



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

FIRST SECTION

CASE OF KHADISOV AND TSECHOYEV v. RUSSIA

(Application no. 21519/02)

JUDGMENT

This version was rectified on 4 May 2009
under Rule 81 of the Rules of the Court

STRASBOURG

5 February 2009

FINAL

05/05/2009

This judgment may be subject to editorial revision.

In the case of Khadisov and Tsechoyev v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Dean Spielmann,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 21519/02) 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 Russian nationals, Mr Salambek Daudovich Khadisov and Islam Issayevich¹ Tsechoyev (“the applicants”), on 11 April 2002.

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 and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that they had been unlawfully detained and tortured by State agents.

4. By a decision of 15 November 2007, the Court declared the application partly admissible.

5. The applicant 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.

¹ Rectified on 4 May 2009: the text was “Islam Isayevich Tsechoyev...”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The first applicant was born in 1956 and the second applicant in 1977. They live in Ingushetia.

A. The applicants' detention

1. The applicants' account

(a) Underlying events and the first applicant's detention in the Sunzhenskiy District Department of the Interior

7. The first applicant is married and has four children. Until 1999 he and his family lived in Grozny. In October 1999, because of the hostilities, they moved to the neighbouring republic of Ingushetia and settled in the village of Verkhny Alkun, Sunzhenskiy District, which is near the border with the Chechen Republic. There the first applicant and his family owned and tended several cows.

8. On 8 September 2001 the village elder and the head of the administration went to the military unit of the border troops stationed near the village to warn them that on the following day the villagers were going to cut grass for hay in the meadows, and to indicate that the servicemen should not shoot at them. The commander of the military unit gave assurances that there would be no shooting.

9. On 9 September 2001 the first applicant, together with his youngest son and other villagers (14 persons altogether, including women and children) went to the meadow to cut grass for hay. At about 10 a.m. the villagers were shot at from the nearby forest, where the troops were stationed. The first applicant's nephew, Mr A.K., born in 1984, was wounded in both legs. The first applicant and other villagers tied his wounds to stop the heavy bleeding and started shouting to the soldiers, who were 100-200 metres away, that they should stop shooting and that a boy had been wounded. However the shooting and shelling continued for about an hour.

10. The first applicant and two women tied a handkerchief to a raised stick and walked up to the closest armoured personnel carrier (APC), shouting "Don't shoot! There is a wounded person here!" An officer in the APC told the first applicant that he would ask the others not to shoot and told him to get the other men out of the field. The villagers got into the Gaz-

66 minivan in which they had arrived at the meadow and went down the hill to the village.

11. At the edge of the village they were met by a group of servicemen, policemen and villagers of Verkhny Alkun. There they were told that the servicemen had been attacked and had fired in response. A local police officer told them that the injured should be taken to hospital, for which purpose he had called a car, and that the men should go and see journalists at the Sunzhenskiy District Department of the Interior (ROVD) in the village of Sleptsovskaya (also known as Ordzhonikidzevskaya) and tell them what had happened.

12. Once at the Sunzhenskiy ROVD, the first applicant and other men were placed in a cell and questioned. Seven men, including the applicant and his son A., were detained for three days, and released on 12 September 2001. While in the ROVD, the applicant and other men were questioned by unknown men wearing military camouflage and by M. B., the investigator of the Sunzhenskiy District Prosecutor's Office. No documents were produced in respect of this detention.

13. Following the opening of a criminal investigation into the attack of 9 September 2001, on 11 October 2001 an investigator of the Prosecutor's Office of Ingushetia informed Mr A.K. that on 11 September 2001 he had been granted victim status in criminal case no. 21600040. The first applicant submitted several statements by other villagers about the circumstances of the events of 9-12 September 2001.

14. On 22 February 2003 the head of the Verkhny Alkun village administration issued an explanation notice confirming the events of 9 September 2001 as presented by the applicant.

15. After his release the first applicant spent several days in the Sunzhenskiy District hospital in Sleptsovskaya village looking after the wounded Mr A.K. In the meantime, the police carried out a search in the first applicant's house in Verkhny Alkun, of which he was informed by his wife.

16. On 23 September 2001 the applicant left the hospital while another relative, Mr S., remained to look after the injured man. That evening, upon his return to the hospital, he was told that Mr S. had been taken to the ROVD and that he too should go there in order to provide certain explanations.

17. The first applicant, who was afraid that he might be detained again, first visited the prosecutor's office and talked to investigator M.B., who allegedly assured him that nothing would happen and that he would personally guarantee this. The first applicant, accompanied by his wife, then went to the Sunzhenskiy ROVD. There the applicant was separated from his wife and placed in a cell, in which there were already several detainees, including his relative Mr S. and the second applicant, whom he had not met before.

(b) The second applicant's detention in the Sunzhenskiy District Department of the Interior

18. The second applicant is an agronomist by profession. In 2001 he worked as a mechanic in a boiler-house. He lived with his parents and siblings at 112 Dzerzhinskogo Street in the village of Ordzhonikidzevskaya.

19. On 23 September 2001 the second applicant was at home. He was planning to go with relatives to the construction site of their new house. His parents, sister, three brothers and a relative were at home at the time and produced detailed statements about the following events.

20. At about 10 a.m. a group of men in civilian clothes entered the house. The second applicant recognised M.Ye., the head of the Sunzhenskiy criminal police, and two policemen whom he knew personally. The family members were ordered to go outside the house, where their identity documents were checked. The policemen searched the house. They then asked the second applicant to come to the Sunzhenskiy ROVD for a check. No documents were produced or submitted in respect of the search or the second applicant's detention.

21. Once at the ROVD, the second applicant was questioned about what he had been doing on 9 September 2001. He understood from the questions that he was suspected of attacking Russian servicemen on that day near the village of Verkhny Alkun. The second applicant gave a written statement that on that day he had been working with his brother and father at the construction site of their new house, and that neighbours could confirm this.

22. The second applicant was then questioned for several hours by three men with Slavic features, who were wearing military camouflage, about the attack of 9 September 2001. They asked him, in particular, whether he knew any fighters. They told him that they suspected him of being a member of an illegal armed group, and that he would be sent to Khankala – the main Russian military base in the Chechen Republic. No records of the questioning were made.

(c) The applicants' detention at the Khankala military base and in Grozny

23. On 24 September 2001 both applicants were taken to the Sunzhenskiy District Court, where the judge asked them for their personal details. The applicants later learned that they had been charged with resisting police officers and that they had been brought to the ROVD for that reason. On the same day a judge of the Sunzhenskiy District Court authorised the detention of both applicants for three days for violently resisting the police officers' attempt to check their identity documents.

24. Later that day the applicants' passports were returned to them and they thought that they would be released. Instead, a group of servicemen from the Special Forces unit of the Ministry of the Interior ("OMON") arrived and took charge of the applicants. The servicemen had "OMON"

inscriptions on their jackets. They put the applicants into a bus where they were forced under the seats, punched and kicked.

25. The bus arrived at the base of the Special Mission Division of the Ministry of the Interior (DON) no. 99, near Nazran, known to the locals as “the 58th army”. There the beating continued. The applicants were severely beaten with rifle butts, boots, metal rods and wrenches; they were also suffocated with plastic bags and strangled with belts. When they lost consciousness the bags were removed from their heads, and when they came round the beatings continued. The servicemen did not ask the applicants any questions, but told them that they were beating them in revenge for their killed comrades.

26. Then both applicants were thrown into a helicopter. The second applicant lost consciousness again and later awoke on the floor of the helicopter, with a bag over his head, a soldier’s feet on his back and a gun pointed at his head. The first applicant’s head was tightly wrapped with a cloth so that he could not see anything, but he was transported in a similar manner.

27. The applicants later learned that the helicopter had taken them to the Khankala military base. They were thrown into a large pit in the ground and beaten for about an hour. They were also subjected to other forms of torture: their hands were tightly tied with metal wire, and their ribs and hips were burned with cigarettes. The soldiers also took photographs in which they were shown placing their feet on the applicants’ heads.

28. The first applicant was later taken to another pit, where he was allowed to remove the cloth from his face.

29. The second applicant was taken somewhere for questioning, and for about an hour he was severely beaten on his head, ribs and on the heels of his feet. He was questioned about having some connection with fighters. He was then put into the same pit as the first applicant, where he was allowed to remove the bag from his head.

30. The applicants remained in the pit for five days. They described it as about 2.5 metres by 2.5 metres wide, and about 2.5 metres deep. It was roofed with a wooden cover and only a small opening was left, concealed by a camouflage net. The applicants suffered from humidity and cold, and were not given any food.

31. During the first four days of detention at Khankala the applicants were taken out for questioning, one after the other, into a room with wooden walls and electric lighting which had a sign marked “Chief of staff” on the wall. They were questioned about whether they had known any fighters and asked to give names. The interrogators also read out the list of wanted persons and asked if the applicants knew any of them. No official records were made during the questioning.

32. According to the applicants, they were subjected to the following forms of torture and ill-treatment: they were kicked and struck with rifle

butts on different parts of their bodies, in particular on the soles of their feet; they were burned with cigarettes and forced to sit in a bucket while being beaten. As a result of the beatings the applicants could hardly walk, the skin on their feet peeled off, and their faces and bodies were bloated and covered with haematomas. The second applicant was forced to stand for hours with his forehead against the wall, with his hands tightly tied behind his back and legs spread widely apart. He still had clearly visible marks on his forehead one year after the events. The soldiers also threatened the applicants with execution and put guns to their heads. On one occasion both applicants were given a document to read which said that they had been caught trying to plant a mine on the road, that the mine had exploded and that both had died on the way to hospital.

33. On the fifth day of detention – the applicants believed it was 29 September 2001 – they were called one after the other to sign a document to the effect that they had no complaints and that they had not been subjected to any ill-treatment. The applicants first refused to sign it, but after the soldiers beat them they signed the document to avoid further beatings. They were then transferred by car, with bags over their heads, to the Sixth Department of the Organized Crime Unit (*RUBOP*) of the Staropromyslovskiy District of Grozny. The applicants spent fifteen days in that department. The conditions of detention were satisfactory and the applicants were given food. However, on several occasions the servicemen kicked them and threatened them with torture.

2. The Government's account

34. On 9 September 2001 in the forest on the outskirts of the village of Verkhny Alkun, Sunzhenskiy District, unidentified persons fired automatic weapons at servicemen of the federal forces. As a result two servicemen were killed and two other servicemen and a villager, Mr K., received shotgun wounds.

35. On the same day the Sunzhenskiy District Prosecutor's Office opened criminal investigation no. 21600040 into the events. In the course of the investigation sixty persons, including the first applicant, his son A. and the second applicant were brought to the ROVD for enquiries concerning their possible involvement in the shooting. However, they were not detained. A search was conducted at the first applicant's house. The second applicant's house was not searched.

36. On 23 September 2001 the applicants were again brought to the ROVD for further enquiries. Since they did not follow the orders of the law-enforcement officers, on 24 September 2001 the Sunzhenskiy District Court ordered their administrative imprisonment for three days.

37. Later on 24 September 2001 the applicants were "transferred" to officers of the mobile detachment of the Ministry of the Interior for enquiries concerning their possible participation in illegal armed groups.

38. The Government submitted no information concerning the applicants' place of detention in the subsequent period. They stated that, according to the results of the investigation, the applicants had not been held in facilities for either remand or administrative detention in the Chechen Republic. Nor was the fact of their detention at the Khankala military base confirmed.

B. The applicants' release and the subsequent investigation

1. The applicants' account

39. On 12 October 2001 the applicants were released. They were not given any papers, and the servicemen told them that they should consider themselves lucky to be alive. At the gates of the RUBOP building they were met by the first applicant's sister and the second applicant's mother. The applicants were very weak and the second applicant could not walk without assistance. Both applicants were taken by their relatives to doctors for treatment.

40. The first applicant was diagnosed as suffering from pneumonia, the fracture of three ribs, burns from cigarettes, partial paralysis of the left hand and bruises. He submitted no copies of medical documents but a statement from his wife, who confirmed that he had suffered from the consequences of the beatings and could not work.

41. The second applicant was taken to Nazran hospital on 16 October 2001 and remained there until 19 October 2001. He was diagnosed with trauma to the lower back, concussion of the kidneys, chronic pyelonephritis and macrohaematuria. On 27 October 2001 the second applicant was again taken to a hospital in Malgobek by his relatives, and remained there until 19 November 2001. In addition to the previous findings, he was diagnosed with craniocerebral injury and concussion of the head and back. The doctors noted his complaints about his loss of sight, pain in the back and head and vertigo. The second applicant continued to suffer from pain, loss of sight, convulsions and other consequences of the ill-treatment for many months after his release. In February 2003 doctors advised him to undergo complicated kidney surgery, but he could not afford it.

42. The applicants and their relatives complained to various official bodies about the search, arrest and ill-treatment of the applicants. In response, they received very little substantive information concerning actions taken by the authorities further to their complaints. On several occasions, they received copies of letters from various authorities informing them that their complaints had been forwarded to the local prosecutors.

43. According to the applicants' relatives, from 24 September to 12 October 2001 they were not informed about the applicants' whereabouts,

or the reasons for or places of their detention. By asking the military and police, they learned that at some point the applicants had been detained at the Khankala military base and then transferred to Grozny. However, this information was not official.

44. On 27 September 2001 the Prosecutor's Office of Ingushetia forwarded a request from the second applicant's father, seeking information on the reasons for the detention and whereabouts of his son, to the Sunzhenskiy District Prosecutor for investigation.

45. On 8 and 10 October 2001 the second applicant's mother wrote to the Sunzhenskiy District Prosecutor's Office and the Sunzhenskiy District administration respectively, asking about the whereabouts of her son after his arrest on 23 September 2001.

46. On 10 October 2001 the Sunzhenskiy District Prosecutor's Office informed the applicants' relatives that no official documents or reports existed in relation to the applicants' arrest, detention or alleged transfer to the Chechen Republic. The letter further stated that any transfer to the Chechen Republic or another region had not been authorised by the prosecutor's office, and that an investigation into possible breaches of correct procedure was underway.

47. On 11 October 2001 the second applicant's mother again wrote to the Prosecutor's Office of Ingushetia, complaining about her son's illegal detention and alleged transfer to the military authorities in the Chechen Republic.

48. On 12 October 2001 the first applicant's wife submitted a complaint to the Prosecutor's Office of Ingushetia in person, asking to be informed of her husband's whereabouts and the reasons for his arrest.

49. After the applicants' release they themselves applied to the prosecutors, asking that an investigation be conducted into their allegations of ill-treatment and that the persons responsible be brought to justice.

50. Soon after his release from hospital (sometime in November 2001) the second applicant submitted a detailed account of his arrest, detention and ill-treatment to the Prosecutor's Office of Ingushetia, indicating the names, ranks and descriptions of the servicemen who had participated in his arrest and the beatings in Ingushetia.

51. It appears that on 23 November 2001 the Sunzhenskiy District Prosecutor's Office refused to open a criminal investigation into the actions of the officials from the Ministry of the Interior, on the ground of absence of *corpus delicti*. The applicants did not submit a copy of that document, but on 20 December 2001 the second applicant, assisted by a lawyer, appealed against the decision to the Prosecutor's Office of Ingushetia. He sought the quashing of the decision and the opening of an investigation into his allegations of ill-treatment. The appeal also contained references to the identity of the servicemen involved and a detailed description of the events.

52. On 4 January 2002 the Prosecutor's Office of Ingushetia informed the second applicant that on that date a criminal investigation had been opened into the complaint with regard to his arrest and beatings administered by unknown servicemen of the Ministry of the Interior, and that the investigation would be carried out by the Sunzhenskiy District Prosecutor's Office.

53. On 27 February 2002 the applicants' representative, the SRJI, wrote to the Chechnya Republican Prosecutor, asking him to open a criminal investigation into the ill-treatment of the applicants at the Khankala military base on 24-27 September 2001. On 10 April 2002 the SRJI again wrote to that prosecutor, but received no reply.

54. On 10 October 2002 the applicants talked to the SRJI representatives in Nazran, who filmed the interview. They have submitted a transcript of the videotape, in which the applicants displayed the scars still visible on their bodies and stated that they suffered from recurrent health problems. They also stated that no proper investigation had taken place into their complaints.

2. The Government's account

55. On 4 January 2002 the Prosecutor's Office of Ingushetia opened a criminal investigation in case no. 22600008, following the second applicant's complaint about alleged ill-treatment by officers of the federal forces. Criminal proceedings were instituted under Article 285 of the Criminal Code (abuse of official powers).

56. On 16 January 2002 the second applicant was questioned and granted victim status in the proceedings. According to the Government's submissions, the second applicant stated that after he and the first applicant had been brought to the ROVD on 23 September 2001, they were transferred to unidentified persons in Nazran, Ingushetia, and then transported to Grozny. They had been ill-treated on the way to Nazran and in Grozny. They had been released a few days later. They would not be able to identify the persons who had ill-treated them.

57. On the same date K.D. and A.A., officers of the Sunzhenskiy ROVD, were questioned.

58. On 18 and 19 January 2002 A.M., M.Ts., S.Ts., V.Kh. and I.M., officers of the Sunzhenskiy ROVD, were questioned.

59. On 1 February 2002 the second applicant was confronted with officer K.D.

60. On 11 February 2002 the first applicant was questioned and granted victim status in the proceedings. He made statements similar to those of the second applicant.

61. On 15 February 2002 the first applicant was confronted with officer A.M.

62. On 19 February 2002 the second applicant was confronted with officer A.A.

63. On 21 February 2002 Mr D. was questioned. It is not clear who he was or why his statements could have been relevant.

64. On 27 February 2002 A.I., a senior officer of the Samogorskiy Department of the Khakasiya Ministry of the Interior was questioned.

65. On 13 March 2002 the investigation was suspended on the ground that the persons to be charged with the offence could not be identified.

66. Despite the suspension of the investigation, on 3 April 2002 investigator M. of the Zamoskvoretskiy Prosecutor's Office of Moscow questioned S. Z., the commander of the mobile detachment of the Ingushetia Ministry of the Interior as a witness.

67. On 10 October 2002 the decision to suspend the investigation was quashed by the Sunzhenskiy District Prosecutor.

68. On 20 October 2002 Mr T.Kh. and Mr A.-S.K. were questioned. On 29 October 2002 Mr M.E. was questioned. It is not clear who they were or why their statements could have been relevant.

69. On 10 November 2002 the investigation was suspended on the ground that the persons to be charged with the offence could not be identified.

70. On 15 April 2003 the decision to suspend the investigation was quashed by the Sunzhenskiy District Prosecutor.

71. On 17 April 2003 Mr U.Kh. was questioned. It is not clear who he was or why his statements could have been relevant.

72. On 15 May 2003 the investigation was suspended on the ground of absence of *corpus delicti*.

73. In July 2003 the materials concerning the applicants' detention at the Khankala military base were separated from case no. 22600008 and transmitted to the military prosecutor's office of the United Group Alignment (UGA) in the North Caucasus region. The results of an enquiry subsequently conducted did not support the applicants' allegations that they had been detained at the base. On 8 August 2003 the UGA Prosecutor's Office refused to institute criminal proceedings, invoking the absence of *corpus delicti*. According to the applicants, they were never notified of this decision.

74. On 7 June 2005 the decision to suspend the investigation of 15 May 2002 was quashed by the Deputy Prosecutor of Ingushetia.

75. On 6 July 2005 the applicants underwent forensic medical examinations. The examination ascertained that the second applicant had a blunt injury in the lumbar region with concussion of the kidneys, which represented significant injuries (*вред здоровью средней тяжести*). The first applicant had traces of injuries that were healing. However, because of the time that had elapsed, it was not possible to establish either how they had been caused or what degree of bodily harm they represented.

76. On 17 July 2005 the investigation was closed on the ground of absence of *corpus delicti*. The relevant parts of the decision read as follows:

“The investigator of the Sunzhenskiy District Prosecutor’s Office ... has established the following:

On 23 September 2001 officers of [the Sunzhenskiy ROVD] brought [the applicants] to the [ROVD] for an enquiry concerning their involvement in the attack on servicemen of the federal troops. Since [the applicants] disobeyed the police officers when being brought to the [ROVD], on 24 September 2001 the judge ... of the Sunzhenskiy District Court ordered their administrative imprisonment ... for three and two days respectively.

On the same day [M.], the deputy head of the Department of the Interior for the Sunzhenskiy District Administration [ОБД администрации Сунженского района] handed over [the applicants] to [A.I.], the head of the criminal investigation department of the mobile detachment of the Ministry of the Interior [начальник уголовного розыска мобильного отряда МВД РФ по Ингушетии], who transferred them to servicemen of the federal troops. The latter transported [the applicants] in a helicopter to the village of Khankala in the Chechen Republic, where for a period of twenty days they tortured and beat them, forcing them to confess to being members of illegal armed groups.

On 4 January 2002, following [the second applicant’s] application ... criminal proceedings were instituted...

...

[A.I.], who was questioned, stated that on 24 September 2001, following an order from [S.Z.], commander of the mobile detachment of the Ministry of the Interior, he had transported [the applicants] from the Sunzhenskiy ROVD to the territory of a military unit in Nazran, where he had transferred them to servicemen who had arrived from Khankala. Lieutenant Colonel [A. Iv.] had given him a document stating that he had received [the applicants]. However, the Sunzhenskiy ROVD had not been informed that [the applicants] would be taken to Grozny. When [the applicants] were transported to the territory of a military unit in Nazran they had not been subjected to any physical coercion.

During the preliminary inquiry [S.Z.], commander of the mobile detachment of the Ministry of the Interior, submitted that, following an order from the military unit in Khankala, he had ordered [A.I.] to convey [the applicants] from the Sunzhenskiy ROVD to the helicopter that had arrived from Khankala. However, during the investigation [S.Z.] refused to make any statement, invoking Article 51 of the Constitution [*which guarantees the right not to incriminate oneself*].

With regard to [S.Z.’s] refusal to make a statement it was decided not to institute criminal proceedings on the ground of [*the expiry of the statutory time-limits for criminal prosecution*].

From expert opinion no. 258 in respect of [the first applicant], it follows that he has two types of injuries: healing scars of burns and healing scars of deep abrasions. However, because of the time that has elapsed it is not possible to establish the degree of bodily harm.

From expert opinion no. 359 in respect of [the second applicant], it follows that he sustained a blunt injury in the lumbar region with concussion of the kidneys, which amounts to significant bodily harm.

Therefore, from the materials of the case it follows that [the applicants] were unlawfully detained and subjected to coercion in the territory of the Chechen Republic.

The decision of the judge of the Sunzhenskiy District Court [*concerning the applicants' administrative imprisonment*] was lawful and entered into force.

Materials concerning [the applicants'] unlawful detention and the application of coercion towards them were separated into a different set of proceedings and have been transferred by reason of territorial jurisdiction to the Prosecutor of the Chechen Republic...

...

Having regard to the foregoing, criminal case no. 22600008 should be closed on the ground of absence of *corpus delicti* ... in the actions of officers of the Sunzhenskiy ROVD.

..."

77. On 26 September 2005 the decision to close the investigation was quashed by the Deputy Prosecutor of Ingushetia. He stated, in particular, that it was necessary to question Lieutenant Colonel A.Iv.

78. On 29 October 2005 the investigation was again suspended on the ground of absence of *corpus delicti*.

79. On 27 December 2007 the Prosecutor's Office of Ingushetia resumed the investigation in case no. 22600008.

3. Results of the investigation

80. On 15 March 2008 the investigation was suspended. The applicants were notified of the suspension in a letter which carried the date of 12 March 2008 but were not provided with a copy of the decision. The investigation failed to establish the applicants' whereabouts from 24 September to 12 October 2001 when, according to the applicants, they were released. According to its findings, no criminal proceedings had been instituted against the applicants by the prosecuting authorities of the Chechen Republic. They had not been held in facilities for either remand or administrative detention in the Chechen Republic.

81. According to the Government, on an unspecified date the Prosecutor's Office of Ingushetia applied to the Ingushetia Ministry of the Interior to take measures to bring to account those responsible for the unlawful transfer of the applicants, who were subject to administrative detention, to the head of the criminal investigation department of the mobile detachment of the Ingushetia Ministry of the Interior. As a result, the head

of the criminal police of the Sunzhenskiy ROVD was dismissed and the officer of the Sunzhenskiy ROVD, who had been in charge of the detention facility on the relevant date, was reprimanded.

C. The Court's request for the case-file

82. Despite specific requests from the Court on several occasions, the Government did not submit any documents from investigation file no. 22600008, apart from eight pages containing the decisions to grant the applicants victim status, the decision of 17 July 2005 to close the investigation and the decisions of 4 January 2002 and 26 September 2005 to reopen the investigation. They stated that disclosure of the documents would breach Article 161 of the Code of Criminal Procedure since the file contained information related to military operations and the personal data of participants in the criminal proceedings. At the same time, the Government suggested that a Court delegation could have access to the file at the place where the preliminary investigation was being conducted, with the exception of "the documents [disclosing military information and personal data of the witnesses], and without the right to make copies of the case file and transmit it to others".

D. Civil proceedings for damages

83. On 15 December 2002 the second applicant brought a civil claim before the Sunzhenskiy District Court for damages in respect of his allegedly unlawful detention and ill-treatment. He claimed 3,000,000 roubles (RUB) for non-pecuniary damage.

84. On 9 January 2003 the Sunzhenskiy District Court rejected the claim on the ground that the applicant had failed to comply with the procedure for out-of-court dispute resolution. The relevant part of the decision reads as follows:

"The present claim cannot be examined for the following reasons.

As shown in the information submitted by the Sunzhenskiy District Prosecutor's Office ... the materials concerning the unlawful detention and ill-treatment of [the second applicant] were sent to the Prosecutor's Office of the Chechen Republic for a decision concerning territorial jurisdiction.

Until this matter is resolved, it is not possible to examine the case, since the procedure for out-of-court dispute resolution has not been complied with."

85. The decision could be appealed against to a higher court. It appears that the second applicant has not appealed.

E. Alleged interference with the right of individual petition

86. The first applicant made the following submissions concerning the events of January – March 2008 which, in his view, were related to his application to the Court.

87. On 22 January 2008 a plain-clothed man of Chechen origin visited him at his home and asked him to come to the Khankala military base. The first applicant complied with the request. At the Khankala military base he was taken to a room where an official was waiting for him. The official introduced himself as Major D., deputy head, senior investigator of the military investigative department of military unit no. 68797. Major D. read out excerpts from the first applicant's application to the Court and questioned him in relation to his ill-treatment in Khankala in 2001. During the questioning he was typing something on his computer. Then he printed out a document and asked the first applicant to read it. The first applicant replied that he was "bad at reading" and that he had forgotten his glasses at home. Then, with the first applicant's consent, Major D. himself read out the document, which was a record of the first applicant's questioning, and asked the first applicant to sign it. The first applicant signed the document and then requested and was provided with its copy, which he submitted to the Court.

88. When the first applicant returned home, his wife read out the document for him. The record contained, in particular, the following statements allegedly made by the first applicant in the course of the questioning:

"In the course of the questioning in Khankala I was not beaten. However, [the second applicant] was beaten..."

The minutes... of my questioning on 11 February 2002 contain a wrong record to the effect that I was beaten in the "pit". I meant that [the second applicant] and me had been beaten by... officers of the mobile detachment [of the Ingushetia Ministry of the Interior] who had conveyed us from ... the Sunzhenskiy ROVD to the helicopter.

I have no complaints against servicemen of the Ministry of the Defence and of the internal troops of the Ministry of the Interior. I have complaints against officers of the mobile detachment of the Ingushetia Ministry of the Interior.

I can also clarify that I lodged a complaint before the representative of the Russian Federation before [the Court] precisely in respect of the actions of ... officers of the mobile detachment of the Ingushetia Ministry of the Interior. I did not complain about actions of servicemen of the Ministry of the Defence and of the internal troops of the Ministry of the Interior."

89. On 24 January 2008 the first applicant applied in writing to the head of military investigative department no. 505 of military unit no. 68797. He wrote, in particular, that in the course of questioning on 22 January 2008 he had never made the above statements and that the record of questioning had

been forged in this part, which he had only discovered at home after the record was read out by his wife. He maintained that during the questioning he had confirmed that he had been beaten in Khankala. He had merely specified that the beatings he had received there had not been as severe as those suffered by the second applicant, and not as bad as those beatings administered against both of them by officers of the mobile detachment of the Ingushetia Ministry of the Interior. The applicant asked to disregard the record of his questioning on 22 January 2008.

90. On 15 February 2008 the first applicant's wife was questioned by Major D. She provided her account of the events related to her husband's detention in September-October 2001. No questions concerning the first applicant's application to the Court were put to her. A copy of the record of the questioning was submitted to the Court.

91. On 14 March 2008 Major D. again questioned the first applicant, who was assisted by his counsel, Mr A. The first applicant stated that he largely confirmed his submissions set out in the record of his questioning on 22 January 2008, with certain exceptions. He clarified, in particular, that during questioning in Khankala in 2001 he had been kicked, punched and struck with sticks. He had been beaten by up to three men simultaneously. During his questioning on 22 January 2008 he had intended to say that he had not been beaten as severely as the second applicant in Khankala, and that the beatings there had been less severe than both had suffered in Nazran. Furthermore, the first applicant submitted that he had never stated that he had no complaints against servicemen. The complaints set out in his application to the representative of the Russian Federation before the Court related to all persons who had unlawfully detained and ill-treated him. He further stated that he had not read the record of the questioning on 22 January 2008 because he had not had his glasses with him. He had signed it after it was read out by the investigator and could not explain why his statements had been recorded inaccurately. The applicant signed the record of his questioning on 14 March 2008 and was provided with a copy, which he submitted to the Court.

II. RELEVANT DOMESTIC LAW

1. Criminal proceedings

92. Until 1 July 2002 criminal-law matters were governed by the 1960 Code of Criminal Procedure of the RSFSR (Russian Soviet Federative Socialist Republic). On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation.

93. Article 125 of the new CCP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

94. Article 161 of the new Code of Criminal Procedure establishes the rule that data from the preliminary investigation cannot be disclosed. Part 3 of the same Article provides that information from the investigation file may be divulged with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of the participants in the criminal proceedings without their permission.

2. Administrative detention and imprisonment

95. In so far as relevant, the Constitution of the Russian Federation, adopted by referendum on 12 December 1993, provides:

Article 22

“1. Everyone has a right to liberty and personal security.

2. Arrest, detention and placement in custody shall be subject to a court decision. No one may be detained longer than 48 hours before the court decision is taken.”

96. The RSFSR Administrative Code (*Кодекс об административных правонарушениях РСФСР*), in force until 1 July 2002, contained the following provisions.

97. Under Article 239 the police and other competent authorities could subject a person to administrative detention in order to prevent an administrative offence, to establish a person's identity, to draw up a report on administrative offence where such a report was necessary and could not be drawn up on the spot, and to ensure effective proceedings or the enforcement of administrative sanctions.

98. Article 240 provides that a report on administrative detention was to contain the date and place where it was drawn up, the name and position of the officials who prepared it, information on the detained person, and the exact time and reasons for the detention. It should be signed by the official and the detained person. Should the latter refuse to sign the report, a record to this effect was to be made in the report. At the request of the detained person, his relatives, his employer or educational institution was to be notified of the place of his detention.

99. Article 241 provides a list of competent authorities and circumstances where they could effect administrative detention. In particular, officials of the interior (policemen) could effect administrative detention for a failure to comply with a lawful order of a police officer.

100. Article 242 provides, in particular, that the term of administrative detention was not to exceed three hours, except for certain categories of offenders, including those who forcefully resisted the lawful order of the

police. Those could be detained as long as necessary until their case was considered by a judge or a police superior.

101. Under Article 302, administrative imprisonment could be applied in exceptional circumstances by a judge as an administrative sanction in respect of certain administrative offences, for a term no longer than fifteen days.

102. Under Article 303 an order on administrative imprisonment was immediately enforceable.

103. Article 304 provides that persons subjected to administrative imprisonments should be held in facilities determined by authorities of the interior. The term of administrative detention was to be counted towards the term of administrative imprisonment.

104. Under Section 3 of the Regulations on the Internal Regime of Special Facilities for the Detention of Persons Subjected to Administrative Imprisonment of 6 June 2000 (*Правила внутреннего распорядка специальных приемников для содержания лиц, арестованных в административном порядке, утвержденные приказом МВД РФ от 6 июня 2000 г. N 605/дсн*), individuals are placed in the special facilities on the basis of an order on administrative imprisonment issued by a competent authority.

105. Section 13 of the Regulations provides that persons delivered to the special facilities are to be registered in the facility's register. A card is to be filled in respect of each detained person, with information on the detainee, the term of detention and the authority which ordered the detention, and the times of placement and release from the facility. Likewise, a personal file is to be kept in respect of each detainee. The file should contain the order on administrative imprisonment, the report on the search conducted upon the person's admittance to the facility and other documents related to the detainee and his conduct in the facility during the detention term. Personal files should be stored for three years.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The parties' submissions

106. The Government contended that the application should be declared inadmissible for failure to exhaust domestic remedies, since the investigation into the applicants' allegations of ill-treatment and unlawful

detention had not yet been completed. Furthermore, the applicants had failed either to complain to a court against any actions or alleged omissions of the investigating authorities or to appeal against any of the decisions to suspend the investigation. Moreover, they had neither appealed against the decision of the Sunzhenskiy District Court of 24 September 2001 concerning their administrative imprisonment, nor brought a civil claim for damages in respect of their allegedly unlawful detention under Article 1100 of the Civil Code.

107. The applicants disputed that objection. In their view, the fact that the investigation had been pending for seven years with no tangible results proved that it was an ineffective remedy in this case. They further argued that a civil claim for damages would not be an effective remedy, since the outcome of civil proceedings would be predicated upon the results of the criminal investigation, which had proved to be futile. The applicants contended that the Government had failed to demonstrate that the remedies to which they referred were effective and, in particular, that they were capable of leading to the identification and punishment of those responsible.

B. The Court's assessment

108. 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 (for a relevant summary, see *Estamirov and Others v. Russia*, no. 60272/00, § 73-74, 12 October 2006).

109. The Court observes that the investigating authorities became aware of the applicants' allegations of ill-treatment shortly after their release on 12 October 2001, and subsequently an investigation was instituted. The applicants and the Government dispute the effectiveness of this investigation. It further notes that after the Sunzhenskiy District Court had ordered the applicants' administrative detention on 24 September 2001, they were "transferred" to officers of the mobile detachment of the Ministry of the Interior and remained in detention until 12 October 2001. The parties dispute the circumstances of the applicants' detention. The Court considers that the Government's preliminary objection raises issues which are closely linked to the merits of the applicant's complaints. Thus, it considers that this matter falls to be examined below under the substantive provisions of the Convention (see paragraphs 121-122 and 150-151 below).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

110. The applicants complained under Article 3 of the Convention that they had been subjected to ill-treatment and torture. They referred, in

particular, to the methods of ill-treatment to which they had been subjected in Ingushetia and in Khankala, to the conditions of detention in Khankala and to the threats of execution. The applicants also complained under Article 3 that the authorities had failed to conduct an effective investigation into their allegations of ill-treatment. Article 3 of the Convention reads as follows:

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

A. The parties’ submissions

111. The applicants reiterated their allegations of having been subjected to torture and ill-treatment by representatives of the federal forces. They maintained that their allegations were supported by the facts that they had been detained by policemen and later transferred to servicemen, which had been acknowledged by the Government. The applicants contended that the domestic investigation into their allegations had been manifestly inadequate, since after several years it had produced no tangible results.

112. The Government submitted that since the circumstances in which the applicants had been injured had not yet been established by the investigation, there were no grounds to consider that they had been subjected to inhuman or degrading treatment in violation of Article 3 of the Convention. In the Government’s view, the investigation had been in compliance with Convention requirements.

B. The Court’s assessment

1. Effectiveness of the investigation

a. General principles

113. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. An obligation to investigate “is not an obligation of result, but of means”: not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant’s account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*,

no. 46477/99, § 71, ECHR 2002-II and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

114. Thus, the investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 103 et seq., *Reports* 1998-VIII.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, etc. (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104 et seq., ECHR 1999-IV.; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. Furthermore, the investigation must be expedient (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV, and *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI).

(b) Application to the present case

115. The Court notes at the outset that most of the documents from the investigation were not disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the parties and the information about its progress presented by the Government.

116. Turning to the facts of the case, the Court notes that the authorities were made aware of the applicants' allegations of unlawful detention and ill-treatment shortly after their release on 12 October 2001. They presented a detailed account of their detention and ill-treatment and the second applicant submitted a medical certificate setting out the injuries sustained. The applicants' allegations thus were clearly "arguable". It appears that the institution of the investigation was initially refused on 23 November 2001. However, following the appeal lodged by the second applicant, the investigation was instituted on 4 January 2002. The Court thus notes that the investigation was opened with over two months' delay, for which no explanation has been provided.

117. The Court notes that on 16 January 2002 the second applicant was granted victim status and questioned. The first applicant was granted victim status and questioned on 11 February 2002. In January – February 2002 the investigating authorities questioned seven officers of the Sunzhenskiy ROVD and confronted the applicants with three of them. In February 2002 they also questioned a senior officer of the Samogorskiy Department of the Khakasiya Ministry of the Interior and, in April 2002, S.Z., the commander of the mobile detachment of the Ingushetia Ministry of the Interior. The

investigating authorities also questioned a number of persons in respect of whom no information has been provided to the Court, and no explanations as to how their statements could have been relevant have been submitted.

118. The Court further observes that from the information available it appears that a number of crucial steps were delayed and were eventually taken only after the communication of the complaint to the respondent Government, or not at all. First of all, the applicants did not undergo forensic medical examinations until 6 July 2005, that is, over three years after the institution of the investigation. In cases concerning allegations of ill-treatment a medical examination to establish the gravity of the injuries, as well as when and how they were inflicted, is the most elemental step. It is crucial for the subsequent conduct of the investigation that it is carried out with utmost expedition, since any delay hinders the accuracy of its findings on account of healing of the injuries, thus affecting the evidentiary base available to the investigation. In the present case the failure to conduct the forensic medical examination for over three years, for which no explanation has been provided to the Court, is in itself liable to render the investigation inefficient.

119. The Court further notes that the investigating authorities questioned S.Z., the commander of the mobile detachment of the Ingushetia Ministry of the Interior to whom the applicants had been transferred on 24 September 2001. The Government has not provided the Court with a transcript of S.Z.'s questioning. However, from the decision of 17 July 2005 of the Sunzhenskiy District Prosecutor's Office it follows that he admitted to having ordered A.I., the head of the criminal investigation department of the mobile detachment, to convey the applicants to a helicopter that had arrived from Khankala, as was also confirmed by A.I. The latter further stated that he had transferred the applicants to servicemen who had arrived from Khankala, and that Lieutenant Colonel A. Iv. had given him a document to confirm that the applicants had been handed over to him. Nevertheless, the investigating authorities failed to establish the applicants' whereabouts in the subsequent period, let alone the particular circumstances of their detention. Although in the decision of 26 September 2005 the first deputy prosecutor of Ingushetia specifically stated that it was necessary to question Lieutenant Colonel A. Iv., no information has been submitted to the Court in respect of any efforts to question either him or the officers under his command.

120. The Court considers that in the circumstances of the present case where the identities of the detachments and their commanders involved in the detention of the applicants were established by the domestic investigation, the failure to establish their whereabouts during the period in question and to bring charges against those responsible may only be attributed to the negligence of the prosecuting authorities in handling the investigation and their reluctance to pursue it. The Court notes that after the

commander of the detachment which had transferred the applicants to the Khankala military base had been identified, the military prosecuting authorities discontinued the investigation on the ground of the absence of *corpus delicti*, and the investigation conducted by the prosecuting authorities of Ingushetia was repeatedly suspended on the same ground. Higher prosecuting authorities criticised deficiencies in the proceedings and ordered remedial measures. However, it appears that their instructions were not complied with. Such a manner of proceeding offered no prospect of bringing those responsible for the offence to account.

121. As regards the Government's preliminary objection, which was joined to the merits of the case, inasmuch as it related to the fact that the investigation was pending, the Court observes that after this objection was raised the investigation was discontinued. Accordingly, the Court does not find it necessary to examine it.

122. The Government also mentioned the possibility for the applicants to apply for judicial review of the decisions of the investigating authorities, in the context of exhaustion of domestic remedies. The Court observes that the applicants were only notified of certain suspensions and resumptions of the investigation, but no information concerning important investigative actions was provided to them. Furthermore, according to the applicants, they were not notified of the UGA Prosecutor's Office's decision of 8 August 2003 not to institute criminal proceedings, and the Government submitted no evidence to the contrary. Having no access to the case file and not being properly informed of the progress of the investigation, the applicants could not have effectively challenged actions or omissions of investigating authorities before a court. Furthermore, the investigation has been resumed by the prosecuting authorities themselves on a number of occasions due to the need to take additional investigative measures. However, they still failed to investigate the applicants' allegations properly. Owing to the time that had elapsed since the events complained of, certain investigative steps that ought to have been carried out much earlier could no longer usefully be conducted. Therefore, it is highly doubtful that the remedy relied on would have had any prospects of success. The Court therefore finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection in this part also.

123. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the applicants' allegations of ill-treatment. Accordingly, there has been a violation of Article 3 in this respect.

2. *The alleged ill-treatment*

(a) General principles

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

(b) Application to the present case

125. The Court notes that on 24 September 2001, after the Sunzhenskiy District Court ordered the applicants’ administrative imprisonment, they were transferred to officers of the mobile detachment of the Ministry of the Interior. On the same date, as corroborated by the findings of the domestic investigation, they were handed over to servicemen who had arrived from the Khankala military base. According to the applicants, during their transportation and several days of detention in Khankala, officers of the Interior Ministry and servicemen ill-treated them, forcing them to confess to having connections with paramilitary groups. In particular, they were held in a pit and were subjected to the following forms of ill-treatment: they were kicked with boots and beaten with rifle butts on different parts of their bodies, including the soles of their feet; they were burned with cigarettes and forced to sit in a bucket while being beaten. The second applicant was forced to stand for hours with his forehead against the wall, with his hands tightly tied behind his back and legs spread widely apart. The servicemen also threatened them with execution and put guns to their heads. According to the applicants, five days later they were transferred to the Sixth Department of the Organized Crime Unit of the Staropromyslovskiy District of Grozny, where they were held until their release on 12 October 2001. There they were on several occasions kicked by the servicemen and threatened with torture, although the general conditions of detention were satisfactory. The domestic investigation failed to establish the applicants’

whereabouts between the moment of their “transfer” to servicemen on 24 September 2001 and their release on 12 October 2001.

126. According to the applicants, as a result of the beatings they could hardly walk, the skin on their feet peeled off, and their faces and bodies were bloated and covered with haematomas.

127. On their release, the second applicant was twice placed in hospital, where he was diagnosed with trauma to the lower back, concussion of the kidneys, chronic pyelonephritis and macrohaematuria, craniocerebral injury and concussion to the head and back. The doctors noted his complaints about his loss of sight, pain in the back and head, and vertigo. He continued to suffer from pain, loss of sight, convulsions and other consequences of the ill-treatment for many months after his release. In February 2003 he was advised by doctors to undergo complicated kidney surgery, which he could not afford. In the course of a forensic medical examination conducted on 6 July 2005, the second applicant was diagnosed with a blunt injury in the lumbar region with concussion of kidneys.

128. According to the first applicant, on his release he was diagnosed with pneumonia, fracture of three ribs, burns from cigarettes, partial paralysis of the left hand and bruises. He submitted no copies of medical documents, but instead a statement from his wife, who confirmed that he had suffered from the consequences of the beatings and could not work. The report of the forensic medical examination conducted on 6 July 2005 stated that he had traces of healing injuries.

129. The Court observes that the Government did not contest any details of the applicants’ account of the ill-treatment to which they had been subjected in detention, but merely referred to the absence of findings of the domestic investigation as to the circumstances in which the applicants had been injured. It notes, however, that after seven years the domestic investigation not only failed to verify the applicants’ allegations, but even to establish their whereabouts in the relevant period, although it had been confirmed that on 24 September 2001 they were handed over to the State servicemen who had arrived from Khankala. Furthermore, in paragraphs 115-123 above, the Court found the investigation ineffective, in breach of Article 3 of the Convention.

130. The Court notes that the second applicant corroborated his allegations by medical certificates. Although the first applicant has not provided copies of the relevant certificates, he submitted a witness statement by his wife and, furthermore, traces of healing injuries on his body were confirmed by a forensic medical examination conducted almost four years after the events. The Government did not argue that the injuries had been sustained after the applicants’ detention. The Court is thus satisfied that the applicants have presented a consistent account of the ill-treatment they were subjected to, corroborated by appropriate evidence. In view of the absence of any other plausible explanation as to the origin of the

injuries caused to the applicants in the period concerned, the Court accepts that they were subjected to the ill-treatment by officers of the Interior Ministry and servicemen as described above.

131. As to the seriousness of the acts of ill-treatment, the Court reiterates that in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The Court has previously had before it cases in which it has found that there has been treatment which could only be described as torture (see *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83-84 and 86, *Reports* 1997-VI; *Selmouni v. France* [GC], no. 25803/94, § 105, ECHR 1999-V; *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)). The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. In any event, the Court reiterates that, in respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Selmouni*, cited above, § 99).

132. The Court finds that 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 existence of physical pain or suffering is attested by the medical reports and the applicants' statements concerning their ill-treatment by servicemen. In particular, they claimed to have been severely beaten and subjected to other forms of ill-treatment which caused injuries and other serious health problems, which was not refuted by the Government. The sequence of events also demonstrates that the pain and suffering were inflicted on them intentionally, in particular with the view of extracting from them a confession to having been connected with paramilitary groups active in Chechnya.

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

134. Accordingly, there has also been a violation of Article 3 in this connection.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

135. The applicants complained that their arrest and detention had been in breach of the domestic law and Article 5 §§ 1-4 of the Convention and that they had no enforceable right to compensation for those violations, as provided for under Article 5 § 5 of the Convention. Article 5 of the Convention provides:

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

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

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

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

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

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

A. The parties' submissions

136. The applicants maintained that, having been brought by policemen to the ROVD on 23 September 2001, they had been detained without any lawful basis until 12 October 2001. The decision on their administrative imprisonment for three days could not have served as such a basis and, furthermore, the allegations of their failure to comply with orders given by law-enforcement officers had been fabricated so as to justify their unlawful detention. They argued that their detention had not been duly acknowledged by the authorities, since no relevant records had been produced by the Government. Accordingly, it did not fall under any of the paragraphs of Article 5 § 1 and, therefore, none of the guarantees enshrined in Article 5 had been afforded.

137. The Government submitted that the applicants' administrative imprisonment had been ordered by the Sunzhenskiy District Court in a decision of 24 September 2001, of which the applicants had been immediately informed. In their observations submitted prior to the Court's decision as to admissibility of 15 November 2007, the Government stated that the domestic investigation obtained no information about the applicants' detention between 24 September and 12 October 2001 and that, therefore, there was no evidence that the applicants had been deprived of their liberty in violation of Article 5 of the Convention. In their observations submitted after that decision, they stated that on 24 September 2001 the applicants had been transferred to officers of the mobile detachment of the Ministry of the Interior, in breach of the applicable procedure. However, in the Government's view, the dismissal of the head of the criminal police of the Sunzhenskiy ROVD and the reprimand given to the officer of the Sunzhenskiy ROVD, who had been in charge of the detention facility on the relevant date, constituted both an acknowledgment of the violation and provided redress for the applicants.

B. The Court's assessment

138. 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 state the obligation to conform to the substantive and procedural rules thereof. 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 *Fursenko v. Russia*, no. 26386/02, § 73, 24 April 2008). It has also stated that unacknowledged detention is a complete negation of guarantees against arbitrary detention and discloses a

very grave violation of Article 5 (see *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-... (extracts)).

139. The Court observes from the outset that, as undisputed by the parties, the applicants' arrest on 23 September 2001 and the ensuing detention amounted to deprivation of liberty within the meaning of Article 5 § 1 of the Convention.

140. The Government admitted that on 23 September 2001 the applicants were brought to Sunzhenskiy ROVD "for further enquiries". They also stated that, since the applicants had not followed the orders of the law-enforcement officers, on 24 September 2001 the Sunzhenskiy District Court ordered their administrative imprisonment. However, the Government advanced no lawful basis for their detention from 23 to 24 September 2001.

141. Inasmuch as the applicants' detention in the period concerned might have fallen into the category of "administrative detention" under Article 239 of the RSFSR Administrative Code, the Court notes that under Article 240 of the Code a report on administrative detention, containing detailed information concerning the circumstances of the detention, must be drawn up. No such report has been provided to the Court. No other documents related to the applicants' detention in the period in question, including records of detention facilities, has been made available to the Court either.

142. The Court further notes that it is common ground between the parties that on 24 September 2001 the Sunzhenskiy District Court ordered the applicants' administrative imprisonment for three days for a failure to comply with orders of law-enforcement officers. Although no copy of the order has been provided to the Court, having regard to the parties' submissions it is satisfied that such an order was issued.

143. It further observes that it is not disputed between the parties that on the same date the applicants were initially transferred to officers of the mobile detachment of the Ministry of the Interior, who then handed them over to servicemen from the Khankala military base. As regards the subsequent events, according to the applicants they were kept for five days at the Khankala military base. Then they were transferred to the Sixth Department of the Organized Crime Unit of the Staropromyslovskiy District of Grozny, where they were kept for several days until their release on 12 October 2001. The Government merely stated that the domestic investigation failed to obtain any information concerning the applicants' detention between 24 September and 12 October 2001.

144. Having regard to the Sunzhenskiy District Court's order of 24 September 2001 on the applicants' administrative imprisonment for three days, the Court shall first consider whether it might have constituted a lawful basis for their detention from 24 to 27 September 2001.

145. The Court reiterates that, in order to comply with Article 5 § 1 of the Convention, the deprivation of liberty must be “in accordance with a procedure prescribed by law”. It notes that under the Regulations of 6 June 2000 persons subjected to administrative imprisonment should be placed in special facilities for administrative detention and their admittance should be recorded in the facility’s register (see paragraph 105 above). However, no records of the applicants’ admittance to the special facility has been provided to the Court. On the contrary, from both parties’ submissions it follows that after the Sunzhenskiy District Court had ordered the applicants’ administrative imprisonment, they were transferred to officers of the mobile detachment of the Ministry of the Interior and then to servicemen from the Khankala military base. The Government has expressly admitted that such a transfer was in breach of the applicable procedure. They stated, furthermore, that the applicants were transferred “for enquiries concerning their possible participation in illegal armed groups”. It thus follows that from 24 September 2001 the applicants were detained in connection with such enquiries and not in connection with the imposed sanction for an administrative offence.

146. Accordingly, the Court finds that the applicants’ detention from 24 to 27 September 2001 was not effectuated pursuant to the Sunzhenskiy District Court’s order of 24 September 2001 on their administrative imprisonment.

147. The Court notes that the Government has not advanced any other lawful basis either for the applicants’ detention from 24 to 27 September 2001, or for their ensuing detention from 27 September to 12 October 2001. The domestic investigation failed to establish the circumstances of their detention.

148. Thus, the applicants’ detention was not acknowledged and was not logged in any custody records and there exists no official trace of their whereabouts in the period concerned. In accordance with the Court’s practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee as well as the reasons for the detention and the name of the person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan v. Turkey*, no. 25656/94, § 371, 18 June 2002).

149. Consequently, the Court finds that from 23 September to 12 October 2001 the applicants were held in unacknowledged detention without any of the safeguards contained in Article 5.

1. The Government's preliminary objection

150. Having regard to the Government's preliminary objection, which was joined to the merits of the case, inasmuch as it concerns the applicants' failure to appeal against the Sunzhenskiy District Court's order of 24 September 2001 on their administrative imprisonment, the Court notes that it has found in paragraph 146 above that their detention was not effectuated pursuant to this order. Therefore, the Court finds that the remedy relied on by the Government was ineffective in the circumstances and rejects their preliminary objection in this respect.

151. Inasmuch as the Government's preliminary objection concerned the applicants' failure to claim damages in respect of their allegedly unlawful detention under Article 1100 of the Civil Code, the Court recalls that the right not to be deprived of one's liberty "save in accordance with a procedure prescribed by law" is not the same as the right to receive compensation for detention. Paragraph 1 of Article 5 of the Convention covers the former and paragraph 5 of Article 5 the latter. The court invited to rule on an action for damages caused by unlawful detention examines the matter after the events and therefore does not have jurisdiction to order release if the detention is unlawful, as Article 5 § 4 requires it should (see *Weeks v. the United Kingdom*, 2 February 1987, § 61, Series A no. 114). A civil action for damages has accordingly no bearing on the question of exhaustion of domestic remedies in respect of the applicant's complaints under Article 5 §§ 1-4 (see, as a recent authority, *Belchev v. Bulgaria* (dec.), no. 39270/98, 6 February 2003, with further references). Accordingly, the Court rejects the Government's preliminary objection in this respect as well.

2. Whether the applicants may still claim to be "victims"

152. The Court notes that, according to the Government, following an application filed by the Prosecutor's Office of Ingushetia to the Ingushetia Ministry of the Interior, the head of the criminal police of the Sunzhenskiy ROVD was dismissed and the officer of the Sunzhenskiy ROVD, who had been in charge of the detention facility on the relevant date, was reprimanded for having transferred the applicants to officers of the mobile detachment of the Ministry of the Interior on 24 September 2001, in breach of the applicable procedure. It further notes the Government's argument that such measures constituted an acknowledgment of the violation and appropriate redress.

153. The Court reiterates that, according to its case-law, the applicant may lose the status of "victim" in instances where "the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention" (see *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). The Court notes, in the first place, that the Government has failed to produce any documents to corroborate that the

disciplinary measures described above were actually taken. However, even assuming they were, and particularly in view of the domestic investigating authorities' failure to establish the circumstances of the applicants' detention after 24 September 2001, the Court is not satisfied that the disciplinary measures imposed on the ROVD officers on account of the applicants' unlawful transfer to officers of the Interior on 24 September 2001 may be considered to constitute an appropriate acknowledgement of the violation of their rights under Article 5 in respect of the whole period of their detention from 23 September to 12 October 2001. Furthermore, the Government provided no information as to how, if at all, having regard to those measures the applicants would be able to obtain any compensation for the violation of their rights. Accordingly, the Court considers that those measures also failed to provide adequate redress as required by the Court's case-law and concludes that the applicants may claim to be "victims" for the purposes of Article 34 of the Convention.

3. Conclusion

154. Having regard to the foregoing, the Court finds that there has been a violation of Article 5 of the Convention on account of the applicants' detention from 23 September to 12 October 2001.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

155. The applicants complained under Article 13 of the Convention that that they had had no effective remedies against the alleged violations of Articles 3 and 5 of the Convention. Article 13 of the Convention 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."

156. The applicants maintained their complaint that they had not had effective domestic remedies, since their detention had remained unacknowledged and the investigation into their complaints of ill-treatment had been inadequate.

157. The Government contended that the applicants had effective domestic remedies, as required by Article 13 of the Convention, and that the Russian authorities had not prevented them from using those remedies. They had been granted victim status in the criminal proceedings and received reasoned replies to all their applications within the framework of the proceedings. At the same time, the applicants had not submitted their complaints concerning their allegedly unlawful detention, or any other complaints, to a court. The Government referred to a number of decisions of

the courts in the Chechen Republic whereby complaints concerning the actions or inaction of prosecuting authorities had been allowed.

158. The Court reiterates that Article 13 of the Convention guarantees the availability at the 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. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheylya Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005). The Court further reiterates that the requirements of Article 13 are broader than a Contracting State's obligation under Article 2 to conduct an effective investigation (see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 183, 24 February 2005).

159. In view of the Court's above findings with regard to Article 3, this complaint is clearly "arguable" for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The applicants should accordingly have been able to avail themselves of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation for the purposes of Article 13.

160. It follows that in circumstances where, as here, the criminal investigation into the ill-treatment has been ineffective and the effectiveness of any other remedy that may have existed, including civil remedies suggested by the Government, has consequently been undermined, the State has failed in its obligation under Article 13 of the Convention.

161. Consequently, there has been a violation of Article 13 in conjunction with Article 3 of the Convention.

162. As regards the applicants' reference to Article 5 of the Convention, the Court notes that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements and in view of its above findings of a violation of Article 5 of the Convention on account of unacknowledged detention, the Court considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

V. ALLEGED FAILURE TO COMPLY WITH ARTICLE 34 OF THE CONVENTION

163. The first applicant alleged that his questioning on 22 January 2008 and, in particular, the record of the questioning made by Major D. amounted to hindrance of his right to petition the Court in breach of Article 34, the relevant parts of which provide:

“The Court may receive applications from any person ... claiming to be the victim of a violation ... of the rights set forth in the Convention ... The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

164. The first applicant maintained that Major D. had forged the record of his questioning on 22 January 2008 and misled him so as to obtain his signature on the record. Taking into account that the events had taken place before the Government submitted their observations on the admissibility and merits of the case, the first applicant alleged that those actions were aimed at forcing him to withdraw his application.

165. The Government considered the allegations to be unsubstantiated. They pointed out that the applicant himself did not allege that any pressure had been put on him. On the contrary, he had been questioned with regard to the events of 2001, he had been listened to attentively and his complaints had been recorded. The Government regarded the first applicant’s account of the “discovered” falsification of the record as hardly credible.

166. The Court notes that on 22 January 2008 the first applicant was questioned by Major D. in relation to his detention in 2001. The record of the questioning was then read out to him by Major D. The first applicant signed it and was provided with a copy thereof. According to the first applicant, once at home he discovered that some of the statements made in the course of the questioning had been recorded incorrectly. On 24 January 2008 he complained to this effect to the head of the military investigative department no. 505 of military unit no. 68797. On 15 March 2008 he was again questioned by major D. The first applicant explained which statements made by him on 22 January 2008 were inaccurately recorded. His submissions were taken down, he signed the record of his questioning on 15 March 2008 and was provided with its copy.

167. The Court observes that the only passage in the record of the first applicant’s questioning on 22 January 2008 which could be regarded as related to his application before the Court reads as follows:

“I can also clarify that I lodged a complaint with the representative of the Russian Federation before [the Court] precisely in respect of actions of ... officers of the mobile detachment of the Ingushetia Ministry of the Interior. I did not complain about actions of servicemen of the Ministry of the Defence and of the internal troops of the Ministry of the Interior.”

168. In the course of questioning on 15 March 2008 the first applicant rectified it to the effect that the complaints set out in the application related to all persons who had unlawfully detained and ill-treated him.

169. The Court notes, in the first place, that in the relevant passage the first applicant referred to his application to the representative of the Russian Federation before the Court. The Court accepts that the first applicant might have meant his application to the Court. However, nothing in this passage suggests that a question was put to him in this respect. Quite the contrary, it appears that the first applicant provided those clarifications of his own motion. Furthermore, the first applicant's allegations that during the questioning on 22 January 2008 Major D. read out excerpts from his application before the Court are not corroborated by any evidence.

170. From the materials available to the Court it appears that on 22 January 2008 the first applicant was questioned in relation to his detention in 2001. Following his allegations that some of his statements were inaccurately recorded, he was questioned again on 15 March 2008. During the questioning he corrected the inaccurately recorded statements as reflected in the record of the questioning on 15 March 2008. The accuracy of this record is not contested by the first applicant.

171. Having regard to the foregoing, the Court observes that, on the one hand, the materials available disclose no evidence that the first applicant was questioned with regard to his application before the Court, let alone that any pressure was put on him in this respect. On the other hand, inasmuch as the record of the first applicant's questioning on 22 January 2008 contained inaccurate statements, the issue has been rectified at the domestic level.

172. Accordingly, the Court finds that there has been no failure to comply with the respondent State's obligations under Article 34 of the Convention.

VI. OBSERVANCE OF ARTICLE 38 § 1 (a) OF THE CONVENTION

173. The applicants argued that the Government's failure to submit the documents requested by the Court disclosed a failure to comply with their obligations under Article 38 § 1 (a) of the Convention, which, in so far as relevant, provides:

“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;

...”

174. The applicants invited the Court to conclude that the Government's refusal to submit a copy of the entire investigation file in response to the

Court's requests was incompatible with their obligations under Article 38 of the Convention.

175. The Government reiterated that the submission of the case file would be contrary to Article 161 of the Code of Criminal Procedure.

176. The Court reiterates that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation and 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.

177. 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. It is inherent in the proceedings relating to cases of this nature, where individual applicants accuse State agents of violating their rights under the Convention, that in certain instances it is only the respondent State that has access to information capable of corroborating or refuting those allegations. A failure on a Government's part to submit such information which is in their possession 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. In a case where the application raises issues as to the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of the facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility and at the merits stage (see *Tanrıku v. Turkey* [GC], no. 23763/94, § 71, ECHR 1999-IV).

178. The Court notes that despite its repeated requests for a copy of the investigation file opened into the applicants' detention and ill-treatment, the Government refused to produce such a copy, having produced very few documents from the case-file. They invoked Article 161 of the Code of Criminal Procedure. The Court observes that in previous cases it has already found this reference insufficient to justify refusal (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-... (extracts)).

179. Referring to the importance of a respondent Government's cooperation in Convention proceedings, and mindful of the difficulties associated with the establishment of facts in cases of such a nature, the Court finds that the Government fell short of their obligations under Article 38 § 1 of the Convention because of their failure to submit copies of the documents requested in respect of the applicants' detention and ill-treatment.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

180. 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. Non-pecuniary damage

181. The applicants claimed 50,000 euros (EUR) each for their unlawful detention and torture.

182. The Government considered the claim to be unfounded and excessive.

183. The Court has found a violation of Articles 3 and 13 of the Convention on account of the applicants’ having been tortured by State agents and the lack of an effective domestic investigation into the matter. It has also established that the applicants were deprived of liberty in violation of Article 5 of the Convention. The Court thus accepts that they have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards them EUR 35,000 each, plus any tax that may be chargeable thereon.

B. Costs and expenses

184. The applicants were represented by the SRJI. They submitted an itemised 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 SRJI lawyers and EUR 150 per hour for SRJI senior staff. They also claimed postal expenses in the amount of EUR 89.11 and translation expenses in the amount of EUR 491.12, as certified by invoices, and administrative expenses in the amount of EUR 606.97. The aggregate claim in respect of costs and expenses related to the applicants’ legal representation amounted to EUR 9,858.20.

185. The Government did not dispute the details of the calculations submitted by the applicants, but pointed out that they should be entitled to the reimbursement of their costs and expenses only in so far as it had been shown that they had been actually incurred and were reasonable as to quantum (they referred to *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005). They objected, however, to the applicants’ representatives’ claim in the part related to the work of lawyers other than those whose names were on the power of attorney.

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

187. Having regard to the details of the information available, the Court is satisfied that these rates are reasonable and reflect the expenses actually incurred by the applicants' representatives. Further, it has to be established whether the costs and expenses incurred for legal representation were necessary. The Court notes that this case was rather complex and required a certain amount of research and preparation. Accordingly, it accepts that the expenses incurred were necessary.

188. As regards the Government's objection, the Court notes that the applicants were represented by the SRJI. It is satisfied that the lawyers indicated in their claim formed part of the SRJI staff. Accordingly, the objection must be dismissed.

189. Having regard to the details of the claims submitted by the applicants and acting on an equitable basis, the Court awards them the amount of EUR 9,858.20, less EUR 850 received by way of legal aid from the Council of Europe, together with any value-added tax that may be chargeable to the applicants, the net award to be paid into the representatives' bank account in the Netherlands, as identified by the applicants.

C. Default interest

190. 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. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure to conduct an effective investigation into the applicants' allegations of ill-treatment;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment inflicted on the applicants by State agents;
4. *Holds* that there has been a violation of Article 5 of the Convention;

5. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 3 of the Convention;
6. *Holds* that no separate issues arise under Article 13 of the Convention as regards the alleged violation of Article 5;
7. *Holds* that there has been no failure to comply with the State's obligation under Article 34 of the Convention in respect of the first applicant;
8. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government have refused to submit documents requested by the Court;
9. *Holds*
 - (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage to each applicant, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (ii) EUR 9,008.20 (nine thousand eight euros and twenty cents), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid into the representatives' bank account in the Netherlands;
 - (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;
10. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President