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

FIRST SECTION

CASE OF KHUZHIN AND OTHERS v. RUSSIA

(Application no. 13470/02)

JUDGMENT

STRASBOURG

23 October 2008

FINAL

23/01/2009

This judgment may be subject to editorial revision.

In the case of Khuzhin and Others v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 2 October 2008,

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

PROCEDURE

1. The case originated in an application (no. 13470/02) 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 three Russian nationals, Mr Amir Gilvanovich Khuzhin, Mr Damir Gilvanovich Khuzhin and Mr Marat Gilvanovich Khuzhin ("the applicants"), on 26 February 2002.

2. The applicants, who had been granted legal aid, were represented before the Court by Ms K. Moskalenko and Ms V. Bokareva, lawyers with the Centre for International Protection in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 1 March 2005 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants are brothers. Mr Amir and Damir Khuzhin were twins born in 1975 and Mr Marat Khuzhin was born in 1970. They all live in the town of Glazov in the Udmurtiya Republic of the Russian Federation. On 19 June 2006 Mr Damir Khuzhin died in an accident.

A. Arrest of the applicants

5. On 14 April 1999 the first and second applicants were arrested on suspicion of kidnapping committed in concert. The case was assigned to Mr Kurbatov, a senior investigator in the prosecutor's office of the Udmurtiya Republic.

6. On 12 May 1999 the investigator Mr Kurbatov questioned the third applicant as a witness. On the same day he was placed in custody. On 14 May 1999 the investigator issued a formal decision to arrest the third applicant on suspicion on aiding and abetting kidnapping.

7. On 17 and 26 May 1999 the first applicant was allowed to see his fiancée, Ms Maksimova. It would appear that on the latter date they contracted a marriage because from 9 June 1999 she began visiting him as his wife and changed her name to Mrs Khuzhina. In the subsequent period she visited the first applicant on a regular basis once or twice a month.

8. On 2 June 1999 the three applicants were charged with kidnapping and torture, offences under Articles 117 and 126 of the Criminal Code. They were accused of having abducted a certain Mr V., a homeless tramp, and forced him to perform physical labour in a fruit warehouse owned by them in exchange for extremely low pay. On several occasions V. had run away but the brothers had caught him, beaten him and tortured him by applying electric wires to various parts of his body.

9. On 7 June 1999 the first applicant and his counsel requested the investigator to arrange for a confrontation with V. and a certain witness U. On the following day the investigator refused their request, noting that the confrontation was "undesirable as both V. and U. had previously been financially dependent on the Khuzhin brothers and during a confrontation Amir Khuzhin could exert a negative influence on them".

10. The third applicant and his counsel requested the investigator to interview witnesses G., L., and A., who could allegedly testify that V. had been able to move around freely and that the Khuzhin brothers had treated him well. On 18 June 1999 the investigator dismissed the request as unsubstantiated. He noted that V.'s liberty of movement had indeed been unrestricted in the beginning and the Khuzhin brothers had restrained him "only at a later stage" and that there were "a sufficient number of depositions by witnesses and the victim to the effect that the Khuzhin brothers had treated V. very badly and humiliated him".

11. It appears that on an unspecified date the police entered and inspected a warehouse belonging to the applicants.

B. Press coverage of the case

1. Television broadcast

12. On 20 July 1999 the State television channel Udmurtiya broadcast the *Versiya* ("Version") programme. The second part of the programme concerned the applicants' case. The participants included the presenter Ms Temeyeva, the Glazov town prosecutor Mr Zinterekov, the investigator Mr Kurbatov, and Mr Nikitin, who was head of the division for particularly important cases in the office of the prosecutor of the Udmurtiya Republic, as well as the victim V., whose face was not shown.

13. Mr Zinterekov opened the programme with the following statement:

> "The Khuzhin brothers are, by their nature, cruel, insolent and greedy; they wished to get cheap or, more precisely, free labour. On the other hand, the victim V., a person with no fixed abode, mild and gentle..."

14. The presenter started telling the story of V.'s enslavement. As she was speaking, black-and-white passport-size photos of the applicants were shown full screen.

15. The presenter's story alternated with that of the victim V., who related how he had been ill-treated by the Khuzhins and had unsuccessfully attempted to escape. The presenter asked the participants whether the Khuzhin brothers could be described as sadistic.

16. Mr Zinterekov replied as follows:

> "We, that is, prosecutors and the police, have known these brothers from the time when they were still minors... We investigated the acts committed by the brothers but they could not be held criminally liable by virtue of their young age. After they reached the age [of majority], they found themselves in the dock. All three brothers were convicted of disorderly acts. In my opinion, that offence is very much characteristic of all the Khuzhin brothers in its cruelty and meaningless brutality. I think that the personal qualities of the Khuzhin brothers and [their] desire to have free labour have led to this crime."

17. The participants subsequently discussed why the victim had not come to the police immediately after the beatings had begun, and commented on legal aspects of the pending proceedings:

> "[Mr Kurbatov:] You know when [V.] came to the law-enforcement authorities in April 1999, our investigative group in the Glazov town prosecutor's office was shocked at the cruelty of this crime. When a person comes for protection to the law-enforcement authorities, you should examine him closely, listen carefully to his story. [V.] had more than 187 injuries on him. The Convention [for the Prevention] of Torture naturally comes to mind.
>
> [Presenter:] The Khuzhin brothers are now charged under two provisions of the Criminal Code: Article 126 – kidnapping committed for lucrative motives, and Article 117 – torture."

As she was speaking, the first page of the criminal case file was shown on screen.

18. The other participants offered the following comments:

> [Mr Zinterekov:] The prosecutor's office will insist on imprisonment as a measure of punishment in respect of all three brothers... For instance, Article 126 § 2 provides for five to ten years' imprisonment, Article 117 provides for three to seven years' imprisonment. The court will have to choose...
>
> [Mr Nikitin:] A brazen crime. If anyone knows about similar facts, report them to the police and the criminals will be punished...
>
> [Presenter:] ... In September the Glazov Town Court begins its examination of the criminal case. Three businessman brothers who got a false idea of being slave-owners will get a well-deserved punishment."

19. The programme was broadcast again in August 1999 and on 15 May and 25 October 2001.

2. Newspaper publication

20. On 7 August 1999 the journalist Ms M. published an article under the headline "The Land of Slaves" (*«Страна рабов»*) in the local newspaper *Kalina Krasnaya*. It began as follows:

> "I am firmly convinced that the following story is just one fact that emerged from the dim waters of market relations. And ethnic relations as well. Though I wish I were impartial as regards these ethnic relations – each people has its enlightened scholars and cruel murderers."

21. The journalist related the story of V., who had been exploited and beaten by the Khuzhin brothers. The article mentioned that the elder brother's first name was Marat, that the two other brothers were twins aged 24 and that they traded in fruit at a local market. The applicants' last names were not listed. A former classmate of V. who had given him refuge was quoted as citing a statement by V. himself, to the effect that "these Tatars have everything fixed up". The final paragraph read as follows:

> "Many, many questions crossed my mind as I was reading the criminal case file. Why is the life of a dirty piglet more valuable than a human life? Why are masses of Russians, Udmurts and others among the unemployed, while 'they' not only find work for themselves but also use hired labour! And why does everyone in the town know about the doings of that best friend of all tramps and put up with it? ..."

3. Complaints about press coverage

22. The applicants lodged several complaints about the press coverage of proceedings against them.

23. In a letter of 23 March 2000 Mr Nikitin replied that the programme had been produced on the basis of information supplied by the division for particularly important cases in the office of the prosecutor of the Udmurtiya

Republic. Pursuant to Article 139 of the RSFSR Code of Criminal Procedure, the prosecutor's office had had the right to disclose materials in the case file and make them available to the journalist.

24. In a letter of 3 May 2000 a deputy prosecutor of the Udmurtiya Republic replied that there were no grounds to hold officials of the Glazov prosecutor's office criminally liable for disclosure of materials from the investigation.

25. On 25 August 2000 Mr Zinterekov wrote that there were no grounds for liability to be incurred either by officials of the prosecutor's office or by journalists who had provided coverage of the proceedings.

26. On 18 December 2000 a deputy prosecutor of the Udmurtiya Republic replied to the third applicant that Mr Zinterekov could not be held criminally liable for his statements.

27. In a letter of 12 March 2001 a deputy prosecutor of the Udmurtiya Republic confirmed that the disclosure of the case file to the mass media had been in compliance with Article 139 of the Code of Criminal Procedure. He further noted that the Glazov town prosecutor (Mr Zinterekov) had been told to use "a more balanced approach in determining the scope of information that could be made public in criminal cases before the conviction has become final".

28. In similarly worded letters of 25 July and 15 August 2001, deputy prosecutors of the Udmurtiya Republic informed the first and third applicants that there were no grounds to initiate a criminal case against the maker of the television programme and that no further replies concerning that matter would be given. The Glazov town prosecutor was, however, instructed to check whether a criminal investigation should be opened in connection with the article in the *Kalina Krasnaya* newspaper.

29. On 27 September 2001 an investigator from the Glazov prosecutor's office issued a formal decision not to initiate a criminal case for libel against the journalist M., who had authored the article "The Land of Slaves". It appears from the decision that, in M.'s own words, she had received formal permission from the investigator Mr Kurbatov to consult the case file and that Mr Kurbatov had approved a draft of the article. Mr Kurbatov, however, denied any memory of granting access to the file to M. and claimed he had never read the article in question. He did not deny, though, that he had briefed the presenter of the television programme on details of the criminal case. Referring to the applicants' conviction by the judgment of 2 March 2001 (see below), the investigator found that the contents of the article had been essentially true and that M. had not disseminated any false information damaging the third applicant's dignity or honour.

C. The applicants' trial

30. On 31 July 2000 the Glazov Town Court held a directions hearing and scheduled the opening of the trial for 10 August 2000.

31. The trial continued in late 2000 and early 2001. Witnesses for the prosecution and defence, as well as the victim Mr V., testified in court.

32. On 2 March 2001 the Glazov Town Court found the applicants guilty of kidnapping and torture under Article 126 § 2 and Article 117 § 2 of the Russian Criminal Code. The third applicant was sentenced to five years and one month's imprisonment, whilst the first and second applicants were to serve seven years in a high-security colony.

33. The applicants appealed against the conviction. Their points of appeal concerned, in particular, the alleged prejudice to their presumption of innocence which had resulted from the newspaper publication and television programme described above. The prosecution also lodged an appeal. The case file was sent to the Supreme Court of the Udmurtiya Republic for consideration on appeal.

34. On 29 October 2001 the acting president of the Criminal Division of the Supreme Court of the Udmurtiya Republic returned the case file to the Town Court because the trial judge had failed to consider the applicants' comments on the trial record, to locate the allegedly missing documents and to provide the applicants with a copy of the prosecution's points of appeal.

35. In an interim decision of 1 November 2001 the Glazov Town Court partly accepted and partly rejected the applicants' corrections of the trial record.

36. On 18 December 2001 the Supreme Court of the Udmurtiya Republic heard the case on appeal and upheld the judgment of 2 March 2001. The court did not address the applicants' arguments concerning an alleged impairment of their presumption of innocence.

D. Conditions of the applicants' transport

37. Following their conviction, the applicants remained in detention facility no. IZ-18/2 for unspecified reasons.

38. On 21 October 2002 the facility administration distributed winter clothing to the prisoners. The applicants refused to take it. On 13 November 2002 the third applicant accepted a padded jacket and the second applicant winter shoes.

39. On 26 December 2002 the applicants were listed for transport from detention facility no. IZ-18/2 to correctional colonies. According to them, the outside temperature on that day was -36° C; the Government submitted a certificate from the meteorological service showing that the temperature fell to -29.8 ° C in the night.

40. At about 5 p.m., when the applicants were taken to the assembly cell of the detention facility together with ten to twelve other detainees, they were wearing T-shirts and tracksuit bottoms. The wardens offered them winter jackets and hats which, according to the Government, hailed from the humanitarian-aid supplies but had been washed and were neat. The applicants claimed that the items were "torn and old" and refused to take them.

41. At 10 p.m. the applicants, together with other prisoners, were put into a prison van and taken to Glazov railway station to board the Kirov-Kazan train that arrived at 10.10 p.m. The distance between the facility and the station was 800 metres and the journey time was less than five minutes. At 10.05 p.m. the van arrived at the station and the applicants emerged from it without winter clothing. A prison inspector dashed into the van, collected the winter clothing which the applicants had left behind, and gave it to the escorting officer. The officer again offered the clothing to the applicants to put on but they refused to do so, claiming that it was unfit to wear. According to the statements by the inspector and the officer, the clothing was in an "appropriate condition".

42. It appears that the argument went on for about 10 to 15 minutes. The head of the train escort refused to take the applicants in without appropriate clothing and the facility personnel decided to take them back into the cells.

43. In support of their claim that the clothing had been "inappropriate", the applicants produced to the Court a written statement signed by five other detainees who had been held in facility no. IZ-18/2 at that time.

44. On 27 and 29 December 2002, 7 January and 11 April 2003 and other dates the applicants complained that they had been subjected to inhuman and degrading treatment on 26 December 2002.

45. On 28 February 2003 Mr Zinterekov responded to them in the following terms:

> "It has been established that winter clothing was given to you and that you remained outside in clothing inappropriate for that season only because you refused to put it on. Your arguments that the clothing offered did not meet sanitary and hygiene standards could not have been objectively confirmed; there are no grounds for disciplining any officials."

E. Impounding of the third applicant's van

46. On 12 May 1999 the third applicant arrived in his van at the Glazov police station for questioning. On that day he was taken into custody (see above).

47. On 13 May 1999 the investigator Mr Kurbatov impounded the van and ordered that it should be kept in the car park of a private company. The charging order itself did not indicate the grounds on which it had been

issued, but referred back to the investigator's decision of the same date, a copy of which was not made available to the Court.

48. The third applicant repeatedly complained to various authorities that his van had been unlawfully seized. He alleged that the investigator was using it for his private errands.

49. In a letter of 14 April 2000 the acting Glazov prosecutor reported to the third applicant the findings of an internal inquiry into his complaints. He found as follows:

> "On 12 May 1999 Mr Kurbatov arrested you... However, the Gazel car, in which you had arrived, remained in the street outside the premises of the Glazov police station, and measures for its safe keeping were not taken. The car remained there until 13 May 1999, when Mr Kurbatov impounded it... However, he did not examine the state of the car, nor did he show it to you or any attesting witnesses...
>
> The impounded car was taken by a road police employee from Glazov police station, acting on Mr Kurbatov's orders, into the premises of the [private company]. The car was not properly sealed...
>
> It must be noted at the same time that there existed no legal grounds for impounding the vehicle, as required by Article 175 § 1 of the RSFSR Code of Criminal Procedure. According to that provision, a charging order could be issued with a view to securing a civil claim or a possible confiscation order. However, in this case no civil claim was brought throughout the proceedings and the criminal-law provisions under which [the third applicant] was charged do not provide for confiscation measures as a penal sanction.
>
> Thus, Mr Kurbatov breached Articles 141, 142, 175 and 176 of the RSFSR Code of Criminal Procedure – which set out the requirements for the record of impounding and the procedure for issuing charging orders – and also the Instruction on the procedure for seizing, accounting, storing and transferring physical evidence in criminal cases, values and other assets by law-enforcement authorities and courts.
>
> Further to the internal inquiry, the prosecutor of the Udmurtiya Republic was advised to determine whether Mr Kurbatov should be disciplined."

50. On 13 June 2000 the investigator Mr Kurbatov handed the keys and registration documents of the van to the Glazov Town Court.

51. In letters of 19 July and 18 December 2000 the Udmurtiya Republic prosecutor's office informed the third applicant that Mr Kurbatov had been disciplined for breaches of the Instruction on the procedure for storing physical evidence and fined in the amount of his bonus salary for the first quarter of 2000.

52. It appears that on 4 June 2002 the Glazov Town Court lifted the charging order and the third applicant's van was returned to Mrs Khuzhina (his brother's wife).

F. Civil proceedings against the investigator and journalists

1. Civil action against the investigator and the journalist Ms M.

53. On an unspecified date the third applicant sued the investigator Mr Kurbatov for damages on account of his failure to ensure the safe keeping of his van; all three applicants also brought a defamation action against the journalist Ms M., seeking compensation in respect of non-pecuniary damage. The Glazov Town Court ordered the joinder of both actions and listed a hearing for 3 March 2003.

54. In February 2003 the applicants asked the court for leave to appear. Mrs Khuzhina, as a representative of the first applicant, asked the court to ensure the attendance of the applicants at the hearing.

55. On 3 March 2003 the Town Court issued several procedural decisions. In the first decision, it rejected Mrs Khuzhina's request for the applicants' attendance, holding that the Penitentiary Code did not provide for the possibility of bringing convicted persons from a correctional colony to the local investigative unit for the purpose of taking part in a hearing in a civil case. The second decision took stock of the absence of both parties – the journalist Ms M. and a representative of the newspaper had not shown up despite having been notified of the hearing – and indicated that the case would be heard in their absence. It appears that Mrs Khuzhina then walked out of the courtroom in protest against the court's decision to hear the case in the absence of the first applicant. In a third decision, the court decided to proceed with the case in her absence. It additionally rejected the applicants' request for leave to appear on the same grounds as above, adding:

> "...parties to the case do not just have rights but also have duties, such as [a duty] to make written submissions and substantiate their claims. Taking into account the fact that the rights of Mr A. Khuzhin, Mr D. Khuzhin and Mr M. Khuzhin are not restricted and can be exercised by them in full measure, there are no legal grounds to ensure the attendance of individuals who have committed particularly serious, insolent [*дерзкие*] crimes."

Lastly, the Town Court rejected the applicants' requests to summon witnesses and study the hearing records, reasoning as follows:

> "The substantiation of the Khuzhins' claim seeks to obtain a new assessment of the circumstances and findings set out in the criminal judgment of 2 March 2001. The statements by the Khuzhin brothers are not reasoned or argued; they are not procedural requests as such [*sic*]; they have repeatedly studied the materials in the case file and can study them again by receiving copies of them; since they are serving a sentence imposed by a court judgment in a penitentiary institution, the case must be examined in their absence."

56. On 4 March 2003 the Town Court refused for the same reasons the third applicant's request to obtain attendance of witnesses and an expert. It

also decided to proceed with the hearing in the absence of both parties' representatives.

57. On the same day the Town Court dismissed all of the applicants' claims. On the defamation issue it found that the article "The Land of Slaves" had been based on the true facts which had subsequently been established in the criminal judgment of 2 March 2001. As regards the claim relating to the damage caused to the third applicant's van, it established that the vehicle had been returned to him after he had paid compensation to the victim for non-pecuniary damage and that the investigator had acted within his powers and had not caused any damage through his actions.

58. The applicants and Mrs Khuzhina appealed. They complained, in particular, of a breach of the principle of equality of arms. Mrs Khuzhina additionally pointed out that she had not been the representative of either Damir or Marat Khuzhin.

59. On 7 October 2003 the Civil Division of the Supreme Court of the Udmurtiya Republic held an appeal hearing. It appears that neither the applicants nor Mrs Khuzhina were in attendance. The court held that there had been no breach of equality of arms because the applicants had been duly notified of the hearing and informed of their right to appoint representatives. The second and third applicants had not made use of that right, whereas the first applicant's representative, Mrs Khuzhina, had declined to take part in the hearing. In the court's view, the joinder of the cases was also lawful and justified because the second applicant had been a party to both claims.

60. According to a letter of 30 April 2003 from the prosecutor of the Udmurtiya Republic to the second applicant, it was incumbent on the court hearing a civil claim to decide whether the detainee's presence was necessary. The second applicant could have been escorted to the hearing if there had been a decision of the Glazov Town Court to that effect.

2. The third applicant's action against the prosecutor

61. On an unspecified date the third applicant brought a defamation action against the prosecutor Mr Zinterekov. He challenged as defamatory the statements made by Mr Zinterekov in the *Versiya* television programme about the applicants' adolescent delinquency, insolence and greediness.

62. On 14 November 2003 the Glazov Town Court delivered its judgment. Mr Zinterekov made oral submissions to the court; the third applicant was neither present nor represented. In dismissing the defamation action, the court noted as relevant the materials relating to the criminal case against the applicants and, more specifically, a reference letter for the second applicant from his secondary school that concerned his unauthorised absences from classes and disorderly behaviour. The court held that the facts as established in the judgment of 2 March 2001 had justified Mr Zinterekov's reference to the applicants as insolent and greedy.

63. On 19 December 2003 and 22 January 2004 the third applicant lodged his points of appeal, alleging, in particular, a violation of the principle of equality of arms.

64. The Court has not been provided with any information about the appeal proceedings.

II. RELEVANT DOMESTIC LAW

65. The Criminal Code provides that torture is punishable with up to seven years' imprisonment (Article 117 § 2) and kidnapping with up to twenty years' imprisonment (Article 126 § 3).

66. The RSFSR Code of Criminal Procedure (in force at the material time) provided as follows:

Article 137. Recognition as a civil claimant

"If the investigator observes, on the basis of the case file, that the crime committed caused pecuniary damage to an individual or organisation, he must explain to them or to their representatives that they have a right to lodge a civil claim...

If a civil claim has been lodged, the investigator must issue a reasoned decision recognising [the interested party] as a civil claimant or refusing such status..."

Article 139. Unacceptability of divulging the materials from the preliminary investigation

"Materials from the preliminary investigation may only be made public with the consent of an investigator or a prosecutor and to the extent they consider it possible..."

Article 175. Charging of property

"With a view to securing a civil claim or a possible confiscation order, the investigator must charge the property of the suspect, defendant ... or of the other persons who keep criminally acquired property... If necessary, the charged property may be impounded..."

67. The Code of Civil Procedure of the Russian Federation provides that individuals may appear before the court in person or act through a representative (Article 48 § 1). A court may appoint an advocate to represent a defendant whose place of residence is not known (Article 50). The Advocates Act (Law no. 63-FZ of 31 May 2002) provides that free legal assistance may be provided to indigent plaintiffs in civil disputes concerning alimony or pension payments or claims for health damage (section 26 § 1).

68. The Penitentiary Code provides that convicted persons may be transferred from a correctional colony to an investigative unit if their participation is required as witnesses, victims or suspects in connection with

certain investigative measures (Article 77.1). The Code does not mention the possibility for a convicted person to take part in civil proceedings, whether as a plaintiff or defendant.

69. On several occasions the Constitutional Court has examined complaints by convicted persons whose requests for leave to appear in civil proceedings had been refused by courts. It has consistently declared the complaints inadmissible, finding that the contested provisions of the Code of Civil Procedure and the Penitentiary Code did not, as such, restrict the convicted person's access to court. It has emphasised, nonetheless, that the convicted person should be able to make submissions to the civil court, either through a representative or in any other way provided by law. If necessary, the hearing may be held at the location where the convicted person is serving the sentence or the court hearing the case may instruct the court having territorial jurisdiction over the correctional colony to obtain the applicant's submissions or carry out any other procedural steps (decisions no. 478-O of 16 October 2003, no. 335-O of 14 October 2004, and no. 94-O of 21 February 2008).

THE LAW

I. AS TO THE LEGAL CONSEQUENCES OF THE DEATH OF THE APPLICANT MR DAMIR KHUZHIN

70. Following the death of the second applicant on 19 June 2006 (see paragraph 4 above), the other two applicants, his brothers, informed the Court of their wish to pursue in his stead the grievances he had raised.

71. The Court reiterates that in various cases where an applicant has died in the course of the proceedings, it has taken into account the statements of the applicant's heirs or close family members who expressed the wish to pursue the proceedings before it (see *Karner v. Austria*, no. 40016/98, § 25, ECHR 2003-IX, and *Dalban v. Romania* [GC], no. 28114/95, § 39, ECHR 1999-VI). In the instant case it observes that the complaints raised by all three applicants were similar in substance and that the situations they complained about affected them in an equal measure. It therefore accepts that the first and third applicants may pursue the application in so far as it was lodged by the late second applicant.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

72. The applicants complained under Article 3 of the Convention that they had been humiliated, intimidated and pressurised by the investigator.

They further complained that they had been transported in inhuman conditions on 26 December 2002. In addition, the first applicant complained of the degrading conditions of his detention from 22 April 1999 to 16 May 2002 and from 26 June 2002 to 16 January 2003. Article 3 reads as follows:

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

73. The Court observes at the outset that the first applicant raised his complaint about the conditions of his detention for the first time in an addendum to the application form dated 19 December 2003. Since this complaint relates to the period of detention which ended on 16 January 2003, it was submitted outside the six-month time-limit and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

74. The Court further notes that the applicants' submissions about the alleged intimidation and pressure on the part of the investigator were not elaborated on and did not contain any description of the alleged ill-treatment. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

75. Finally, as regards the complaint about the incident on 26 December 2002, the parties' submissions may be summarised in the following manner.

76. The applicants submitted that they had been subjected to inhuman and degrading treatment because they had been deliberately put in a prison van without warm clothing, taken to the railway station, held there for some thirty minutes and then taken back to the prison. Padded jackets and winter hats had not been given to them before they had entered the van but only at the station. They had been unable to put them on because the jackets had shrunk after repeated washes. The applicants claimed that the time taken to enter and leave the prison van had been as long as twenty minutes because each prisoner had been required to state his full name, date of birth, the charges against him and the duration of the sentence.

77. The Government put emphasis on the fact that the applicants had repeatedly been offered winter clothing but had refused to put it on. Admittedly, the clothing had been used but had been clean and neat as per the applicable sanitary and hygiene requirements. The applicants' decision to stay outside in the frost without appropriate clothing had been the result of their own deliberate actions.

78. The Court observes that the circumstances of the incident on 26 December 2002 are largely not in dispute between the parties. On that day the applicants were scheduled to be transported to the correctional colony by train. The outside temperature was extremely low. As they were leaving the detention facility, prison officers handed them winter clothing, which they declined to put on. The train escort refused to take them in without warm clothes and the applicants were brought back to the detention

facility. By all accounts, the applicants stayed outside the facility for less than one hour.

79. The only contentious point between the parties is whether the clothing offered to the applicants was fit to wear. In their original submissions the applicants claimed that it had been "torn and old" (see paragraph 40 above), whereas in their submissions on the merits they alleged that it had been too small because it had shrunk. However, the Court is not convinced by the latter claim because it appears peculiar that it transpired for the first time only at an advanced stage of proceedings. The Government, for their part, did not deny that the clothing had not been new, yet they maintained that it had been washed in compliance with hygiene requirements. In these circumstances, the Court concludes that the applicants were offered winter clothing which was used but clean.

80. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, Series A no. 25, p. 65, § 162).

81. In the instant case the alleged inhuman treatment consisted in the applicants' being exposed to an extremely low outside temperature without warm clothing. It was not in dispute between the parties that their exposure was the result of the applicants' deliberate choice not to put on the clothing that the facility wardens had repeatedly offered to them.

82. It has not been claimed that the applicants were singled out for any kind of special treatment. In particular, it does not appear that the winter clothing which was handed to them was any different from that distributed to other prisoners. As the Court has found above, the clothing was not new and was probably quite worn. Nevertheless, there is no evidence that it was in such a dire state as to be unacceptable to wear. Nor has it been alleged that it did not offer sufficient protection from the cold. The Court therefore cannot conclude that the domestic authorities failed in their duty to provide the applicants with adequate protection against inclement weather.

83. Having regard to the above circumstances, the Court finds that the treatment complained about did not go beyond the threshold of a minimum level of severity. It follows that this part of the complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

84. The applicants complained under Article 5 of the Convention that their detention orders had not been based on sufficient reasons and that they had not been released pending trial despite their applications to that effect.

85. The Court notes that the applicants' pre-trial detention ended with their conviction on 2 March 2001, whereas their application was only lodged on 26 February 2002, more than six months later. It follows that this complaint has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN THE CRIMINAL PROCEEDINGS

86. The applicants complained under Article 6 §§ 1 and 3 (a), (b) and (d) that the materials in the investigation file had been made available to them only at the end of the investigation, that they had not had an opportunity to question the witnesses for the defence and the victim and that the trial judge had been biased and had dismissed their challenges. They further claimed that the length of the criminal proceedings against them had been excessive. Finally, they alleged a breach of their presumption of innocence guaranteed by Article 6 § 2 of the Convention in that the prosecution authorities had closely cooperated with the mass media during the trial. The relevant parts of Article 6 read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

A. Admissibility

87. The Court notes that the criminal proceedings against the applicants lasted from 12 April 1999 to 18 December 2001, that is, for two years and eight months. Within that period the pre-trial investigation lasted for one year and three months and the trial at first instance continued from 31 July 2000 to 2 March 2001. The appeal proceedings had been preceded by a delay resulting from the Town Court's failure to take certain procedural steps which were considered indispensable by the Supreme Court (see paragraph 34 above). Once those defects had been remedied, the appeals were heard in less than two months' time. The Court reiterates that the fact that the applicants were held in custody required particular diligence on the part of the courts dealing with the case to administer justice expeditiously (see *Panchenko v. Russia*, no. 45100/98, § 133, 8 February 2005, and *Kalashnikov v. Russia*, no. 47095/99, § 132, ECHR 2002-VI). Nevertheless, noting that there were no significant delays attributable to the authorities, save for the one mentioned above, and making a global assessment of the circumstances of the case, the Court does not find that the duration of proceedings was in breach of the "reasonable time" requirement in Article 6 § 1 of the Convention.

88. As regards the complaint about the allegedly insufficient time for the preparation of the defence, the Court observes that in the Russian legal system it is normal practice to allow defendants to study the case file after the pre-trial investigation has been completed. This does not in itself run counter to the requirements of Article 6 of the Convention. The applicants did not complain that the time for studying the case file was insufficient or that their right to read the materials in the file was otherwise restricted.

89. The Court further observes that the victim V. gave oral evidence during the trial and that the applicants therefore had an opportunity to put questions to him. As to the witnesses for the defence whom the court allegedly refused to call to the witness stand, the Court notes that the trial court did examine certain witnesses for the defence. The applicants did not identify further witnesses they wished to have examined or explain why it would have been useful to examine them in the circumstances of the case. Nor did they substantiate their claim that the trial judge had lacked impartiality. It follows that the above-mentioned complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

90. Finally, the Court considers, in the light of the parties' submissions, that the complaint concerning the alleged prejudice to the applicants' presumption of innocence raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly

ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

1. Submissions by the parties

91. The applicants submitted that the investigator Mr Kurbatov and other employees of the prosecutor's office had not only granted Ms Temeyeva unrestricted access to the criminal case file but had also actively participated in the television show. The showing of the front cover of the case file in the opening sequence of the television show demonstrated that it had been made physically available to the journalist. The show had been recorded before the case had been referred for trial; it had been extensively advertised with the sensationalist line "Slavery in Glazov at the end of the twentieth century" and aired at such times as to precede the adjourned trial hearings and the appeal hearing. Article 139 of the RSFSR Code of Criminal Procedure could not be interpreted as justifying an encroachment on the applicants' presumption of innocence. Their right to be presumed innocent until found guilty had been further damaged by the statements made by the journalist Ms Temeyeva, the prosecutor Mr Zinterekov, the investigator Mr Kurbatov and the prosecutor Mr Nikitin during the television show. In addition, the prosecution had also granted access to the case file to the journalist Ms M., the author of the article "The Land of Slaves", which had also been highly prejudicial to the applicants. The applicants insisted that the extensive press coverage of their case and the statements by high-ranking prosecution officials had led the public to believe them guilty.

92. The Government denied that the investigator Mr Kurbatov had made the physical criminal case file available to the journalist Ms Temeyeva. They claimed that he had orally communicated to her certain information which he had considered appropriate to disclose in accordance with Article 139 of the RSFSR Code of Criminal Procedure. By that time the preliminary investigation had been completed and the case had been referred for trial. The Government submitted that the participants in the *Versiya* television show had not made any statements which could have breached the applicants' presumption of innocence.

2. The Court's assessment

93. The Court reiterates that Article 6 § 2, in its relevant aspect, is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings. The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the

elements of the fair criminal trial that is required by paragraph 1 (see *Allenet de Ribemont v. France*, judgment of 10 February 1995, Series A no. 308, § 35). It prohibits the premature expression by the tribunal itself of the opinion that the person "charged with a criminal offence" is guilty before he has been so proved according to law (see *Minelli v. Switzerland*, judgment of 25 March 1983, Series A no. 62) but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X; and *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II).

94. It has been the Court's consistent approach that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Böhmer v. Germany*, no. 37568/97, §§ 54 and 56, 3 October 2002, and *Nešťák v. Slovakia*, no. 65559/01, §§ 88 and 89, 27 February 2007).

95. Turning to the facts of the present case, the Court observes that a few days before the scheduled opening of the trial in the applicants' case, a State television channel broadcast a talk show, in which the investigator dealing with the applicants' case, the town prosecutor and the head of the particularly serious crimes division in the regional prosecutor's office took part. The participants discussed the applicants' case in detail with some input from the show's presenter and the alleged victim of their wrongdoings. Subsequently the show was aired again on two occasions during the trial and once more several days before the appeal hearing.

96. As regards the contents of the show, the Court notes that all three prosecution officials described the acts imputed to the applicants as a "crime" which had been committed by them (see their statements in paragraphs 16, 17 and 18 above). Their statements were not limited to describing the status of the pending proceedings or a "state of suspicion" against the applicants but represented as an established fact, without any qualification or reservation, their involvement in the commission of the offences, without even mentioning that they denied it. In addition, the town

prosecutor Mr Zinterekov referred to the applicants' criminal record, portraying them as hardened criminals, and made a claim that the commission of the "crime" had been the result of their "personal qualities" – "cruelty and meaningless brutality". In the closing statement he also mentioned that the only choice the trial court would have to make would be that of a sentence of an appropriate length, thus presenting the applicants' conviction as the only possible outcome of the judicial proceedings (see paragraph 18 above). The Court considers that those statements by the public officials amounted to a declaration of the applicants' guilt and prejudged the assessment of the facts by the competent judicial authority. Given that those officials held high positions in the town and regional prosecuting authorities, they should have exercised particular caution in their choice of words for describing pending criminal proceedings against the applicants. However, having regard to the contents of their statements as outlined above, the Court finds that some of their statements could not but have encouraged the public to believe the applicants guilty before they had been proved guilty according to law. Accordingly, the Court finds that there was a breach of the applicants' presumption of innocence. This finding makes it unnecessary to examine separately the applicants' grievance that the release of the case file to the journalists was also prejudicial to their presumption of innocence.

97. There has therefore been a violation of Article 6 § 2 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN THE CIVIL PROCEEDINGS

98. The applicants complained of a breach of the equality-of-arms principle flowing from Article 6 § 1 of the Convention, in that the domestic courts examining their civil claims had refused them leave to appear. The relevant part of Article 6 reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

99. The Court observes that it has not received any information about the outcome of the defamation proceedings instituted by the third applicant against the prosecutor Mr Zinterekov (see paragraph 64 above). In these circumstances, this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

100. As regards the other claim lodged by the applicants, the Court considers, in the light of the parties' submissions, that the complaint raises

serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

1. Submissions by the parties

101. The applicants emphasised that the summons had mentioned their right to appear in person before the civil court. However, since they were deprived of their liberty, the exercise of that right had been conditional on the court's decision to have them transferred to the local investigative unit. They pointed out that Mrs Khuzhina had left the court, protesting against the court's decision to refuse them leave to appear. They maintained that the principle of equality of arms had been breached because they had not been present or represented in the proceedings.

102. The Government submitted that at the relevant time the applicants had been serving their sentences in a correctional colony. They had been duly summoned to the hearing and also informed of their right to make written submissions to the court. Mrs Khuzhina, a representative of the first applicant, had left the hearing of her own will and without any explanation. The court had examined written submissions by the second applicant. The third applicant had not appointed a representative, although he had been informed of his right to do so. The Government considered that there had been no violation of the applicants' right to a fair trial because they had made use of their right to make written submissions or to appoint a representative.

2. The Court's assessment

103. The Court reiterates that the principle of adversarial proceedings and equality of arms, which is one of the elements of the broader concept of a fair hearing, requires that each party be given a reasonable opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party and to present his case under conditions that do not place him or her at a substantial disadvantage *vis-à-vis* his or her opponent (see *Krčmář and Others v. the Czech Republic*, no. 35376/97, § 39, 3 March 2000, and *Dombo Beheer B.V. v. the Netherlands*, judgment of 27 October 1993, Series A no. 274, § 33). The Court has previously found a violation of the right to a "public and fair hearing" in several cases against Russia, in which a party to civil proceedings was deprived of an opportunity to attend the hearing because of the belated or defective service

of the summons (see *Yakovlev v. Russia*, no. 72701/01, §§ 19 et seq., 15 March 2005; *Groshev v. Russia*, no. 69889/01, §§ 27 et seq., 20 October 2005; and *Mokrushina v. Russia*, no. 23377/02, 5 October 2006). It also found a violation of Article 6 in a case where a Russian court refused leave to appear to an imprisoned applicant who had wished to make oral submissions on his claim that he had been ill-treated by the police. Despite the fact that the applicant in that case was represented by his wife, the Court considered it relevant that his claim had been largely based on his personal experience and that his submissions would therefore have been "an important part of the plaintiff's presentation of the case and virtually the only way to ensure adversarial proceedings" (see *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007).

104. The Court observes that the Russian Code of Civil Procedure provides for the plaintiff's right to appear in person before a civil court hearing his claim (see paragraph 67 above). However, neither the Code of Civil Procedure nor the Penitentiary Code make special provision for the exercise of that right by individuals who are in custody, whether they are in pre-trial detention or are serving a sentence. In the present case the applicants' and their representative's requests for leave to appear were denied precisely on the ground that the domestic law did not make provision for convicted persons to be brought from correctional colonies to the place where their civil claim was being heard. The Court reiterates that Article 6 of the Convention does not guarantee the right to personal presence before a civil court but rather a more general right to present one's case effectively before the court and to enjoy equality of arms with the opposing side. Article 6 § 1 leaves to the State a free choice of the means to be used in guaranteeing litigants these rights (see *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II).

105. The issue of the exercise of procedural rights by detainees in civil proceedings has been examined on several occasions by the Russian Constitutional Court, which has identified several ways in which their rights can be secured (see paragraph 69 above). It has consistently emphasised representation as an appropriate solution in cases where a party cannot appear in person before a civil court. Given the obvious difficulties involved in transporting convicted persons from one location to another, the Court can in principle accept that in cases where the claim is not based on the plaintiff's personal experiences, as in the above-mentioned *Kovalev* case, representation of the detainee by an advocate would not be in breach of the principle of equality of arms.

106. In the instant case the applicants were informed of their right to appoint a representative in civil proceedings and the first applicant nominated Mrs Khuzhina as his representative. However, given the personal nature of their claim for defamation, they sought leave to appear before the civil court, which was refused to them by the judge on 3 March 2003. After

Mrs Khuzhina refused to participate further in the hearing in protest against the judge's decision and walked out of the courtroom, the judge decided to proceed with the case in her absence and also in the absence of the applicants, finding that "there [were] no legal grounds to ensure the attendance of individuals who have committed particularly serious, insolent crimes". On the following day the court dismissed the applicants' claim in its entirety.

107. The Court notes that, after the Town Court had refused the applicants leave to appear in terms that can only be described as prejudicial, it did not consider the legal possibilities for securing their effective participation in the proceedings. Furthermore, it did not adjourn the proceedings to enable the second and third applicants, on having learnt of the refusal of leave to appear, to designate a representative and the first applicant to discuss the issue of further representation with Mrs Khuzhina or to find a replacement lawyer. The applicants were obviously unable to decide on a further course of action for the defence of their rights until such time as the decision refusing them leave to appear was communicated to them. However, as it happened, that decision reached them at the same time as the judgment in which their claim was dismissed on the merits. The appeal court did nothing to remedy that situation.

108. In these circumstances the Court finds that the fact that the applicants' civil claim was heard with them being neither present nor represented deprived them of the opportunity to present their case effectively before the court.

109. There has therefore been a violation of Article 6 § 1 of the Convention in those proceedings.

VI. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

110. The first and second applicants complained under Article 8 of the Convention that the investigator had exerted pressure on their relatives. In addition, the first applicant complained under the same provision about the broadcasting of his photo and personal details during the *Versiya* television show. Article 8 reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

111. The Court notes that the applicants did not furnish any details of the pressure allegedly put on their relatives. It appears that the first applicant was able to receive visits from his fiancée (later his wife) on a regular basis (see paragraph 7 above), whereas the second applicant did not raise any specific grievances about family visits. In these circumstances, the Court is unable to discern any interference with these applicants' family life. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

112. As regards the alleged interference with the first applicant's private life, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

113. The first applicant submitted that the black-and-white photo of him which had been shown during the television programme had been the one from his passport which had been appended to the criminal case file. This proved that the journalist had obtained it from the prosecuting authorities. He considered that the broadcasting of his photograph had not served any legitimate purpose and was in breach of Article 8 of the Convention.

114. The Government did not mention the broadcasting of the applicants' photographs in their observations. They indicated, nevertheless, that, in the assessment made by the Prosecutor General's Office, there had been no violation of Article 8 § 1 in respect of the applicants.

2. The Court's assessment

115. The Court reiterates that the concept of private life includes elements relating to a person's right to his or her image and that the publication of a photograph falls within the scope of private life (see *Gurgenidze v. Georgia*, no. 71678/01, § 55, 17 October 2006; *Sciacca v. Italy*, no. 50774/99, § 29, ECHR 2005-I; and *Von Hannover v. Germany*, no. 59320/00, §§ 50-53, ECHR 2004-VI). In the *Gurgenidze* and *Von Hannover* cases the State failed to offer adequate protection to the applicants against the publication of their photographs taken by journalists, whereas in the *Sciacca* case the applicant's published photograph had been released to the press by the police without her consent (see *Sciacca*, cited above, §§ 16, 26 and 28). The Court found that the fact that Mrs Sciacca

was the subject of criminal proceedings did not curtail the scope of the enlarged protection of her private life which she enjoyed as an "ordinary person" (§ 29).

116. The situation in the instant case was similar in substance to that obtaining in the *Sciacca* case. Without his consent, the first applicant's passport photograph was taken by the police from the materials in the criminal case file and made available to a journalist, who used it in a television show. The Court finds that there has been an interference with the first applicant's right to respect for his private life.

117. As regards the justification for the interference, the Court observes that none has been put forward by the Government. The Court considers that where a photograph published in the context of reporting on pending criminal proceedings has no information value in itself, there must be compelling reasons to justify an interference with the defendant's right to respect for his private life (compare *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, § 58 *et passim*, ECHR 2000-I). Even assuming that Article 139 of the RSFSR Code of Criminal Procedure could be a lawful basis for granting the press access to the case file, in the instant case the Court does not see any legitimate aim for the interference with the first applicant's right to respect for his private life. Being in custody at the material time, he was not a fugitive from justice and the showing of his photograph could not have been necessary for enlisting public support to determine his whereabouts. Nor could it be said to have bolstered the public character of judicial proceedings because at the time of the recording and the first airing of the television show the trial had not yet begun. Accordingly, the Court finds that in the circumstances of the present case the release of the first applicant's photograph from the criminal file to the press did not pursue any of the legitimate aims enumerated in paragraph 2 of Article 8.

118. There has therefore been a violation of Article 8 of the Convention in respect of the first applicant.

VII. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

119. The applicants complained under Article 1 of Protocol No. 1 about the unlawful impounding and retention of the third applicant's van. They also alleged a violation of that provision on account of the police's forceful entry into the warehouse, the locks of which had been damaged as a result. Article 1 of Protocol No. 1 provides as follows:

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

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

A. Admissibility

120. The Court observes that the applicants did not raise the complaint about the alleged damage to the warehouse in any domestic proceedings. It follows that it must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

121. It is not in dispute that the third applicant was the sole owner of the van. Accordingly, the Court considers that the complaints by the other two applicants relating to the van are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4. On the other hand, the third applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Since it is not inadmissible on any other grounds, it must therefore be declared admissible.

B. Merits

1. Submissions by the parties

122. The Government submitted that the van had been returned to Mrs Khuzhina, who had not made any complaints about its state or any missing property. The third applicant's claim against the investigator Mr Kurbatov had been dismissed by the domestic courts as unfounded. The Government asserted that his complaint under Article 1 of Protocol No. 1 was manifestly ill-founded because he had already made use of effective domestic remedies.

123. The third applicant claimed that the vehicle had remained for more than three years in an open-air car park, as a result of which it had suffered a depreciation in value and considerable damage. Since it had been returned to Mrs Khuzhina rather than to its lawful owner, the third applicant, she had been unable to detect any missing parts or items of property. Moreover, the impounding of the vehicle had been unlawful: the Udmurtiya Republic prosecutor had ruled that the investigator Mr Kurbatov had proceeded without a legal basis and had acted in breach of the Instruction on storing physical evidence. However, the third applicant's right to claim damages in civil proceedings had turned out to be merely theoretical rather than practical and effective, as required by the Convention.

2. The Court's assessment

124. The Court observes that the "possession" at issue in the present case was the vehicle of which the third applicant was the lawful owner. The vehicle was impounded on 12 May 1999 and returned to his brother's wife on 4 June 2002, three years and almost one month later.

125. The parties did not take a clear stance on the question of the rule of Article 1 of Protocol No. 1 under which the case should be examined. The Court observes that the charging of the car amounted to a temporary restriction on its use and thus fell under the scope of the second paragraph of Article 1 concerning "a control of the use of property" (see *Air Canada v. the United Kingdom*, judgment of 5 May 1995, Series A no. 316-A, § 34).

126. The Court has next to determine whether the interference was justified in accordance with the requirements of that provision. In this connection it reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be "lawful": the second paragraph recognises that the States have the right to control the use of property by enforcing "laws". Moreover, the rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention. The issue of whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights only becomes relevant once it has been established that the interference in question satisfied the requirement of lawfulness and was not arbitrary (see, among other authorities, *Baklanov v. Russia*, no. 68443/01, § 39, 9 June 2005, and *Frizen v. Russia*, no. 58254/00, § 33, 24 March 2005, with further references).

127. The RSFSR Code of Criminal Procedure, in force at the material time, envisaged two situations in which a charging order in respect of a suspect's or defendant's property could be issued (Article 175): firstly, if the offence with which the individual was charged carried a confiscation measure as an auxiliary penal sanction; and secondly, if the charging order was necessary to secure a civil claim in the criminal proceedings.

128. In the instant case the Court observes that neither the offence of torture nor that of kidnapping, which formed the charges against the third applicant, carried a confiscation measure as a penal sanction (see paragraph 65 above). Furthermore, at the time the investigator issued a charging order no civil claim had been brought in criminal proceedings and no one had been recognised as a civil claimant by a reasoned decision, as required by Article 137 of the RSFSR Code of Criminal Procedure. It follows that neither of the two grounds was applicable for making a charging order in respect of the third applicant's vehicle. The deficient legal basis for the contested measure was identified by an inquiry carried out by the supervising prosecutor in response to the third applicant's complaints (see

paragraph 49 above). The prosecutor found, in particular, that the investigator had acted in breach of Article 175 of the Code, in that he had impounded the vehicle without legal grounds for doing so. In examining the third applicant's claim for damages, the domestic courts did not clarify why they believed that in those circumstances the investigator had acted in accordance with the applicable legal provisions.

129. Accordingly, the Court finds that the interference with the third applicant's rights under Article 1 of Protocol No. 1 did not meet the requirement of "lawfulness". There has therefore been a violation of that provision.

VIII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

130. Lastly, the applicants complained under Articles 9 and 14 of the Convention about discrimination on account of their Tatar ethnicity in the article by the journalist Ms M. The Court notes that the applicants did not raise the alleged discrimination issue in any domestic proceedings and that the contested statements represented a personal opinion by the journalist, for which the State authorities cannot be held accountable. It follows that this complaint must be rejected for non-exhaustion of domestic remedies or as being incompatible *ratione personae* with the provisions of the Convention.

131. The applicants alleged a violation of Article 13 of the Convention in respect of all the above complaints. The Court observes that they did not explain in any detail why they considered that they were denied effective domestic remedies for their grievances. Having regard to the circumstances of the case, the Court finds that the complaint is devoid of merit. It therefore rejects this complaint as manifestly ill-founded in accordance with Article 35 §§ 3 and 4 of the Convention.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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."

133. The applicants did not submit any claim for just satisfaction. Instead, on 30 September 2005 the Court received a claim from Ms Natalie Volodina for pecuniary and non-pecuniary damage and also costs and expenses.

134. The Government pointed out that the claim had been signed by Ms Volodina, who had not been authorised to represent the applicants before the Court. In addition, there had been significant discrepancies

between the amounts cited in Ms Volodina's covering letter and the list of claims enclosed with it. The claims for pecuniary damage and costs and expenses had not been accompanied by any supporting documents and the claim for non-pecuniary damage was either unrelated to the alleged violations of the Convention or manifestly excessive.

135. The Court observes that the claim for just satisfaction was not signed by the applicants or by either of their two representatives in the proceedings, Ms Moskalenko or Ms Bokareva. Instead, it bore the signature of Ms Volodina, who had not been designated as the applicants' representative before the Court. No explanation as to Ms Volodina's status in the proceedings or authority to act on the applicants' behalf has been provided. In these circumstances, the Court is unable to accept that the claim was submitted by the applicants or by their authorised representative. The claim must therefore be rejected.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* that the first and third applicants may pursue the application in so far as it was lodged by the late second applicant;

2. *Declares* the complaints concerning the alleged breach of the applicants' presumption of innocence, the alleged breach of the equality-of-arms principle in the civil proceedings, the alleged breach of the first applicant's right to respect for his private life and the alleged breach of the third applicant's right to the peaceful enjoyment of his possessions admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention in the civil proceedings;

5. *Holds* that there has been a violation of Article 8 of the Convention in respect of the first applicant;

6. *Holds* that there has been a violation of Article 1 of Protocol No. 1 in respect of the third applicant;

7. *Rejects* the claim for just satisfaction.

Done in English, and notified in writing on 23 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Nina Vajić
Deputy Registrar	President