

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

FIRST SECTION

DECISION

Application no. 4261/06
Rasul KUDAYEV and Others
against Russia

The European Court of Human Rights (First Section), sitting on 3 November 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 January 2006,

Having regard to the decision of 4 May 2011 to grant priority to the above application under Rule 41 of the Rules of Court,

Having deliberated, decides as follows:

THE FACTS

The applicants are

1) Mr Rasul Kudayev, born in 1978,
2) Ms Fatimat Tekayeva, born in 1952, and
3) Mr Arsen Mokayev, born in 1972.

The applicants are Russian nationals and come from the village of Khasanya, in the Kabardino-Balkariya Republic ("the KBR"). They are represented before the Court by Mr M. Abubakarov, a lawyer practising in

Grozny, and Mr D. de Savornin Lohman and Mr R. Lemaitre of the Stichting Russian Justice Initiative, an NGO based in the Netherlands with a representative office in Russia.

The second applicant is the mother and the third applicant is a brother of the first applicant.

The facts of the case, as submitted by the applicants, may be summarised as follows.

A. The background to the case

1. Events related to the first applicant's arrest in Afghanistan and detention in Guantanamo Bay

On an unspecified date in 2001 the first applicant left Russia to travel to Saudi Arabia to study Islam. Subsequently, he travelled to Iran and intended to go through Afghanistan to Pakistan to continue his studies. In Afghanistan the Taliban arrested him, suspecting that he was a Russian spy, and held him in detention for several months. After the entry of the Allies into Afghanistan in 2001, the first applicant was arrested by the forces of the Northern Alliance led by General Dostum.

On an unspecified date in November 2001 the first applicant, together with a number of Taliban fighters, were taken to Qalai Janghi fortress.

On 25 November 2001 an uprising broke out in the fortress. In the ensuing fighting a number of persons were killed and the first applicant sustained a gunshot wound to the right hip.

Subsequently, the first applicant was taken to a US-run detention centre in Kandahar and, on an unspecified date in 2002, to Guantanamo Bay detention camp.

In the applicants' submission, both in Kandahar and in Guantanamo Bay the first applicant was subjected to various forms of torture, including beatings, sleep deprivation, withholding of medical assistance and undernourishment.

2. The first applicant's transfer to Russia

On 28 February 2004 the US authorities handed the first applicant and six other Russian nationals, prisoners in Guantanamo Bay, over to the Russian authorities.

Upon his arrival in Russia the first applicant was brought to a remand centre in Pyatigorsk where he was held in detention. He was charged with having committed a number of criminal offences, including illegal crossing of a state border, mercenary activities and participation in a criminal gang.

On 24 June 2004 a court ordered the first applicant's release. It seems that he was released shortly thereafter.

It appears that at some point in 2004 the prosecution dropped the charges against the first applicant.

3. The first applicant's state of health after his return to Russia

(a) The applicants' account

According to the applicants, after his return to Russia the first applicant was diagnosed with a number of serious illnesses, including hepatitis A, B and C, pyelonephritis, gastric ulcer, arrhythmia and chronic bronchitis.

In the applicants' submission, after his return the first applicant suffered from persistent headaches and pains in the heart region and in the sacrum. The headaches were accompanied by jaundice. Periods of acute pain all over his body, lasting from two to three days, came and went with a certain regularity, making the first applicant unable to move around without assistance on those occasions. Moreover, the wound to the first applicant's hip and the bullet lodged between the first and second vertebrae of the sacrum badly impeded his ability to walk. He was unable to walk or stand on his feet for lengthy periods of time; his right leg would go numb. When the pain in the sacrum was at its worst, he had to stay in bed for at least eighteen hours a day. On each occasion when the first applicant's condition deteriorated, his relatives had to call an ambulance for him.

In the applicants' submission, because of his condition, the first applicant is in constant need of taking numerous medicines, failing which his state of health rapidly deteriorates. In particular, he has to take painkillers, vasodilators and medicines to treat his heart and liver condition, gastric ulcer, blood pressure and kidney problems.

As a result of his condition, the first applicant also needs regular in-patient treatment. In the applicants' description, during such treatment, which would last for about one month, the first applicant would be put on a drip and administered with a large number of medicines and injections. The effects of such treatment would last for about two to three months.

Because of the damage done to his liver during his stay in Guantanamo, the first applicant has to stick to a strict diet.

In the applicants' submission, the first applicant's condition was exacerbated by the fact that after his arrival in Russia the domestic authorities refused to issue him with a passport, thereby denying him access to State medical care. The applicants had to arrange for his medical treatment unofficially and the local hospitals often refused to treat him when they found out he had no passport. This situation lasted until 1 October 2005, when the first applicant finally obtained an identity card.

The above description of the first applicant's state of health is based on the information contained in the application form, a written statement of 8 March 2006 by A.Z., a volunteer with "Reprieve" (a British project aimed, among other things, at enforcing rights of former Guantanamo prisoners),

who visited the first applicant in Russia in September/October 2005, and the written statement of the second applicant dated 28 December 2005.

(b) Relevant medical documents

An extract from the first applicant's medical file no. 10429, in so far as relevant, reads as follows:

"...

21.04.04. Examination by a general practitioner. Conclusion: chronic hepatocholecystitis. Prescribed: ranitidine...

29.04.04. Examination by general practitioner. Diagnosis: acute respiratory disease, chronic hepatocholecystitis...

Prescribed: paracetamol..., amoxillin..., dekamevit..., allokhol...

28.05.04. Examination by general practitioner. Diagnosis: acute chronic bronchitis, chronic hepatocholecystitis in remission phase.

Prescribed: bromhexin..., carsil..., allakhol..., dekamevit...

4.06.04. Examination by general practitioner. Diagnosis: After-effects of a gunshot wound to the right buttock "2002", pain syndrome.

Prescribed: analgin...

...

10.06.04. Examination by general practitioner. Diagnosis: exacerbated chronic gastritis.

Prescribed: ranitidine..., dekamevit...

...

06/[illegible]/04. Complaints about dull pain in subcostal area on the right side, ..., weakness, excessive sweating, headaches.

More than two years ago had malaria and ... hepatitis while in Afghanistan.

Objectively: [the patient is]... asthenic. Erethitic...abdomen boggy [on palpation], painful...

...subcostal area on the right side [is] boggy, painful. ..

Diagnosis: persistent hepatitis in the phase of subcompensation (after hepatitis B and malaria). Vegetative-vascular dystonia.

...[it appears that during the examination the first applicant was prescribed a diet, a number of further examinations and tests and also instructed to take various medicines, but the related part of the medical file is hardly legible]

08/09/05. [illegible] ... Diagnosis: chronic hepatitis virus [illegible]

...[it appears that during the examination the first applicant was prescribed a diet, a number of further examinations and tests and also instructed to take various medicines, but the related part of the medical file is hardly legible].

30/09/05. Complaints about pain in the subcostal area on the right side, nausea, ...

...

Diagnosis: persistent hepatitis (after-effects of malaria and hepatitis C), [illegible]."

On 12 August 2005 the first applicant was examined by a neurosurgeon. The relevant certificate of the same date, in so far as relevant, reads as follows:

"Diagnosis: after-effects of a gunshot wound to the sacrum (dating from 2001), accompanied by nerve damage to the sacral plexus [and] resulting in the dysfunction of the pelvic organs.

From the neurological point of view there is severe pain syndrome in the right hip joint, numbness in the anogenital area, periodic difficulties in urination and defecation, erectile dysfunction.

Computer tomography of the sacrum recommended to decide whether the bullet needs to be removed."

Following the first applicant's x-ray examination, carried out on an unspecified date in 2004, and a tomography of the small pelvis, carried out on 17 August 2005, he was diagnosed with penetrating gunshot wound to the lower region of the sacroiliac joint on the right side. The examination established, in particular, that a foreign body – a bullet – was lodged in the soft tissues of the first applicant's small pelvis on the right side.

On an unspecified date the first applicant underwent an ecography of the liver. The related certificate, undated, concludes:

"...Conclusion: ... diffuse changes to the structure of the liver characteristic of chronic hepatitis, stones in the right lobe of the liver. Chronic cholecystitis, pancreatitis. Deformation of the gallbladder. Indication of bile congestion."

4. The events of 13 October 2005

(a) The Nalchik raid

On 13 October 2005 a group of gunmen launched attacks on several government institutions in Nalchik, including the Federal Security Service ("the FSB"), the "OMON" special police squad, three police stations and also the Nalchik airport. The Russian authorities deployed regular troops and special forces to regain control of the city.

In the ensuing hostilities between government forces and the gunmen, which lasted until the next day, more than 100 people, including about 14 civilians, 90 gunmen and dozens of law enforcement officers, were reported to have been killed and over 200 wounded.

(b) The applicants' submissions concerning the first applicant's whereabouts during the Nalchik raid

In the applicants' submission, on 13 October 2005 the first applicant was at home at 192 A, Attoyeva Street, in Khasanya.

In the morning of 13 October 2005 the third applicant took the second applicant to work and returned home to look after the first applicant. At

work the second applicant's colleagues told her about the gunmen's raid and she immediately returned home, where she spent the rest of the day with the first and third applicants.

On 14 and 15 October 2005 the first applicant stayed in bed at his parents' home in Khasanya.

According to an ambulance call card ("*карта вызова скорой медицинской помощи*") dated 15 October 2005, at 7.15 p.m. on that date an ambulance was called for the first applicant. He was diagnosed with vegetative-vascular dystonia and given several injections and medicines.

5. Opening of the criminal investigation into the Nalchik events

On an unspecified date in October 2005 the Russian authorities opened a criminal investigation into the events of 13 October 2005. The investigation was entrusted to a special investigating group of the Prosecutor General's Office of the Russian Federation.

By 9 December 2005 the law-enforcement authorities had arrested some fifty-nine people on suspicion of participation in the Nalchik raid.

B. The first applicant's arrest and placement in custody

On 23 October 2005 officers from Police Department no. 6 for the Fight against Organised Crime ("*Управление по борьбе с организованной преступностью номер 6*", hereinafter "the UBOP") arrived at the applicants' house to conduct a search.

In the applicants' submission, a group of twenty to twenty-five men in camouflage uniforms and masks, armed to the teeth, burst into the applicants' house at 192A, Attoyeva Street. The group included two snipers, two machine gunners and a number of plain-clothes police officers, some of whom were drunk. They secured the perimeter of the house, swearing and ordering the applicants not to move.

The second applicant called out to the neighbours for help. Hearing her shouting, the first applicant went outside the house. Officer K. of the UBOP immediately rushed up to him, grabbed his hand and ordered that he be handcuffed. The second applicant asked the officers to show her an arrest warrant but they could not produce one.

The officers led the first applicant away, kicking him and pushing him with their gun butts. The first applicant had difficulty walking on his own, but the officers pushed and hurried him along. At that moment a number of neighbours gathered outside. The second applicant shouted to them that the first applicant would be beaten and called on them to be witnesses to his arrest. In reply officer K. allegedly told her: "We won't beat him right now, we'll leave it till we get to the UBOP".

Shortly thereafter several police officers took the first applicant to the UBOP.

In the meantime, the remaining officers searched the house. According to a search order dated 23 October 2005 ("*Постановление о производстве обыска*"), the authorities had been notified of the first applicant's presumed participation in the Nalchik raid by a phone call received on a telephone hotline opened by them after the events of 13 October 2005. The search order also stated that there might be weapons and explosives stored at the applicants' home.

According to the search record of 23 October 2005, the search was conducted between 2.30 and 3.05 p.m.; no weapons or explosives were found, but two computer discs were seized.

It appears that the record of the first applicant's arrest was drawn up in the evening of 23 October 2005 and stated that he had been arrested at 11.10 p.m. on that day.

There is no indication that the first applicant challenged his arrest before the domestic courts.

On 25 October 2005 the Nalchik Town Court ("the town court") authorised the first applicant's placement in custody. In the applicants' submission, the investigators intentionally omitted to notify the first applicant's lawyer I.K. of the hearing, so that the judge had to appoint another representative for him. According to the detention order of 25 October 2005, at the hearing the first applicant was represented by lawyer Kh.K. The decision also stated that it was open to appeal before the Supreme Court of the Kabardino-Balkariya Republic ("the Supreme Court") within three days.

There is no indication that the first applicant appealed against the detention order of 25 October 2005.

C. The first applicant's alleged ill-treatment in 2005 and the related investigation

1. Episodes of the first applicant's alleged ill-treatment in 2005

(a) First applicant's alleged ill-treatment on 23 October 2005 at the UBOP

Upon the first applicant's arrival at the UBOP on 23 October 2005, UBOP officers took him to an office on the second floor and started kicking and hitting him, to make him confess to his participation in the Nalchik raid. After a while the first applicant was transferred to another office, where the beatings continued, the police officers kicking and hitting him and applying electric current to his fingers. They also prodded him with an object under his right eye and hit him on the heels and ears. The first applicant fainted several times because of the pain inflicted on him. The beatings continued until about 11 p.m., with the UBOP officers pressuring him to confess to his participation in the Nalchik raid.

At 11.20 p.m. on 23 October 2005 an ambulance was called for the first applicant.

In so far as relevant, the ambulance call card, dated 23 October 2005, reads as follows:

> "Complaints, anamnesis: headache, nausea, dizziness, back pain. Origin of the traumas not known.
>
> Objectively: Patient has somewhat delayed reactions. Enters into contact. Response to stimuli retained. ... On the right [side] – a bruise to the eyelids, haemorrhage of the eyeball. Moderate rigidity of the cervical muscles. ... On the back and waist – injuries and bruises to the soft tissues...
>
> Diagnosis: closed craneocerebral injury, brain concussion? Bruises and injuries to soft tissues of the face, upper limbs, back.
>
> ...
>
> Hospitalisation refused (in need of convoy)..."

According to a certificate of 1 November 2005, at 11.20 p.m. on 23 October 2005 an ambulance was called to the UBOP for the first applicant; he was diagnosed with psychomotor agitation, arterial hypertension and major bruising.

On 24 October 2005 the Kabardino-Balkariya Bar Association entrusted the first applicant's defence to lawyer I.K.

On the same day I.K. went to visit the first applicant at the UBOP. In her complaint to the authorities dated 3 November 2005 (see below) she described her meeting with the first applicant as follows:

> "Upon arrival at the 6th department [the UBOP] I saw [the first applicant] sitting on a stool in a contorted position, holding his stomach; he had a large bruise and numerous abrasions on the right side of his face near the eye. Apart from the investigator, there were many people (three to five persons) in the room. Investigator A.A., who was working with [the first applicant] on that day, handed me the record of [the first applicant's] questioning.
>
> After reading the record, I asked [the first applicant] whether he had really given that testimony, and he replied that he wished to talk to me in private...
>
> During our conversation [the first applicant] told me that he had been tortured and beaten up on his arrival at the UBOP. He had not given the testimony recorded in the [interrogation] record; it had been invented and was not true.
>
> I advised [the first applicant] to rely on Article 51 of the Constitution of the Russian Federation: "No one shall be obliged to give evidence against himself" and Article 46 § 4 (2) of the Code of Criminal Procedure of the Russian Federation, the right of a suspect not to testify...
>
> When [the first applicant] told the investigator that he would not sign the confession... what a commotion!!! The people in the room, who did not introduce themselves, surrounded [the first applicant] and all started threatening him. Finally, he gave up and agreed to sign the document because he was afraid that after my departure they would beat him again.

As for me, I was told by one of the persons present: "You are free to leave; we don't need your services anymore".

I considered the [first applicant's] fear of being beaten up again to be real and for that reason I felt obliged to sign the record, without any comments, so as not to make matters worse."

By a decision of 24 October 2005, investigator Z.Sh. ordered the first applicant's forensic medical examination.

On the same date an expert of the Forensic Medical Examination Bureau of the Kabardino-Balkariya Republic ("the forensic bureau") examined the first applicant. The expert's report (no. 1470a), in so far as relevant, reads as follows:

"...

According to [the first applicant]: On 23 October 2005 he sustained bodily injuries on being arrested.

Complaints: pain in the right subcostal area and the lumbar region, headaches.

Medical examination results

A purplish-cyanotic bruise [measuring] 6×4 cm in the right orbital region. Analogous [bruises]: 2×2 cm on the right cheek, 6×8 cm on the front of the right shoulder, 6×2 cm on the back of the same shoulder, 10×2 cm on the back of the left shoulder, 7×3 cm in the area of the left collarbone, a stripe-like [bruise] 14×3 cm in the interscapular area, a 5×1 cm [bruise] on the back of the right radiocarpal joint, a 6×1 cm [bruise] on the back of the left radiocarpal joint, a 14×17cm [bruise] on the right buttock, a 14×6cm [bruise] on the left buttock, a 10×4 cm [bruise] on the back of the left lower leg, a 9×3cm [bruise] on the back of the right lower leg. In the right cheek-bone area an abrasion ... [measuring] 2×0.5cm. Analogous 2×2 cm abrasion on the wing of the haunch bone on the right. A swelling of the soft tissues [measuring] 7×8 cm in the parietal region on the right side, painful on palpation. Similar [swelling area] of 4×4 cm in the left parietal region. Swelling of the right wrist.

Conclusions

On the basis of the information obtained after examination of [the first applicant]..., taking into account the circumstances of the case and the questions put to the expert, I conclude:

[The first applicant] has:

Abrasions on the face and in the iliac region on the right; bruises on the face, limbs, thorax region, buttocks; injuries to the soft tissues of the head. The injuries described above were sustained as a result of blows from hard blunt objects with a limited impact surface; they may have been sustained at the time and in the circumstances indicated in the order for the expert examination; they are not likely to cause impairment of the health or permanent disablement..."

(b) Alleged ill-treatment on 25 October 2005 at SIZO no. 1 in Nalchik

On 25 October 2005 the first applicant was transferred to SIZO no. 1 in Nalchik ("the remand prison").

In the applicants' submission, after his arrival in SIZO no. 1 the first applicant was beaten up again.

On 26 October 2005 I.K. signed an agreement with the first applicant's family members to represent him. On the same date she went to visit the first applicant in SIZO no. 1. In a complaint to investigator A.A., dated 27 October 2005 (see below), she declared:

> "...On 26 October 2005 ... I visited [the first applicant] in SIZO ...
>
> [The first applicant] was in fact brought to me because he could not move without assistance. During our conversation he told me that he had been ill-treated, i.e. that he had been beaten up on 23 October 2005 when he had been taken to the UBOP and that he had been also beaten up on 25 October 2005 upon his transfer to the SIZO. [On the latter occasion] he had been hit in the waist and on his heels. ...
>
> It appeared that [the first applicant] could not stand upright because of the pain, he was dragging one of his feet, on which he could not put any weight; there were abrasions on his face."

(c) Alleged ill-treatment on 28 October 2005 at the FSB

On 28 October 2008 the first applicant was taken from his cell and escorted to the Kabardino-Balkariya Department of the FSB, where he was severely ill-treated again.

On an unspecified date between 28 October and 9 November 2005 the first applicant complained to investigator E.K. about the alleged ill-treatment, explaining, in particular, that as a result of the ill-treatment on 28 October 2005 he had sustained injuries to his arms and hands.

On 9 November 2005 E.K. ordered the first applicant's medical examination, referring to the latter's complaint that he had been beaten up on 28 October 2005.

On 9 November 2005 an expert from the forensic bureau examined the first applicant. His report no. 1621-A, in so far as relevant, reads as follows:

> "...[The first applicant] complained that on 28 October 2005, while interviewing him as a suspect, law enforcement officers had beaten him up and that, as a result of the beatings, he had sustained scars to his hands and arms, which had also become swollen.
>
> According [to the first applicant]: On 23 October 2005 several persons beat him up on the premises of the UBOP, hitting him with truncheons and gun butts and administering electric shocks to his fingers. [The first applicant] fainted several times and was sick. An ambulance was called; [the ambulance crew] administered [him] injections. Three or four days later three or four individuals hit [the first applicant] with a wooden stick on the legs, feet and body. [On that occasion the first applicant] did not faint or ask for a doctor. On 28 October 2005 four persons hit him on the body, suspended him by his handcuffed wrists and hit him with a stick. He did not faint or call for a doctor.
>
> Complaints: bouts of stabbing pain in the heart region, pains in both wrists, in the kidney region, painful urination, pain in the liver region.
>
> **Medical examination results**
>
> There are 2 spindle-shaped stretch wounds in the region of the wrist, on the right elbow extensor surface and the flexor radial surface, measuring 1.5×0.4cm and

1×0.3cm [respectively]... [There are] 4 similar wounds – [located] in a circle round the left radiocarpal joint, measuring from 0.6×0.1cm to 0.9×0.2 cm. In the same area on the right and on the left [there are] 4 linear bow-shaped and linear crosscut abrasions ... which are up to 3.5 cm long. A 1.2 cm-long crosscut linear bow-shaped abrasion in the right infraorbital region. An abrasion ... [measuring] 0.8×0.5 cm in the right deltoid region. Two stripe-like ... bruises, 9.5 cm and 6.5 cm long [respectively] and 0.3 cm wide, ... on the external surface of the left buttock. Linear abrasions, 0.5-0.9 cm long, on the internal ... and external surface of the right thigh. A ... scar [measuring] about 2.2 cm ... on the right buttock ...

Examination by a generalist and a neurologist recommended.

Conclusions

...

1. [The first applicant] has the following bodily injuries:

1.1. superficial wounds and abrasions and bruises on the head, body, both upper limbs and right lower limb;

1.2. a scar on the right buttock.

The injuries mentioned in 1.1 were caused by blows from hard blunt objects with a limited impact surface, possibly at the time and in the circumstances indicated by the patient; [they] are not likely to cause impairment of the health or permanent disablement.

2. Superficial wounds and abrasions on the wrists could have been sustained as a result of ... rubbing of handcuffs."

(d) Photos of the first applicant after his arrest, published by the media

On 15 December 2005 internet newspaper "gazeta.ru" published an article entitled "General Ermolov joined the investigation" ("*Генерал Ермолов подключился к следствию*"). The article described the investigation into the Nalchik events, suggesting that local law-enforcement authorities were instilling terror in the town by conducting a cruel crackdown on its residents, torturing them, extorting confessions from them and even killing them. The article referred, in particular, to the case of the first applicant and the affirmations of his lawyer I.K. that the investigating authorities had not only tortured her client but had unlawfully and maliciously removed her from his defence with a view to preventing her from complaining about his torture.

The article contained photos of people arrested on suspicion of participation in the Nalchik events, including the first applicant, taken, according to the newspaper, by the UBOP about three weeks after the arrest. In the photo the first applicant has a seriously swollen face; a scratch on the right cheek, scratches above and below the right eye and a bruise under the same eye.

2. Investigation into the above-mentioned episodes of alleged ill-treatment

On 24 October 2005 the second applicant complained to the Prosecutor's Office of the Kabardino-Balkariya Republic ("the KBR Prosecutor's Office") that the first applicant had been ill-treated and unlawfully arrested.

By letter of 26 October 2005 the KBR Prosecutor's Office informed the second applicant that they had received her complaint on 24 October 2005 and that her submissions would be examined in the framework of the criminal proceedings against the first applicant.

On 27 October 2005 the first applicant's lawyer, I.K., complained to investigator A.A. that her client had been ill-treated on 23 October 2005 after his arrest and transfer to UBOP, and on 25 October 2005 after his transfer to SIZO no. 1. She averred that on the latter occasion he had been hit on the waist and feet in particular. She further stated that, on seeing him on 26 October 2005, she had been shocked by the fact that he was not able to stand up straight, that he was dragging his foot and that he had numerous abrasions on his face. I.K. requested that a forensic medical examination of the first applicant be carried out with a view to establishing the origin and the gravity of her client's injuries, as well as examining whether he was in need of medical assistance. Lastly, she requested that the authorities secure her presence at the examination and notify her of its date and place.

By letter of 28 October 2005 the Prosecutor General's Office of the Russian Federation informed the first applicant that his lawyer's request for his medical examination had been granted and that the examination was under way. The accompanying order for the medical examination bears a stamp which appears to indicate 8 November 2005 as the date of its dispatch.

On 3 November 2005 I.K. complained to the KBR Prosecutor's Office and a number of other authorities about the first applicant's alleged ill-treatment. She described in detail her meetings with the first applicant on 24 and 26 October 2005 and averred that he had been severely ill-treated, on the former date, at the UBOP, to extract a confession that he had participated in the Nalchik raid, and also on the latter date, after he was transferred to SIZO no. 1. She stressed that he could barely move and that she had seen numerous abrasions on his face. Lastly, she submitted that she had not been informed of any decision concerning her request for the first applicant's medical examination, lodged on 27 October 2005.

On 9 November 2005 one of the investigators in charge of the proceedings concerning the Nalchik raid interviewed the first applicant in the presence of I.K. Before the interview the first applicant told her again about his ill-treatment on 28 October 2005 and showed her the bruises and scars that still remained on his hands. When she advised him to make specific note of his ill-treatment on the interrogation record, the investigator became furious and left the room. After a while he returned and took the

first applicant and I.K. to a forensic expert, in an office in the same building but on a different floor. At that moment the first applicant learnt that the investigator had issued in the meantime a decision ordering his forensic medical examination.

The first applicant was examined by the forensic expert that same day (for details of the expert's findings (report no. 1621-A), see above).

By a letter of 10 November 2005 the Prosecutor General's Office of the Russian Federation informed the first applicant's lawyer that her complaint of 3 November 2005 about her client's alleged ill-treatment had been examined and that an internal inquiry into the matter would be conducted by the Ministry of the Interior of the KBR.

On 10 November 2005 an investigator removed I.K. from the first applicant's defence in the criminal proceedings against him (see below).

On an unspecified date in 2005 the first applicant appointed a new lawyer to represent him.

On 5 December 2005 the second applicant complained about her son's ill-treatment to the prosecutor of the KBR. She submitted that the first applicant had been taken from his home without any injuries and that he had been subsequently severely tortured by UBOP officers, remand prison officers and other law-enforcement officials of the Ministry of the Interior of the KBR. She also gave the names of the persons who had participated in her son's arrest, such as officer K., and enclosed photos of the first applicant showing his injuries.

On 9 December 2005 the Nalchik town prosecutor's office ("the town prosecutor's office") refused to institute criminal proceedings in respect of the first applicant's alleged ill-treatment. The decision, in so far as relevant, reads as follows:

> "On 12 November 2005 the KBR Prosecutor's Office received the [first applicant's] complaint of 9 November 2005 where he states that on 28 October 2005 he was taken from SIZO [no. 1] to the premises of a law-enforcement authority unknown to him and that he was subjected to physical violence there. He indicates that traces of ill-treatment, [including] scars and swollen tissues, are still visible.
>
> During a preliminary inquiry into the matter [the first applicant] explained that on 23 October 2005 he had been ... arrested on suspicion of participation in the Nalchik raid and had subsequently been taken to [SIZO no. 1]. On 28 October 2005 several persons in civilian clothes and military uniforms, whom [the first applicant] would not be able to identify, put a black plastic bag over his head and took him from [SIZO no. 1] to an unknown destination. Upon arrival in a building previously unknown to him, [the first applicant] was taken to an office on the first floor where three persons unknown to him tried to get him to confess to his participation in the Nalchik raid and provide information about gun caches and followers of radical Islam. When he refused, they started hitting and kicking him all over his body. Thereafter he was taken to a sports room on the third floor where, on an order from one of the persons present, he was hung by his handcuffs from a horizontal bar and beaten with sticks all over the body. ... [The first applicant] fainted because of the beatings and was lying on the floor until he regained consciousness, after which he was taken back to an office

on the second floor and then, after a while, to SIZO no. 1. There he sought medical assistance from the prison doctors.

... Remand prison officer ... V.M. stated that at about 2 p.m. on 28 October 2005, following a written request to transfer ... [the first applicant] to the Kabardino-Balkariya Department of the Federal Security Service of the Russian Federation for investigative measures, he had ... handed him over to an FSB official. The requisite documents had been filled in, ... [the first applicant] had been taken out of the remand prison. [V.M.] had not applied physical violence to [the first applicant], no one had applied such violence to him in [V.M.'s] presence; no plastic bags had been put over the first applicant's head.

S.Ch., deputy head of the operational and search bureau of the Kabardino-Balkariya Department of the Federal Security Service ... submitted that on 28 October 2005, following an authorisation by A.S., head of the investigating group of the Prosecutor General's Office of the Russian Federation, ... S.Ch., together with his subordinates, had had ... [the first applicant] taken to the Kabardino-Balkariya Department of the Federal Security Service from [SIZO no. 1] by officers of the Kabardino-Balkariya Department of the Federal Security Service. While on the premises of the Kabardino-Balkariya Department of the Federal Security Service, [the first applicant] had been interviewed; the interrogation was recorded by a hidden camera. When the investigative measures had been completed, [the first applicant] had been transferred to [SIZO no. 1]; the detainee had not been subjected to any violent methods.

A similar account was given by A.T., operational officer with the Kabardino-Balkariya Department of the Federal Security Service.

R.K., senior operational officer at the UBOP ... stated that on 23 October 2005 a group had arrived at 192 A Attoyeva Street in Khasanya... with a view to searching [the first applicant's] home. ... Before the beginning of the search [the first applicant] had refused to let anyone inside his house, preventing [the officers] from entering. ... R.K. had instructed the OMON officers ... to take [the first applicant] outside and put him in a car during the search. Later, after transmitting the information that he had apprehended [the first applicant], [R.K.] had been instructed to have him transferred to the UBOP...

According to the conclusions of forensic medical examination no. 1621-A of 9 November 2005, at the time of the examination [the first applicant] had the following injuries: superficial wounds, abrasions and bruises to the head, body, both upper limbs and right lower limb and a scar on the right buttock, which had been caused by hard blunt objects with a limited impact surface – possibly in the circumstances and at the time indicated by the person under examination...

The preliminary inquiry identified the persons who had been [with the first applicant] on 28 October 2005; [they were] interviewed; their submissions are confirmed by other objective materials from the inquiry. [The first applicant's] submissions are contradictory and are refuted by the information obtained in the inquiry. In particular, [the first applicant] himself explained during his examination that "on 28 October 2005 four persons hit [him] on the body, suspended [him] by handcuffs from the wrists and hit him with a stick. He did not faint or seek medical assistance.", whilst in his earlier explanation he stated that after continuous beatings on 28 October 2005 he had fainted and had then applied for medical assistance.

[The first applicant's] bodily injuries could have been sustained during his arrest...."

On 26 January 2006 the second applicant wrote to the prosecutor of the KBR, submitting that the authorities had failed to follow up on the complaint of 3 November 2005 about the first applicant's ill-treatment. She requested to be informed of the outcome of the inquiry and to be sent copies of any decisions taken.

On 27 June 2006 the first applicant complained to the Prosecutor General of the Russian Federation about his ill-treatment on 23, 25 and 28 October 2005. He described in detail the beatings to which he had been subjected and submitted that his previous complaints had been disregarded and that the prosecutors had refused to institute criminal proceedings in respect of his ill-treatment. He also alleged that he had been forced to incriminate himself under torture.

On 28 June 2006 the first applicant complained to the town court about the refusal, issued on 9 December 2005, to institute criminal proceedings in respect of his alleged ill-treatment. Relying on the requirements laid down in the Court's case-law concerning the effectiveness of the investigation, he submitted that the investigators had based their conclusions exclusively on the statements of the law enforcement officials. The fact that the first applicant had numerous injuries to the entire body did not tally with the hypothesis of lawful use of force to subdue his alleged resistance. In any event, the inquiry had failed to establish whether the use of force had been proportionate.

On 6 July 2006 the town court dismissed the first applicant's complaint. It held that examination of the materials of the inquiry into the alleged ill-treatment showed that it had been conducted in a comprehensive manner and that the refusal to institute criminal proceedings was lawful and well-founded.

On 14 July 2006 the first applicant appealed against the decision of 6 July 2006.

On 25 August 2006 the Supreme Court set aside the decision of 6 July 2006 and remitted the case for fresh examination by a different bench. The court found, in particular, that although the town court had based its conclusions on the materials of the preliminary inquiry, it had never actually studied them.

On 22 September 2006 the town court found the decision of 9 December 2005 unlawful. In its decision it stated that, despite numerous documents attesting to the first applicant's injuries, his lawyer's complaints and other evidence, the investigators had failed to properly verify the circumstances in which those injuries had been sustained. The police officers who had called an ambulance for the first applicant and the ambulance doctors who had examined him had not been identified and interviewed. Statements of the UBOP officers contained obvious contradictions as to the use of force against the first applicant which remained unexplained. In particular, whilst some officers stated that he had offered resistance, others submitted that he

had intentionally thrown himself onto the floor of the car while being transferred to the UBOP. The investigators had failed to explain why they gave more credence to the statements made by law enforcement officials than to those made by the first applicant. Moreover, the forensic reports indicated that the first applicant had different groups of injuries sustained on different occasions.

By a decision of 7 December 2006 the town prosecutor's office refused to institute a criminal investigation into the first applicant's alleged ill-treatment. The decision stated, in particular, that the first applicant's submissions concerning his alleged ill-treatment were contradictory, that he had sustained bodily injuries because he had resisted his arrest and had intentionally thrown himself on the floor in the car during his transfer to the UBOP, and that the use of force against him had been lawful.

On 25 December 2006 the deputy prosecutor of the KBR set aside the decision of 7 December 2006, finding that the town prosecutor's office had failed to rectify the shortcomings in the investigation indicated by the town court. He instructed the town prosecutor's office to carry out an additional inquiry and to take the following investigative steps: to obtain the first applicant's detailed submissions concerning his alleged ill-treatment on 23 and 28 October 2005; to carry out an additional forensic medical examination with a view to elucidating unspecified contradictions in reports nos. 1621-A and 1470a concerning the number and the origin of the first applicant's injuries; to obtain the lists of the first applicant's fellow inmates in SIZO no. 1 in the period from 23 to 28 October 2005 and to interview them; to identify and interview all law enforcement officials who had taken the first applicant outside his cell on 28 October 2008 and to establish in which vehicle he had been transferred on that day; to interview the remand prison doctors who had examined the first applicant after his transfer to SIZO no. 1 on 25 October 2005; to interview officers O.M. and R.R., who had transferred the first applicant from SIZO no. 1 to the KBR FSB Department; to identify the remand prison officer who had taken the first applicant back to his cell at 7.30 p.m. on 28 October 2005; to interview the ambulance doctors who had examined the first applicant at 11.30 p.m. on 23 October 2005 and to append to the file the related ambulance call card; to identify and interview the official who had called the ambulance for the first applicant, and to identify all persons who had seen the first applicant on the premises of the KBR FSB Department.

On 29 December 2006 the town prosecutor's office ordered the first applicant's additional forensic medical examination. The expert was requested to answer the following questions: "What bodily injuries did [the first applicant] have on 23 and 28 October 2005? What were the time of their infliction, their origin and location and the gravity of the damage done to his health?"

On an unspecified date in December 2006 the forensic bureau carried out the additional medical examination, as requested in the decision of 29 December 2006. The forensic expert compared the findings of the two previous examinations, as described in reports nos. 1621-A and 1470a. The new forensic report, no. 1667-A, in so far as relevant, reads as follows:

"...

Conclusions

...

At the time of the [first applicant's] examination on 24 October 2005 he had bodily injuries:

- a bruise in the right orbital region;

- a bruise on the right cheek;

- a bruise on the front of the right shoulder;

- a bruise on the back of the right shoulder;

- a bruise on the back of the left shoulder;

- a bruise in the area of the left collarbone;

- a bruise in the interscapular region;

- a bruise on the left wrist;

- a bruise on the right wrist;

- a bruise on the left buttock ;

- a bruise on the right buttock;

- a bruise on the back of the right lower leg;

- a bruise on the back of the left lower leg;

- an injury of the soft tissue of the head and the right wrist.

The injuries described were caused by hard blunt objects with a limited impact surface, were inflicted within twenty-four hours before the examination, and did not entail health impairment or disablement.

2. At the time of the examination on 9 November 2005 [the first applicant] had bodily injuries:

- contused superficial wound on the inside of the right wrist;

- contused superficial wound on the outside of the right elbow;

- contused superficial wounds (4) around the left wrist;

- abrasions on both wrists;

- abrasion in the right suborbital area;

- abrasion on the back of the right thigh;

- abrasion on the right thigh;

- bruises on the left buttock ;

- a scar on the right buttock.

The injuries described were caused by hard blunt objects with a limited impact surface, the injuries to the wrists could have been caused by handcuffs.

According to their morphological characteristics, the injuries discovered at the examination on 9 November 2005 [in particular]... the contused wounds and abrasions on both wrists and the right elbow, and the abrasions in the right suborbital area and on the right thigh were sustained 10 to 14 days [prior to the examination]; the bruises on the left buttock region [were sustained] 16 to 18 days [priori to the examination]. It is impossible to establish the time of infliction of the scar on the right buttock because the healing (cicatrisation) process has been completed."

By a decision of 31 December 2006 the town prosecutor's office refused to institute criminal proceedings in respect of the first applicant's alleged ill-treatment.

On 22 January 2007 the Nalchik deputy prosecutor set aside the decision of 31 December 2006 and instructed the town prosecutor's office to take unspecified additional investigative steps.

On 25 January 2007 the town prosecutor's office refused to institute criminal proceedings in respect of the first applicant's alleged ill-treatment. The decision stated that the first applicant's submissions concerning the alleged ill-treatment were contradictory, and that it was impossible to identify and interview his fellow inmates in SIZO no. 1 and the officers of the special purpose squad who had participated in his arrest owing to the time that had lapsed since the events in question. The police officers interviewed during the inquiry denied having beaten him. Accordingly, he must have sustained his bodily injuries during his transportation from his home to the UBOP on 23 October 2005, when he had intentionally thrown himself on the floor and also when the police officers accompanying him had lawfully applied force to subdue his resistance during his transportation.

On 23 February 2007 the first applicant complained to the town court about the decision of 25 January 2007, reiterating the arguments raised in his previous complaints to courts. He stressed that the investigators had disregarded the instructions given to them by the deputy town prosecutor and failed to rectify the shortcomings indicated in the town court decision of 22 September 2006.

On 7 March 2007 the town court granted the first applicant's complaint and declared unlawful the decision of 25 January 2007. The court noted that the first applicant's forensic examinations conducted on 24 October and 9 November 2005 established two different groups of injuries, which contradicted the investigators' conclusion that he had sustained all his injuries on one occasion, during his arrest. Those findings had, moreover, been confirmed by the examination of 29 December 2006. The court stressed that in examining the first applicant's complaints the investigators had to take into account the requirements of the European Convention on Human Rights concerning the effectiveness of the investigation.

On 3 May 2007 the deputy prosecutor of the KBR quashed the decision of 25 January 2007 as unfounded and premature and ordered the town prosecutor's office to conduct an additional inquiry. The decision stressed that the town prosecutor's office had failed to comply with detailed instructions given by the KBR Prosecutor's Office on 25 December 2006. The town prosecutor's office was instructed to take the relevant investigative steps during the new phase of the inquiry.

It appears that on 13 May 2007 the town prosecutor's office issued a further refusal to institute criminal proceedings in respect of the first applicant's alleged ill-treatment. There is no indication that the applicants were provided with a copy of that decision and it was not made available to the Court.

By a decision of 15 May 2007 the deputy prosecutor of the town of Nalchik set aside the refusal of 13 May 2007, finding that the town prosecutor's office had taken that decision without complying with the instructions given by the KBR deputy prosecutor on 3 May 2007. The town prosecutor's office was ordered to conduct an additional inquiry into the matter.

By a decision of 20 May 2007 the town prosecutor's office refused to institute criminal proceedings in respect of the first applicant's alleged ill-treatment.

On 20 June 2007 the KBR deputy prosecutor quashed the decision of 20 May 2007, referring to inconsistencies in the investigators' conclusions and their failure to take the investigative steps ordered previously by higher-ranking prosecutors.

On 17 July 2007 the town prosecutor's office decided not to open a criminal case in connection with the first applicant's alleged ill-treatment.

On 9 November 2007 the town court granted the first applicant's complaint about the decision of 17 July 2007 in part. It held, in particular, that it appeared from the conclusions of three medical examinations that the first applicant had several groups of injuries which had been inflicted on different occasions and could therefore not all have been inflicted on one single occasion, during his arrest. Moreover, the findings of the experts contradicted the investigators' conclusions that the injuries sustained by the first applicant had been self-inflicted. The circumstances of the first applicant's alleged ill-treatment on 28 October 2005 remained unexamined and the possible witnesses to those events had not been identified or interviewed. Referring to the Court's judgment in the case of *Mikheyev v. Russia*, as well as the inconsistencies and omissions in the investigation in the case, the town court held that the town prosecutor's office's decision could not be considered lawful or well-founded. Lastly, it noted that, whilst it could order the investigating authorities to rectify specific shortcomings, it was not entitled under Article 125 of the Code of Criminal Procedure to

oblige them to open a criminal case, as requested in the first applicant's complaint.

On 19 November 2007 the town prosecutor's office appealed against the decision of 9 November 2007, stating, among other things, that the town court's reference to the *Mikheyev* judgment was misconceived because the Russian legal system did not recognise precedents and a Russian court's decision issued in criminal proceedings could not be based on judgments delivered in foreign courts.

On 28 December 2007 the Supreme Court quashed the town court's decision of 9 November 2007 and remitted the case for fresh examination at first instance.

On 29 February 2008 the town court examined and dismissed the first applicant's complaint about the decision of 17 July 2007. The court found that the town prosecutor's office had examined all the relevant circumstances, interviewed all the witnesses and arrived at well-reasoned conclusions. Neither the first applicant nor his lawyer was present at the hearing.

On 18 April 2008 the first applicant appealed against the decision of 29 February 2008. He reiterated the arguments made in his previous complaints and stressed that the town prosecutor's office had repeatedly refused to institute criminal proceedings, disregarding the instructions of higher-ranking prosecutors and the need to rectify the shortcomings in the inquiry indicated on several occasions by the town court. The complaint also stated that neither the first applicant nor his lawyer had been notified about the town court hearing and that the latter had received the decision of 29 February 2008 only in April 2008.

On 18 April 2008 the first applicant's lawyer applied to the town court, seeking to have the time-limits for appealing against the decision of 29 February 2008 reinstated. He stressed that he had enquired with the town court on several occasions about the date of examination of his complaint but had obtained no information and that he had received the decision of 29 February 2008 only in April 2008.

On 28 April 2008 the town court dismissed the request of the first applicant's lawyer to have the time-limits for appealing against the decision of 29 February 2008 reinstated. The court found that, although the case file contained no acknowledgment-of-receipt cards in respect of the notifications sent to the lawyer, the latter had failed to furnish conclusive evidence that he had not been duly notified about the hearings and had not received the town court decision in due time. The court also noted that it had been open to the first applicant, who had been duly notified about the decision, to appeal against it but he had failed to do so.

On 4 May 2008 the first applicant's lawyer appealed against the decision of 28 April 2008, submitting that he had received the impugned decision of 29 February 2008 only in April 2008, which was attested by the stamp on

the envelope, that is one month later. He insisted that he had not received any notifications about the hearing before the town court and the fact that the file contained copies of telegrams allegedly sent to him did not prove that he had, in fact, received them.

On 10 June 2008 the Supreme Court upheld the decision of 28 April 2008 on appeal and returned the first applicant's lawyer's appeal against the decision of 29 February 2008 without examination.

D. Removal of the first applicant's lawyer I.K. from his defence in the criminal proceedings against him

On 9 November 2005 investigator M. summoned the first applicant's lawyer I.K. to the prosecutor's office with a view to discussing her complaint of 3 November 2005 concerning her client's alleged ill-treatment.

When she arrived at the prosecutor's office on the same day he informed her that he was about to interview her as a witness. I.K. told him that she could not give him any information she had learnt, because of the lawyer-client privilege. M. threatened her with criminal sanctions for refusal to give evidence in a criminal case. After about thirty minutes of discussion I.K. was forced to give in for fear of criminal prosecution if she refused to testify.

On 10 November 2005 investigator K. issued a decision to remove I.K. from the first applicant's defence ("*постановление об отводе защитника*"). The decision stated that on 8 November 2005 I.K. had been interviewed as a witness about circumstances relevant to the examination of the criminal case against the first applicant and that, accordingly, she could no longer represent him.

On 18 November 2005 the town court granted I.K.'s complaint about the decision of 10 November 2005 in part. It found that the investigator had unlawfully interviewed I.K. about facts she had learnt while representing her client and that her fears of being criminally prosecuted for refusing to testify had been well-founded. At the same time the court held that the decision to remove her from the first applicant's defence could not be considered unlawful.

On 13 January 2006 the Supreme Court set aside the decision of 18 November 2005 and remitted the case for fresh examination at first instance.

On 17 February 2006 the town court dismissed I.K.'s complaint, finding that she had testified of her own free will, and upheld the decision to remove her from the first applicant's defence.

It is unclear whether the decision of 17 February 2006 was challenged on appeal.

E. The first applicant's alleged ill-treatment in 2006 and the related investigation

1. The alleged ill-treatment

On 11 October 2006 the first applicant was transferred from SIZO no. 1 to the Supreme Court for a hearing in his criminal case. Before the transfer he had been strip-searched in the presence of several convoy officers. During the search no bodily injuries had been discovered on him.

On that day the first applicant felt unwell. Although he was suffering from hepatitis and had serious liver problems, he did not have the necessary medication.

During a break in the hearing on 11 October 2006, after the judge had left the court room, the first applicant bent his head to his hands because he was having strong pains in the waist and could not sit straight. Seeing this, one of the convoy officers rudely ordered him to sit up straight. The first applicant replied that he was unwell and could not sit straight for a long period of time and that, anyway, it was a break in the hearing. He also explained that he did not wish to offend anyone by his conduct. In reply, the convoy officer approached him and pushed his head several times, threatening him with reprisals when they left the courtroom. Another convoy officer also insulted the first applicant and threatened him with reprisals.

After the hearing the convoy officers cuffed the first applicant's hands very tightly behind his back and when they left the courtroom, they started insulting him, hitting him on his head and twisting his arms. They also hit him on the body and pushed him, so that he banged his head on the walls. The head of the convoy did not prevent the other officers from hitting the first applicant. Other detainees in the convoy cells heard the first applicant screaming while he was being hit.

Upon his arrival in the remand prison on 11 October 2006 the first applicant requested to see a doctor to have his injuries recorded. Following his request a prison officer examined the first applicant and promised to "memorise" his injuries, but made no formal record of them. In the first applicant's submission, his fellow inmates saw the injuries he had sustained on 11 October 2006.

On 12 October 2006 the first applicant visited the head of the remand prison medical unit and showed her his injuries, in particular, an injury to his head.

According to a record of a medical examination ("*акт медицинского освидетельствования*") dated 12 October 2006, upon arrival at SIZO no. 1 the first applicant had subcutaneous bruises on the left side of his back, the right side of the parietal region of the head and the right side of his thorax.

2. The investigation of the alleged ill-treatment

On 12 October 2006 the first applicant complained to the KBR Prosecutor's Office about his ill-treatment on the previous day, describing in detail the events of 11 October 2006 and stressing that he had not been given a copy of the document recording his injuries.

By a letter of 30 October 2006 the town prosecutor's office informed the first applicant that on the same date it had issued a decision refusing to institute criminal proceedings in respect of the alleged ill-treatment.

The decision of 30 October 2006 referred to statements by convoy officers who submitted that, although the first applicant had acted defiantly in the courtroom by lying on the bench and raising his legs, the convoy officers had only warned him and had at no point struck him. It also cited the remand prison doctor's statement that on 11 October 2006 he had examined the first applicant upon his arrival from the court, in the presence of the convoy officers, and established that he had subcutaneous bruises in the thorax region and on the right side of the back and a bruise on the parietal region of the head. However, when recording the injuries the doctor had not asked the convoy officers to sign the document and they had left the remand prison without signing it. When he asked them to sign it on the following day, they had refused to do so. The decision concluded that the inquiry had obtained no objective evidence that the convoy officers had caused the first applicant bodily injuries.

By a letter of 3 November 2006 the KBR Prosecutor's Office informed the first applicant that on 11 October 2006, upon his return to the remand prison from the Supreme Court, the remand prison officers had prepared a certificate attesting to the fact that he had bodily injuries ("*акт о наличии телесных повреждений*"). The letter also stated that on 16 October 2006 the remand prison authorities had sent that document to the town prosecutor's office for examination.

On 27 January 2007 the first applicant complained to the town court about the decision of 30 October 2006. He submitted that although the investigators did not contest the fact that he had sustained bodily injuries, they had refused to open a criminal case to investigate his ill-treatment, relying solely on the statements of the convoy officers. Referring to the Court's judgments in the cases of *Mikheyev v. Russia* and *Menesheva v. Russia*, the first applicant requested the town court to invalidate the impugned refusal and to order the town prosecutor's office to institute criminal proceedings in respect of his alleged ill-treatment.

The outcome of the proceedings remains unclear.

F. The events of March 2011

On 3 March 2011 Mr P. became the new head of remand prison SIZO no.1. In the applicants' submission, after his arrival the authorities started a massive crackdown on the inmates and, in particular, detainees suspected of participation in the Nalchik raid and also those practising Islam. Since 3 March 2011 an OMON unit has been permanently stationed at the remand prison and its officers have constantly beaten up detainees and offended their religious beliefs.

On 4 March 2011 the remand prison authorities started transferring the detainees from an old to a new prison building.

On 11 March 2011 the first applicant was ill-treated and put in a punishment cell. At some point the remand prison authorities seized the first applicant's application to the Strasbourg Court.

On the same date the first applicant's lawyer Mr A. went to visit his client in the remand prison but was refused access to him, allegedly owing to the large number of lawyers already present visiting detainees.

It is unclear whether the first applicant complained about the alleged ill-treatment to the domestic authorities.

G. The alleged lack of medical care for the first applicant in detention

After the first applicant's arrest on 23 October 2005 the second applicant immediately went to the UBOP building with medicines indispensable for her son's health and asked the authorities to hand them over to him. Her request was refused without any reason.

In the second and third applicants' submission, the prison authorities turned down all their ensuing attempts to deliver the necessary medicines to the first applicant.

In a letter dated 13 December 2005, the first applicant wrote to his mother that on that date he was supposed to have been transferred to a hospital but that that for some reason his transfer had been cancelled.

In a letter dated 15 December 2005 the first applicant wrote to his mother that he had pains in the waist and in the kidney and liver regions. He also wrote that he had undergone an ultrasound examination of the liver and had been told that there were "white lumps" on its surface, but he had not been told what that meant. The first applicant also wrote that he had had a cardiogram but had not been told the results, and that in November he had been put on a hemodez drip and that that was the sole treatment he had received so far.

On 26 December 2006 the second applicant went to remand prison SIZO no. 1, seeking permission to pass some medication to her son, but her request was refused.

On the same date the second applicant wrote to the head of the remand centre, asking for information and copies of documents concerning the medical examinations the first applicant had undergone, the treatment he had received and the medicines he had been given. It is unclear whether she received a reply to her request.

On 19 January 2006 the second applicant complained to the Prosecutor General of the Russian Federation that, among other things, the remand prison authorities had refused to hand over to her son medicines which were indispensable for his health. She requested information about his health and permission to supply him with the medicines he needed. It is unclear whether she received a reply to that request.

On 22 August 2007 Amnesty International published a statement saying that the first applicant was not receiving adequate medical care in detention and that the remand prison authorities were refusing to accept the medicines his relatives took to him.

According to a public statement of Amnesty International entitled "Urgent Action" and dated 16 March 2011, in 2008-2009 the first applicant's health deteriorated because of the inadequate medical treatment received in detention and also as a result of the ill-treatment and torture inflicted on him after his placement in custody. In December 2009 the first applicant was diagnosed with acute gastric ulcer and gastric haemorrhage and in March 2011 he started having breathing difficulties as a result of unspecified respiratory complications.

H. Information concerning criminal proceedings against the first applicant

Criminal proceedings against the first applicant have been pending since October 2005.

It appears that on an unspecified date in 2007 the criminal case against the first applicant and fifty-seven other persons charged with having participated in the Nalchik raid was transferred for examination at first instance to the Supreme Court. It seems that the proceedings at first instance are pending.

COMPLAINTS

The applicants complained under Article 3 of the Convention that the first applicant had been repeatedly ill-treated and tortured after his arrest and that the authorities had failed to carry out an effective investigation into his alleged ill-treatment.

The applicants further complained under the same Convention provision that the first applicant, who had serious health issues, did not receive adequate medical care while in detention.

The applicants submitted under Article 5 § 1 of the Convention that the first applicant's arrest had been unlawful and that the authorities had not had any "reasonable suspicion" that he had committed a crime.

Relying on Article 6 § 3 of the Convention, the applicants complained that the investigating authorities had repeatedly breached the first applicant's right to legal assistance in that they had forced him to sign a confession against his lawyer's advice, had intentionally omitted to notify his lawyer about the court hearing on his arrest and had ultimately removed I.K. from his defence on 10 November 2005, thereby depriving him of the services of a lawyer of his choice.

The applicants complained under Article 6 of the Convention about the decision of 28 April 2008, submitting that it had deprived the first applicant of an opportunity to obtain an effective investigation of his alleged ill-treatment at the domestic level.

The applicants submitted that the first applicant had not had effective remedies in respect of their aforementioned complaints, in breach of Article 13 of the Convention.

Lastly, in their letter of 25 March 2011 the applicants complained that the remand prison authorities had seized the first applicant's application to the Court.

THE LAW

A. As regards the second and third applicants

The Court notes at the outset that the second and third applicants complain about a number of alleged violations of the Convention in respect of the first applicant. However, it does not consider that, in respect of any of the complaints enumerated above, the second and third applicants may claim to be victims of the alleged violations (see, for example, *O'Brien v. the United Kingdom* (dec.), no. 61391/00, 8 October 2002).

It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention and must be declared inadmissible in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. As regards the first applicant

1. Complaints about the alleged ill-treatment and the investigation

The first applicant complained, with reference to Article 3 of the Convention, that he had been repeatedly ill-treated and that the authorities had failed to properly investigate his alleged ill-treatment. He also submitted under Article 6 that the decision of 28 April 2008 had made it impossible for him to compel the authorities to pursue an investigation of his alleged ill-treatment. The Court considers that these complaints fall to be examined under Article 3, which reads as follows:

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

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. Complaints about the lack of medical care in detention

The first applicant further complained under Article 3 of the Convention, the text of which has been cited above, that he did not receive adequate medical care while in detention.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

3. Complaints about arrest and detention

The first applicant submitted under Article 5 § 1 of the Convention that his arrest had been unlawful and that the authorities had not had "reasonable suspicion" that he had committed a crime. He also complained under Article 6 that the investigators had intentionally omitted to notify his lawyer of the hearing on his placement into custody on 25 October 2005 and that he had been represented by a lawyer appointed by a court. The Court will examine these complaints under Article 5 §§ 1 (c), 3 and 4 of the Convention which reads, in so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

> ...
>
> 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.
>
> ..."

The Court observes that the first applicant was arrested on 23 October 2005 and that on 25 October 2005 the Nalchik Town Court authorised his placement in custody. It further notes that on 24 October 2005 I.K. was appointed to represent the first applicant and that on the same date she visited him in detention. The first applicant's submissions indicate that on 26 October 2005 his relatives concluded an agreement with I.K. for his representation and that on the same date she visited him in the remand prison.

It is further noted that the first applicant does not submit, and the materials available to the Court do not suggest, that he complained to the domestic courts about any alleged irregularities in his arrest, that he challenged on appeal the detention order of 25 October 2005 or otherwise raised before the appeal court the matter of the absence of his lawyer I.K. at the hearing on 25 October 2005.

In this connection the Court reiterates that the purpose of the rule of exhaustion of domestic remedies referred to in rule 35 § 1 of the Convention is to afford Contracting States an opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court. The State must have a chance to put matters right through its own legal system before having to answer before an international body for its acts. In consequence, complaints intended to be brought subsequently before the Court in Strasbourg should first have been made – at least in substance – to the appropriate domestic body (see *Hutten-Czapska v. Poland* (dec.), no. 35014/97, 16 September 2003).

The Court has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. There is no obligation to have recourse to remedies which are inadequate or

ineffective. In addition, according to the "generally recognised rules of international law", there may be special circumstances which absolve the applicant from the obligation to exhaust domestic remedies at his disposal (see *Aksoy v. Turkey*, 18 December 1996, §§52-53, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 66-67, *Reports* 1996-IV).

As the Court has noted above, there is no indication that the first applicant, who was represented by an experienced lawyer, raised his complaints concerning the alleged irregularities with his arrest or placement in custody before the domestic courts. There is also no evidence to suggest that he brought the issue of his representation at the hearing on 25 October 2005 to the attention of an appeal court. He also did not assert, and the Court finds no indication to hold otherwise, that there were any special circumstances absolving him from doing so.

Against this background and having regard to the principles enunciated above, the Court concludes that this part of the application should be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

4. Complaints about legal assistance

The first applicant complained, with reference to Article 6 § 3 of the Convention, that the investigating authorities had repeatedly breached his right to legal assistance. The Court considers that this complaint should be examined under Article 6 § 1 and § 3 (c) which, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.
>
> ..."

The Court notes that the criminal proceedings against the first applicant are currently pending before the domestic courts. These complaints under Article 6 are, therefore, premature. Accordingly, this part of the application must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention, for non-exhaustion of domestic remedies (see, for example, *Koç v. Turkey* (dec.), no. 36686/07, 26 February 2008).

5. Complaints about lack of effective remedies

The first applicant complained under Article 13 of the Convention that he did not have effective remedies with regard to the aforementioned alleged violations of the Convention. Article 13 reads:

> "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."

In so far as the first applicant may be understood to rely on Article 13 of the Convention in conjunction with Article 5 of the Convention, the Court reiterates that Article 5 § 4 provides a *lex specialis* for matters of deprivation of liberty (see *Reinprecht v. Austria*, no. 67175/01, § 55, ECHR 2005-XII) and that it has declared the first applicant's complaints about his arrest, placement into custody and the alleged irregularities with the representation at the detention hearing inadmissible. Accordingly, this part of the application is manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

The Court further observes that Article 6 is *lex specialis* in regard to the applicant's submissions under Article 13 and that it has found above that his complaints under the former provision are premature.

As to the first applicant's complaint under Article 13 in conjunction with Article 3 concerning the alleged lack of effective remedies in respect of his complaints about the ill-treatment, the related investigation and the lack of medical care in detention, the Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

6. Complaint about the alleged seizure of the first applicant's application to the Court

Lastly, the first applicant complained that in March 2011 the remand prison authorities seized his application to the Strasbourg Court. The Court considers that this complaint should be examined under Article 34 of the Convention which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

For these reasons, the Court unanimously

Decides to adjourn the examination of the first applicant's complaints under Articles 3, 13 and 34 concerning his alleged ill-treatment, the related investigation and the lack of medical care in detention, the absence of effective remedies and the alleged hindrance of his communication with the Court;

Declares the remainder of the application inadmissible.

André Wampach
Deputy Registrar

Nina Vajić
President