



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

FIRST SECTION

Application no. 15367/07  
Eldar Faidbekovich ORAZBAYEV  
against Russia  
lodged on 31 January 2007

**STATEMENT OF FACTS**

The applicant, Mr Eldar Orazbayev, is a Russian national, who was born in 1977 and is currently serving a term of imprisonment in correctional colony IK-7 in the Karelia Republic. He is represented before the Court by lawyers of Stichting Russian Justice Initiative, an NGO based in the Netherlands with a representative office in Russia.

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

**A. The background to the case**

In 1999 the applicant resided the Stavropol Region.

On an unspecified date in May 1999 the applicant moved to the Chechen Republic, to study the Koran, came under the influence of members of the Wahhabist movement and joined a base of rebel fighters who took away his identity card and made him work for them and, in particular, participate in digging trenches, cooking food for them and doing other “household chores”.

In 2002 the applicant was wounded and was taken to Azerbaijan where he had a finger on one of his hands amputated and received other medical assistance.

In 2003 the applicant returned to Grozny where he worked in the construction sector and no longer participated in any armed groups.

On 17 February 2004, having learnt that the domestic law-enforcement authorities had offered to rebel fighters to surrender, the applicant went to the Federal Security Service (hereinafter also “the FSB”) Department in the Stavropol Region and informed the authority that he had voluntarily discontinued his participation in an illegal armed group.

On 26 February 2004 head of the Stavropol Regional Department of the FSB issued a decision refusing to institute criminal proceedings against the applicant in connection with his participation between May 1999 and September 2002 in an illegal armed group. The decision stated that on 17 February 2004 the applicant had come to the FSB Department and had voluntarily informed the authorities of his participation in an illegal armed group. Among other things, he submitted that in May 1999 he had joined a camp of an illegal armed group based in the vicinity of the village of Serzhen-Yurt, that he had been subsequently transferred to other camps of rebel fighters where he been mainly occupied with cooking, digging trenches and other similar tasks. In summer 2002 he had been wounded as a result of a shell attack, after which he had been transferred for medical treatment to Azerbaijan where he had stayed until September 2002. After his return to Russia he had discontinued his participation in the illegal armed groups and had lived in Grozny with his family. The decision further noted that the examination of the applicant's submissions had provided no evidence that he had been involved in military activities against the Russian army or law-enforcement officials or that he had committed crimes other than participation in an illegal armed group, an offence under Article 208 § 2 of the Criminal Code (hereinafter also "the CC"). According to the provision in question, an individual who voluntarily discontinued his participation in an illegal armed group and surrendered his arms was to be relieved of criminal liability, provided that his acts did not constitute other criminal offences. The decision concluded that the applicant had voluntarily terminated his participation in the illegal armed group and that, accordingly, no criminal case was to be opened against him.

#### **B. The applicant's conviction in 2004 concerning unlawful possession of arms**

On 30 April 2004 the applicant was arrested in Neftekumsk, the Stavropol Region, on suspicion of unlawful possession of arms and on 2 May 2004 his placement in custody was authorised by a court.

Following his arrest the applicant was held in the police ward of the Neftekumskiy Department of the Interior (hereinafter also "the Neftekumskiy ROVD").

By judgment of 26 November 2004 the Neftekumskiy District Court of the Stavropol Region found the applicant guilty of unlawful possession of arms and sentenced him to three years' imprisonment. On 18 February 2005 the judgment was upheld on appeal.

#### **C. The applicant's alleged ill-treatment**

On 19 November 2004 investigator B. of the prosecutor's office of the Chechen Republic (hereinafter also "the republican prosecutor's office") interviewed the applicant in Neftekumsk, in the presence of his lawyer O.I. in respect of criminal case no. 52402.

According to an interview record of the accused (*протокол допроса обвиняемого*) of 19 November 2004 a fresh criminal case no. 52402 had been opened against the applicant by the prosecuting authorities in

Chechnya on charges of participation in an illegal armed group (Article 208 § 2 of the CC) and aggravated possession and carrying of arms and explosives (Article 222 § 3 of the CC). The applicant refused to testify with reference to his right to remain silent. The applicant and his lawyer also requested that the refusal to institute criminal proceedings against him under Article 208 § 2 of the CC, issued on 26 February 2004, and the relevant amnesty act be appended to criminal case no. 52402.

By decision of 19 November 2004 investigator B. ordered the applicant's transfer from the police ward of the Neftekumskiy ROVD to remand prison IZ-20/1 in Grozny in connection with criminal case no. 52042. The decision stated that that criminal case had been opened by the prosecutor's office of the Shelkovskiy District of the Chechen Republic (hereinafter also "the district prosecutor's office") against a group of persons on suspicion of banditry, violent assaults against law-enforcement officials and unlawful possession of arms. A.D., one of the suspects, had identified the applicant on a picture shown to him as one of the members of the band, whom A.D. had met between September and December 1999 and who had participated, together with other members of the band, in armed resistance against the Russian military forces. Investigator B. noted that the applicant's actions at the material time were to be classified under Article 208 § 2 of the CC and that accordingly, investigative measures involving him were to be carried out in the Chechen Republic. By the same decision the investigator ordered that the applicant be convoyed to the remand prison by officers of the Operational and Search Bureau no. 2 of the North Caucasus Department of the Ministry of the Interior in the Southern Federal Circuit (hereinafter also "ORB-2").

By decision of 19 November 2004 the Neftekumskiy District Court authorised the applicant's transfer by officers of ORB-2 to the Chechen Republic with a view to carrying out investigative steps in connection with criminal case no. 52402.

On 20 November 2004 the applicant was transferred to the police ward of ORB-2 where he was held until 23 November 2004. According to the applicant, on their way to the ORB-2 its officers had handcuffed him and had put a plastic bag on his face which prevented him from seeing anything. On the premises of ORB-2 he was severely beaten up by officers of that State authority, including those individuals who had escorted him from Neftekumsk, and who requested that he confessed to a number of violent crimes and signed several statements. The applicant was cuffed to a radiator, he was hit and kicked all over his body and also hit with truncheons and administered electric shocks. He was also strangled with the plastic bag they had put over his head. He fainted on several occasions. The applicant particularly remembered officer M.Kh. of ORB-2 among the persons who had ill-treated him but he did not know the names of other ORB-2 officers who had participated in his beating. The beatings continued during his entire stay on the ORB-2 premises. In the applicant's submission, his co-detainee K.T. had witnessed that he had been ill-treated and saw his state of health when he had been brought back to the cell after the interrogations by ORB-2 police officers (see below). Unable to stand the ill-treatment, the applicant signed the self-incriminating statements required of him and containing the text which had already been prepared in advance.

On 25 November 2004, at the hearing before the Neftekumskiy District Court in the case concerning unlawful possession of arms the applicant allegedly saw that officer M.Kh. of ORB-2 made with his mobile phone a video record of the applicant's family. During a break in the hearing, M.Kh. allegedly told the applicant that if the latter refused to sign the statements requested of him, his family would be killed, as well as the applicant himself, when he would be transferred back to ORB-2 and that the transfer would take place in the nearest future.

According to a document entitled "additional interview record of the accused" (*дополнительный допрос обвиняемого*) and dated 25 November 2004, investigator B. of the republican prosecutor's office interviewed the applicant in the presence of his lawyer O.I. The ten-page long document described in detail how the applicant had joined illegal armed groups in 1999, in what terrorist attacks, assaults at law-enforcement officials and murders he had participated with its other members in the period between 1999 and September 2002 and provided further detailed information concerning other members of the gang and its operations against the Russian military forces in which he had participated. According to the interview record, the applicant's interrogation took place on the premises of the prosecutor's office of the Neftekumskiy District of the Stavropol Region. It started at 4.30 p.m. on 25 November 2004 and ended at 9.45 p.m. on the same day, with a break between 7 p.m. and 7.55 p.m.

According to the trial record of the Neftekumskiy District Court which examined the criminal case against the applicant concerning unlawful possession of arms (see above), at 11 a.m. on 25 November 2004 the court continued examining the applicant's criminal case in the latter's presence, as well as in the presence of his lawyer O.I. According to the hearing record, after the parties' pleadings and the applicant's final statement, the court retired to the deliberations room at 5 p.m. on the same day.

In the applicant's submission, neither he nor his lawyer took part in the above interview by investigator B. Moreover, his lawyer O.I. had produced at a certain moment a statement certified by the notary to that effect.

On 26 November 2004, after the district court pronounced the judgment convicting him of unlawful possession of arms and having in mind the threats by M.Kh., the applicant signed a self-incriminating statement requested of him by that police officer.

On 27 November 2004 the applicant was again transferred to the police ward of ORB-2 where he was held for the next two months and ten days. During his stay the applicant was repeatedly ill-treated by ORB-2 officers with a view to obtaining his confessions and incriminating statements against other members of illegal armed groups, he was denied access to a lawyer or an opportunity to inform his relatives of his whereabouts. It was also not possible to lodge a complaint about the ill-treatment while he was on ORB-2 premises because it provoked further ill-treatment, the complaints were not let outside and the ORB-2 authorities actively prevented their detainees from having any contacts with their lawyers.

On an unspecified date in January 2005 the applicant was transferred to remand prison IZ-20/1 in Grozny (hereinafter also "the remand prison").

On 10 February 2005 the applicant was transferred back to ORB-2 where police officers beat him up "to prepare him" for an on-site verification of his

earlier statements (*проверка показаний на месте*), following which they took him to the village of Mirny. Upon their arrival there officer M.Kh. explained to the applicant in detail what he was supposed to say and show during that investigative step. Fearing further ill-treatment, the applicant did as requested. The on-site verification of his statements in the village of Voskresenskaya, which was carried out in the presence of investigator B. and lawyer P. whom the applicant saw for the second time in his life was carried out in the same way. After those investigative steps the applicant was brought back to ORB-2 and on the next day he was transferred to the remand prison.

On 11 July 2005 the applicant was transferred to the police ward of the Department of the Interior of the Shelkovskiy District (hereinafter also “the Shelkovskiy ROVD”).

On 19 July 2005 two officers of the Shelkovskiy ROVD, one of them R.I. and another, whose family name the applicant did not remember, beat the applicant up, requesting that he repeated exactly what they told him to do during the forthcoming investigating experiment (*следственный эксперимент*) and that otherwise they would again torture him. In the applicant’s submission, their visit and beating had been prompted by the fact that during his interrogation on 25 May 2005 he had retracted the statement he had allegedly given on 25 November 2004 (see below).

On 20 July 2005 two investigating experiments with the applicant’s participation were carried out in villages Sary-Su and Kobi, where the applicant did as he had been told to. During those investigative steps the applicant’s lawyer L.K. was present but the applicant was afraid to seek his help because of the threats of police officers.

On 21 July 2005 the applicant was transferred back to the remand prison.

#### **D. Proceedings concerning the applicant’s alleged ill-treatment**

During the applicant’s interrogation on 25 May 2005 by investigator B., in the presence of his lawyer K., the applicant retracted some of his earlier self-incriminating statements, submitting that they had been given under physical and psychological pressure and asserting that he had been beaten to make them.

At an interrogation by investigator B. on 1 June 2005, conducted in the presence of lawyer K., the applicant complained to investigator B. that during his detention in ORB-2 officers of that law-enforcement authority had repeatedly beaten him up and threatened him with killing him. The applicant did not know those officers because they had worn masks. He further explained that he had not earlier complained about the ill-treatment because ORB officers had explicitly told him that if he dared to complain, they would torture him again.

On 21 July 2005 the applicant’s lawyer K. complained to investigator B. that on 20 July 2005, during an on-site verification in the Shelkovskiy District of the Chechen Republic of his client’s earlier submissions he had discovered bodily injuries on the applicant’s body. The applicant refused to reply to K.’s repeated questions as to the origin of those injuries, as well as identities of the persons who had inflicted them on the applicant. K. requested that a forensic medical examination of his client be immediately

conducted. The complaint was received by the republican prosecutor's office on 22 July 2005.

On 27 July 2005 investigator B. ordered the Forensic Medical Expert Bureau of the Chechen Republic (hereinafter also the forensic bureau“) to carry out the applicant's medical examination with a view to establishing, among other things, whether he had any bodily injuries and if so, when those had been sustained.

On 28 July 2005 an expert of the forensic bureau carried out the applicant's medical examination on the premises of the remand prison. The expert report, in so far as relevant, states as follows:

“...

According to the submissions of the [applicant] arrested on 11 July 2004 [*sic*] by the RUBOP of the Shelkovskiy District. Was hit and kicked on different parts of the body. For the last time was beaten about two weeks ago.

Did not apply for medical assistance, records were made in medical file in IZ-20/1.

...

Locally: two areas of irregular roundish form on which there are pinkish-red vertical scars 1cm to 1,5 cm long and up to 0,1 cm wide on the back side on the left and right sides of the middle third of the back surface. [There are] up to 60-65 scars with straight borders, [illegible] located at a distance of 0,5 cm on the back surface of the middle third of both lower legs following the calf muscles [,] there are analogous scars in the form of trapeziums, coinciding as to their sizes and quantity with the scars on the back. On the right side of the lateral part of the chest there is a pinkish-red short oblique scar measuring 2,8×0,1cm with even borders, sharp extremities, floating, not matted together with the surrounding tissues. In the area of the pectoral muscle on the left there is a yellow oval bruise measuring 3×4 cm. On the left side surface of the lumbar region [there is] an oval yellowish bruise measuring 4×2 cm. The index finger in the metacarpophalangeal joint area is missing. ... According to [the applicant] [the missing part] was cut off in 1999 so that he did not leave illegal armed groups. A whitish scar with uneven endings 15 cm below the left nipple, matted with the surrounding tissues measuring 1×8cm. At the level of the 7<sup>th</sup> rib in the shoulder-blade area a whitish scar ... measuring 2,8×0,5cm. No other peculiarities or injuries discovered.

From medical file from IZ-20/1 concerning [the applicant] ... it follows that “ 25.01.05. A scar 15 cm below the left nipple. Shrapnel wound (in 2000). In the shoulder-blade area on the back at the level of the 6-7<sup>th</sup> rib a scar after a shrapnel wound (in 2000). On the left hand the index finger missing (1990).

[date illegible]. No bodily injuries. Return.

21.07.05. No injuries. No complaints. Return.

#### Conclusions:

On the basis of the examination, the information from the medical file and the circumstances of the case and having regard to the questions put, [I] come to the following conclusions:

1. On [the applicant's] body there have been discovered the following injuries:

- bruises on the body,

- a scar on the front surface of the right side of the chest,
- numerous scars of linear form on the back and the back surface of lower legs,
- stump of the index finger on the left hand,
- scars on the back and the front surface of the chest.

2. Bruises to the body, scar on the right side surface of the chest and scars on the back and lower legs could have been sustained two to three weeks before examination. Bruises could have been sustained as a result of impact of a blunt solid object (objects). Scars in the chest area, back and the lower legs could have been sustained as a result of repeated impact of a bladed object (arm).

It is impossible to establish the date of infliction of scars on the front and back surfaces of the chest and of damage to the index finger. However, it cannot be excluded that they could result from shell and cut wounds sustained in 1999 and 2000.

...

4. The localisation of the scars at the back surface of the lower legs, the bruises of the body and the scar of the side surface of the chest does not exclude their self-infliction. The localisation of the linear scars on the back in such a form and, of practically the same length and similar location in respect of each other excludes their self-infliction. ...”

At an interrogation by investigator B. of the republican prosecutor’s office on 10 August 2005, in the presence of lawyer K., the applicant submitted that he was not guilty as regards the charges levelled against him on 10 August 2005. He claimed that he had given his earlier self-incriminating statements, including the statement made on 20 July 2005 during the on-site verification in the Shelkovskiy District, under torture, beatings and physical pressure, which was proved by the conclusions of the forensic medical examination of 28 July 2005. The applicant asserted that ORB-2 officers, while beating him up, had explained him in detail the statements that he was to give and that during his more than two months detention in that facility he had no possibility to complain about their acts.

On 12 August 2005 investigator B. interviewed S.M., staff doctor of remand prison IZ-20/1 in Grozny, as a witness. According to her interview record of the same date, S.M. stated that she had examined the applicant on 21 July 2005 upon his admission to the remand prison. The examination had revealed numerous (thirty-one) slashes on four parts of his body and, in particular, on his back and calves. The applicant explained to her that those slits had been inflicted on him by his co-detainees “with a view to purifying the blood”. In S.M.’s submission, she had already witnessed similar injuries on individuals admitted to the remand prison and heard similar explanations in that respect.

On 12 August 2005 investigator B. interviewed M.KH., officer of ORB-2, as a witness. According to his interview record, M.KH. stated that he was in charge of the “operative support” (*оперативное сопровождение*) in respect of the criminal case against the applicant. In November 2004 the applicant had been transferred to ORB-2. The operational and search measures conducted had revealed that the applicant had been implicated in a number of serious and particularly serious crimes committed in the Shelkovskiy District in the Chechen Republic. In that

connection the applicant had been interviewed in the Neftekamsk prosecutor's office by an investigator of the prosecutor's office of the Chechen Republic. The applicant had testified of his own free will, no physical or psychological pressure had been applied to him. Likewise, no such pressure had been applied to him when he had been detained in the police ward of ORB-2.

According to interview record of A.Ch., an on-duty officer of the police ward of the Shelkovskiy ROVD, dated 12 August 2005, the latter submitted to investigator B. that on 11 July 2005 the applicant had been admitted to the facility. Upon admission he had been examined by on-duty officers of the police ward which had discovered no injuries on his body. The applicant had been held in the police ward until 21 July 2005 and during the entire period of his detention in the police ward none of the police officers or other law-enforcement officials had exerted on him either physical or psychological pressure.

On 12 August 2005 investigator B. interviewed the applicant in the presence of his lawyer K. According to the interview record of the same date, the applicant stated that he did not know the family names of the officers of ORB-2 who had ill-treated him because they had worn masks. The ill-treatment consisted of hitting him with their truncheons, administering electric shocks to his body and strangling him with a plastic bag they had put on his head. They had also threatened to kill him and his relatives if he complained and for that reason, namely the fear of repeated ill-treatment, he had not complained about it after his transfer to the remand prison. He further stated that while in police ward of the Shelkovskiy ROVD officers of that authority had also beaten him up by hitting him. However, he had not met those officers before and could not indicate their names.

By decision of 12 August 2005 investigator B. of the prosecutor's office of the Chechen Republic refused to open a criminal case into the applicant's alleged ill-treatment. The decision stated that on 10 August 2005 the applicant had complained that he had been ill-treated by officers of ORB-2 and the Shelkovskiy ROVD during his detention in police wards of both law-enforcement authorities. The decision referred to submissions by officer M.Kh. and A.Ch. of ORB-2 and the Shelkovskiy ROVD (see above). It further noted that the applicant's forensic medical examination had established the existence of scars on the applicant's back and lower legs which could have been caused by repeated impact of stabbing and cutting objects. The decision further cited the statement by S.M., doctor of the remand prison, who submitted that the applicant had been admitted to that detention facility with those scars, had explained to her that those cuts had been inflicted on him by his fellow detainees with a view to "purifying the blood" and that she had previously encountered similar injuries on persons admitted to the facility accompanied by similar explanations. In view of the foregoing, the investigator concluded that there were no grounds to believe that a crime had been committed.

On 30 May 2008 the applicant complained to the Staropromyslovskiy District Court of Grozny under Article 125 of the Code of Criminal Procedure about the prosecutor's refusal to institute criminal proceedings.



On 25 July 2008 the district court dismissed the complaint. It noted that on 28 April 2006 the Supreme Court of the Chechen Republic found the applicant guilty of a number of violent crimes and sentenced him to sixteen years' imprisonment (see below). The applicant's allegations of ill-treatment had been examined by the courts which had heard the criminal case against him. It also noted that Article 125 provided for an opportunity to challenge decisions refusing to institute criminal proceedings before a court having jurisdiction over the place of the preliminary investigation. However, the applicant had already been convicted and the criminal proceedings against him had been terminated. No new evidence suggesting that the applicant had suffered damage was produced before the court.

On 20 August 2008 the Supreme Court of the Chechen Republic upheld the district court decision on the applicant's appeal.

## **E. The applicant's conviction in 2006**

### *1. Relevant information from the trial record*

According to the trial record, witness K.T. submitted to the trial court that in November 2004 (he did not remember the exact date) he had been held in the same cell as the applicant in ORB-2 during three days. In K.T.'s submission, the applicant was routinely taken by officers of ORB-2 for interrogations at around midnight and was then returned to the cell in the morning. The applicant not only told K.T. that he had been ill-treated but K.T. himself saw bruises on the left and right sides of his body. When he was brought back to the cell in the mornings the applicant could barely walk or hold a bottle with water in his hands. K.T. submitted at the same time that there had been no injuries on the visible parts of the applicant's body, such as his face. K.T. also asserted that the medical staff of ORB-2 were also police officers and that they were, in reality, not interested in recording the detainees' injuries. Lastly, he submitted that it was unthinkable to complain in ORB-2 about the alleged ill-treatment because those who complained risked severe reprisals.

### *2. Trial judgment of 28 April 2006*

By judgment of 28 April 2006 the Supreme Court of the Chechen Republic found the applicant guilty of participation in an illegal armed group, several counts of assault on law-enforcement officials, several counts of concerted murder and an attempted murder, unlawful possession and carrying of arms and unlawful crossing of the State border. The court noted that although the applicant pleaded guilty only to participation in an illegal armed group and the unlawful crossing of the State border, his guilt in the imputed crimes was confirmed, among other things, by his pre-trial statements and the on-site verifications of those statements with his participation, as well as other pieces of evidence. It held that the applicant's allegations of ill-treatment were unfounded and noted that K.T.'s statement that he had witnessed the applicant's injuries were untrustworthy because he was also a convicted person, had been held in the same detention facility

and transferred to the court in the same vehicles and was trying to assist the applicant in avoiding his criminal responsibility.

The applicant appealed, submitting, among other things, that his self-incriminating statements from the pre-trial stage on which the trial court had relied in finding him guilty had been obtained under torture.

### *3. Appellate court judgment of 16 January 2007*

On 16 January 2007 the Supreme Court of the Russian Federation upheld the conviction on appeal. The appellate court noted, among other things, that the applicant's allegations that he had been ill-treated with a view to confessing to the crimes imputed to him were not supported by the materials of the case-file and that the information contained in his pre-trial statements was confirmed by other pieces of evidence.

## **F. Proceedings before the Court**

By letter of 31 January 2007 the applicant requested the Registry to send him an application form, an explanatory notice to applicants and the Convention text.

Subsequently, the Court received an application form submitted on behalf of the applicant by Mr E., who had represented him in the domestic proceedings. The application form was dated 6 July 2007, signed by Mr E. and listed among the enclosures "the authority form". It appears however that the authority form was missing.

By letter of 20 August 2007 the Registry acknowledged to Mr E. the receipt of the application form and informed the latter that, if he wished to represent the applicant, he was to fill in and return to the Court the authority form enclosed to the letter of 20 August 2007. No reply followed.

Subsequently, the applicant submitted an application form in his own name, without indicating any persons or organisations as his representatives. The application form was dated 15 August 2007.

By letter dated 10 June 2009 lawyers of Stichting Russian Justice Initiative informed the Court that they would act as the applicant's representatives, enclosing an authority form and an additional application form dated 10 June 2009.

## **COMPLAINTS**

1. In the application form dated 6 July 2007 and submitted by Mr E. the applicant complains:

(a) under Article 3 of the Convention about the alleged ill-treatment and the lack of effective investigation into it;

(b) under Article 5 that his detention after the final judgment of 16 January 2007 was unfair because he had been unfairly convicted as a result of torture;

(c) under Article 6 that he had been deprived of fair trial and the domestic courts incorrectly assessed the evidence against him, and

(d) under Article 13 that the appeal court in its judgment of 16 January 2007 did not protect his rights, as well as right of other Chechens unlawfully convicted, and

(e) that there has been a breach of Article 15 of the Convention.

2. In his application form of 15 August 2007 the applicant complains:

(a) under Article 3 about the alleged ill-treatment and ineffective investigation;

(b) under Article 5 that that in arresting him on 30 April 2004 and ordering his placement in custody the authorities did not have “a reasonable suspicion” against him;

(c) under Article 6 that the Supreme Court of the Chechen Republic had heard his case concerning banditry and other charges in a closed hearing and that he had been convicted on the basis of self-incriminating statements obtained under duress, and

(d) Under Article 4 of Protocol No.7 that the courts convicted him of the same offence in respect of which there had been issued a decision refusing to open a criminal case.

3. In his application form dated 10 June 2009 the applicant complains:

(a) under Article 3 about his ill-treatment and the lack of effective investigation into it;

(b) under Article 5 that his detention between 19 November 2004 and January 2005 and between 11 and 17 July 2005 was unlawful;

(c) under Article 6 that the domestic courts convicted him on the basis of his self-incriminating statements obtained under torture, and

(d) under Article 13 that he did not have effective remedies in respect of his grievances under Article 3.

### **QUESTIONS TO THE PARTIES**

1. Having regard to the applicant’s submissions, was there a violation of Article 3 of the Convention on account of his alleged ill-treatment, threats and intimidation (a) in ORB-2 by officers of that or any other law-enforcement authority (i) between 20 and 23 November 2004, (ii) between 27 November 2004 and 31 January 2005, (iii) between 10 and 11 February 2005; (b) on 19 July 2005 in the Shelkovskiy ROVD by officers of that or any other State authority?

In addressing the above question the parties are requested to deal, *inter alia*, with the following points:

(a) In the period between 20 November 2004 and 23 July 2005:

(i) What were the (detention) facilities or law-enforcement authorities on whose premises the applicant was held in detention?

(ii) In respect of each and every facility/law-enforcement authority:

- What was the time of the applicant’s admission to the facility/law-enforcement authority?

- Was the applicant examined upon admission to each facility by the medical staff with a view to assessing his state of health, recording any

eventual injuries and possible health complaints? If so, when and was/were his medical examination/s conducted out of the hearing and out of sight of police officers and other non-medical staff

- Was he given access to a lawyer? If so, when?
- Was he given the possibility of informing a family member, friend, etc. about his detention and his location and, if so, when?

(b) What activities involving the applicant were conducted in the above-mentioned time span/on the above-mentioned dates (between 20 and 23 November 2004; between 27 November 2004 and 31 January 2005; between 10 and 11 February 2005, and on 19-20 July 2005), at what facilities/premises of what law-enforcement authorities and at which times of the day? What was the applicant's procedural status? What confessions and/or statements did the applicant give during that period/on those dates (please submit relevant documents, in particular, records of the applicant's statements/confessions, on-site verifications of his statements/investigating experiments, if any, which are **legible**/provide their typed copies, where necessary)? Was the applicant given access to a lawyer before and during each such activity?

2. Have the authorities complied with their positive obligation under Article 3 of the Convention to carry out an effective investigation into these applicant's allegations of ill-treatment? In particular:

(a) Were the investigating authorities who carried out the inquiry into the applicant's allegations of ill-treatment independent from the investigating authorities who were responsible for investigating the criminal case against him?

(b) Which officers from which police department(s)/other law-enforcement authorities were involved in the inquiry into the applicant's complaints of police ill-treatment? What operational and other activities did they carry out in the course of the inquiries and were those sufficient to ensure that the investigation into alleged torture be thorough and effective?

(c) The parties are invited to specify, in particular:

- whether forensic medical examinations/medical expert examinations were performed in respect of the applicant in order to establish the nature and the origin of his injuries?
- when was the applicant questioned/interviewed in respect of his allegations of ill-treatment in the framework of the inquiry conducted into it?

In connection with the above the Government are requested to submit relevant **legible** documents and, if need be, their typed copies, in response to each of the above questions, including, but not limited to:

- an entire copy of the case file concerning the inquiry into the applicant's alleged ill-treatment conducted by investigator B. of the

prosecutor's office of the Chechen Republic, which resulted in the decision of 12 August 2005 refusing to institute criminal proceedings;

- an entire copy of the applicant's medical file;
- excerpts from logbooks of detainees admitted to all the detention facilities in which the applicant was held in the time span between 20 November 2004 and 23 July 2005 for the relevant dates and in respect of the applicant;
- excerpts from logbooks of primary medical examination of persons admitted to facilities in which the applicant was held in the time span between 20 November 2004 and 23 July 2005 for the relevant dates and in respect of the applicant.

3. Did the applicant comply with the six-month requirement laid down in Article 35 § 1 in respect of his complaint under Article 6 about the domestic courts' use of his self-incriminating statements allegedly obtained under duress for his conviction (see, for example *Mikhaniv v. Ukraine* (dec.), no. 75522/01, 20 May 2008)?

4. On what self-incriminating statements, as well records of on-site inspection of his statements given by the applicant at the pre-trial stage, did the domestic courts rely in finding him guilty in the proceedings which ended with the final judgment of the Supreme Court of Russia of 16 January 2007 (please, indicate their dates and provide their copies)? Were those statements obtained in the presence of the applicant's lawyer? Did the admission of those statements, some of them obtained allegedly under duress and in the absence of a lawyer, and the domestic courts' relying on them in convicting the applicant render the proceedings against the applicant unfair in breach of Article 6 §§ 1 and 3 (c) of the Convention (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 165-66, ECHR 2010, with further references; *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008; *Panovits v. Cyprus*, no. 4268/04, §§ 64-77 and §§ 80-86, 11 December 2008; and *Pavlenko v. Russia*, no. 42371/02, §§ 103-118, 1 April 2010)?

5. Did the applicant have at his disposal effective domestic remedies for his complaints under Article 3 of the Convention about his alleged ill-treatment, as required by Article 13 of the Convention?