



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

FIRST SECTION

Application no. 29924/07  
Ismail Patakhovich MUTAYEV and Ismail Amelyevich TATAYEV  
against Russia  
lodged on 13 July 2007

**STATEMENT OF FACTS**

The applicants, Mr Ismail Mutayev and Mr Ismail Tatayev, are Russian nationals. The first applicant was born in 1981 and the second applicant – in 1975. The applicants are currently serving their terms of imprisonment in colony IK-2 in the Tomsk Region and in a colony in the Volgograd Region, respectively. They are represented before the Court by Mr B. Bowring and Mr P. Leach, lawyers of the European Human Rights Advocacy Centre (EHRAC), a human rights NGO.

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

**A. The first applicant's apprehension, alleged ill-treatment and the related proceedings**

*1. The background to the case*

In May 2001 and 2002 two of the first applicant's brothers were kidnapped from the family house in Gudermes, the Chechen Republic. The first brother was killed and the second disappeared, the investigation into his disappearance failing to establish his fate after the abduction. The family was repeatedly harassed by the so-called "yamadayevtsy", the local armed units headed by Mr S.Yamadayevev, who had initially fought against the Russian military forces but had subsequently joined the Russian army. The "yamadayevtsy" burst into the applicants' house in Gudermes on many occasions, once kidnapped the first applicant's mother, beat her up and held in detention for several days. The first applicant's father's health deteriorated as a result of those events and he died in 2002.

## *2. The first applicant's apprehension and alleged ill-treatment*

On 14 November 2004 the first applicant was returning home on a bus from the village of Kurchaloy with his cousin. At the outskirts of Gudermes the bus stopped at a petrol station to tank up. Suddenly a VAZ-21099 vehicle approached the gas station. A group of armed men in camouflage uniforms and masks emerged from the vehicle and ordered the first applicant to lie down at gunpoint. The armed men then punched and handcuffed the first applicant, threw him into the trunk of their vehicle and left with him to an unknown destination. The applicant subsequently found out that he was taken to a military base of the Security Service of the Chechen President (the so-called “kadyrovtsy”), headed at the material time by Mr Ramzan Kadyrov, in the village of Tsentoroy. He also realised that the armed men who had apprehended him at the petrol station were “kadyrovtsy”. In the yard of the military base there were armed men without masks whom the first applicant recognised as officers of the Gudermes District Department of the Interior (hereinafter also “the Gudermes ROVD”). In the first applicant’s submission, there was also a further individual present on the premises but the applicant would not give his name for fear for his relatives’ and his own life.

Without providing any explanations, those persons started beating the first applicant severely. The beatings continued for about five to six hours. The first applicant was subsequently cuffed to a gas pipe and his back, shoulder, elbow, the palm of the right hand and abdomen were burnt with gas flame. The first applicant fainted on several occasions and his torturers had to bring him back to consciousness by pouring cold water over his head. During the torture the applicant was ordered to sign all documents that would be given to him later at the Gudermes ROVD. He was threatened that if he refused, the lives of his close relatives would be in danger.

On 15 November 2004 the first applicant was taken to the Gudermes ROVD. There ROVD police officers continued beating him up and torturing him. The applicant memorised the names and ranks of his torturers. They were: A.D., head of the Criminal Investigating Department of the Gudermes Region, as well as police officers U.R., S.B. and I.M. Officers named “Sergey”, “Lyokha” and “Roman” also participated in his ill-treatment but the first applicant was unable to memorise their family names. The first applicant was threatened that acid would be poured on his burnt right hand. The applicant was tortured in that way during two to three days, after which he signed every single document presented to him by his torturers. He had to sign them with his left hand because his right hand had become paralysed.

On 17 November 2004 the first applicant was transferred to the police ward (*изолятор временного содержания*) of the Gudermes ROVD. There he was taken to a room where three people were waiting for him: A.D., head of the Criminal Investigating Department of the Gudermes Region; a certain “Magomed”, a deputy of Suleyman Yamadayev, and a third person whose name the first applicant did not memorise. They tortured him by administering electric shocks to his body for several hours. His torture was recorded on a video camera and his co-detainees heard him scream in pain.

On 17 November 2004 investigator I. of the prosecutor’s office of the Gudermesskiy District (hereinafter also “the district prosecutor’s office”)

drew a record of the first applicant's arrest as a suspect (*протокол задержания подозреваемого*). The document stated that it was compiled on 6.20 p.m. on 17 November 2004 and that I. had arrested the applicant at 6.10 p.m. on the same date "in the front office of the Gudermes ROVD" (*в дежурной части Гудермесского РОВД*) pursuant to Articles 91 and 92 of the Code of Criminal Procedure (hereinafter also "the CCP"). According to the record, the reason for the first applicant's arrest was that eyewitnesses had identified him as a member of an illegal armed group. The record also stated that the applicant was to be transferred to the police ward of the Gudermes ROVD for detention and was signed by the investigator and the applicant. The box "representative's signature" was not filled in.

According to the decision formally charging the first applicant with participation in an illegal armed group (*постановление о привлечении в качестве обвиняемого*) dated 20 March 2004 and issued by the district prosecutor's office, the first applicant was notified of that decision at 3 p.m. on 18 November 2004 against his signature. The criminal case against the first applicant was referred to under the number 35005.

On an unspecified date in November 2004 doctor A. of the medical unit of the Gudermes ROVD examined the first applicant and prescribed him bed rest and treatment.

On an unspecified date between 18 and 20 November 2004 a certain Mrs M.I. was appointed as a lawyer for the first applicant.

By letter of 20 November 2004 Mrs M.I. requested doctor A. of the Gudermes ROVD to provide her with information concerning the first applicant's state of health. She submitted that, according to the logbook of registration of detainees of the police ward of the Gudermes ROVD, doctor A. had examined the first applicant and had prescribed him bed rest. She further asserted that the applicant's health had deteriorated owing to, among other things, the conditions of his detention in the police ward, and requested to be informed whether her client needed in-patient treatment. It is unclear whether that request was ever replied to.

The applicant was held in detention in the police ward of the Gudermes ROVD until 28 December 2004, when he was transferred to remand centre IZ-20/1 in Grozny (hereinafter also "the remand prison").

While being interviewed as an accused on 18 and 23 November and 2 December 2004, as well as on 17 January, 13 and 16 March 2005 by investigators of the district prosecutor's office, as well as the prosecutor's office of the Chechen Republic (hereinafter also "the republican prosecutor's office"), the first applicant admitted his guilt in respect of participation in an illegal armed group, several explosions of military vehicles, an abduction and aggravated concerted murders. According to his interview records, the applicant made those statements in the presence of lawyer M.I. or lawyer Kh.M. The relevant interview records referred to the criminal case against the first applicant under the number 35014.

When interviewed as an accused on 3 May 2005 in the presence of Kh.M. the first applicant stated that he admitted his guilt only in respect of participation in an illegal armed group.

During an interview as an accused on 16 May 2005, in the presence of Kh.M., the first applicant stated that he admitted his guilt only in respect of participation in an illegal armed group and claimed that he had previously

admitted his guilt in respect of other criminal offences because officers of the security service of the Chechen President and the Gudermes ROVD had ill-treated him, which was proven by the conclusions of his forensic examination (see below).

On 13 May 2005 the prosecutor's office of the Chechen Republic dropped the charge against the first applicant under Article 205 § 2 of the Criminal Code concerning an episode of a terrorist attack. The decision stated, among other things, that the criminal case against the first applicant included charges of participation in an illegal armed group, aggravated terrorist attacks, banditry, unlawful possession of arms and aggravated murder.

### *3. Proceedings concerning the first applicant's alleged ill-treatment*

On 3 February 2005 the first applicant's lawyer Kh.M. complained to the prosecutor's office of the Chechen Republic that his client had been subjected to ill-treatment and torture while in detention and requested that his forensic medical examination be carried out.

By a decision of 3 February 2005 investigator Kh. of the republican prosecutors office ordered the Forensic Medical Expert Bureau of the Chechen Republic (hereinafter also "the forensic bureau") to carry out the first applicant's medical examination.

It appears that the first applicant's forensic examination was carried out between 7 and 9 February 2005. The copy of expert report no. 124 by I.A., provided by the applicant is partly illegible. In so far as it is legible and relevant, it reads as follows:

"...

[According to the applicant]: Was subjected to torture after his arrest on 14.11.2004. In particular, was tortured by a gas torch [applied] to his back and right upper limb. Was hit with truncheons and canes on his legs and once with a stick on his head. Tortured with electricity by connecting wires to little fingers on the hands (1,5 hours). Was held in handcuffs. In 2000 underwent an appendicitis surgery.

Objectively: ... On the crown of the head there is a curved pale red scar of linear form, 1,5 cm long, even edges. Even surface. On the [illegible] surface of the upper third of the right shoulder a half-moon-shaped scar measuring 3,5×1,5cm of reddish colour. On the external surface of the lower third of the right shoulder [there is] a barely visible [illegible] of pale red colour, measuring 9×4,5cm. Even surface, on the level of the skin [illegible] ... On posteroexternal surface of the right forearm and the wrist of the right hand [illegible] an extensive scar of intense pink-red colour, measuring 3,1×6,5cm. ... [On the surface] between the ring and little fingers [there are] roundish pointed [illegible] of brown colour. In the left lumbar region [there is] a red oval scar with pinkish crosscut longitudinal lines measuring 6,5×2,5cm. On the right [side] of the chest on the posterior axillary line [there is] a scar [illegible] colour of a triangle form measuring 5×4,5×4cm. On the front surface of the [illegible] third of both lower legs two red scars measuring 2×1cm and 1,5×1cm. ... In the groin area [there is] a scar of linear form with traces of surgical sutures.

..."

The expert concluded that all scars, except for those located in the groin and on the lower legs could have been sustained as a result of impact of hot temperature (flame) and that their colour and texture suggested that they could have been sustained two to three months prior to the first applicant's

forensic medical examination. The scars on lower legs could have resulted from healing of wounds inflicted by blunt solid object(s) also two to three months prior to the examination. The scar in the groin area was a result of a surgery and could have been caused more than one and a half years prior to the examination.

By decision of 11 May 2005 investigator Kh. of the investigating department of the Gudermes ROVD opened a criminal case into the first applicant's alleged ill-treatment under Article 112 § 2 of the Criminal Code (aggravated intentional infliction of medium gravity bodily harm). It appears that the case file was given the number 45576. The decision stated, among other things, that on 15 April 2004 the district prosecutor's office had instituted criminal proceedings in case no. 35014 against the first applicant on suspicion of his participation in an illegal armed group. On 16 April 2005 materials concerning the first applicant's alleged ill-treatment by unidentified persons had been severed from case file no. 35014 and sent to the Gudermes ROVD. Those materials indicated that on 14 November 2004 the first applicant had been arrested in Gudermes by unidentified persons and taken to the village of Tsentoroy, where he had been subjected to torture and beatings, his torturers requesting that he signed the documents which would be submitted to him later in the Gudermes ROVD. On 15 November 2004 unidentified persons had transferred the first applicant to the Gudermes ROVD.

On 16 May 2005 the first applicant complained about his ill-treatment to the Prosecutor General of the Russian Federation. He reiterated in detail the circumstances of his apprehension in Gudermes on 14 November 2004 and the ensuing ill-treatment, as well as the fact that the perpetrators had tortured him, requesting that he signed the documents which would be given to him later in the Gudermes ROVD, where he had also been tortured after his transfer there. The first applicant gave the names of the torturers and asserted that his co-detainees had witnessed his ill-treatment. He further submitted that he had given his self-incriminating statements fearing further torture and even death and referred to the case of T., in respect of whom investigator A.I. in charge of the first applicant's case had told him that T. "had died under certain circumstances" after he had retracted his self-incriminating statements and had complained about his ill-treatment to the prosecutor's office, which made the first applicant fear that he would suffer the same fate. He particularly stressed that he had signed a number of self-incriminating statements in the presence of his lawyer because the police officers had "prepared him" for giving them by severely ill-treating him and that he knew that once the lawyer would leave he would stay alone with his torturers without any protection. He also stressed that investigator A.I. was aware of his torture by officers of the Gudermes ROVD and had not only failed to take any measures to stop it but that the perpetrators had, in fact, acted with his connivance.

On 1 July 2005 the first applicant was granted victim status in the proceedings in case no. 45576.

It appears that the proceedings in case no. 45576 are pending.

## **B. The second applicant's apprehension, alleged ill-treatment and the related proceedings**

### *1. The second applicant's apprehension and alleged ill-treatment*

At the time of the events described below the second applicant resided in Gudermes, the Chechen Republic, with his family.

On the night of 22-23 August 2004 a group of armed men in masks and camouflage uniforms burst into the second applicant's house, where he stayed with his mother, wife, two daughters and a niece. The intruders spoke Chechen to each other and Russian when they had to address the commander of the group. Some of the intruders immediately started beating the second applicant while others searched the house. They refused to introduce themselves but the second applicant noticed that the intruders' T-shirts bore the word "VOSTOK". According to the applicant, the "VOSTOK" battalion was a military unit staffed with Chechens under the command of a certain Mr S.Yamadayev, whose members were called "yamadayevtsy". The headquarters of the group were located in the south-east of Gudermes on the premises which were known as "PMK-6".

The intruders covered the second applicant's head with his own T-shirt and took him outside where he managed to see a grey UAZ vehicle parked at the house. This type of vehicles was often used by the Russian police and army. The second applicant was forced inside the vehicle which took off in the direction of the "VOSTOK" headquarters. On their way the armed men hit the second applicant with their rifle butts.

At the "VOSTOK" headquarters the second applicant was taken to a room in one of the buildings where two men were already waiting for him. One of them was Russian and the other – Chechen. The second applicant was made sit on a chair in the middle of the room, his hands cuffed in front of him. Without explaining anything the men fixed the wires of a field-telephone to the toes of his feet and administered him electric shocks. To inflict more pain on the second applicant they poured water over his feet while passing electric current through his body. At the same time they asked him about certain locations and also whether he knew certain individuals, giving him several Arab names. The second applicant did not know or understand what they were talking about. This treatment lasted for about one and a half to two hours, after which the second applicant could not walk on his own and had to be assisted in walking. When he fell on the ground, the men kicked him in the kidneys area.

On 23 August 2004 the second applicant was transferred to the police ward of the Gudermes ROVD. In the evening on the same day he was taken to a room with several police officers who started asking him about an illegal armed group of which he was allegedly a member and also whether he had any arms. They threatened him with torture and one of them wrapped telephone wires around his head, put a gas mask over it and started administering electric shocks to his body, which caused him extreme physical pain. Unable to stand the pain, the second applicant gave the self-incriminating statements they wanted from him and also made several statements incriminating other people, as requested.

On 24 and 25 August 2004 the torture continued with the participation of A.D., head of the Criminal Investigating Department of the Gudermes Region, officers U.R., S.I., S.Berzu., S.Berza., V.M., and officers nicknamed “Eric”, “Pasha”, “Lyosha” and “Alexander”, whose family names the second applicant were not able to memorise. The police officers put a gas mask on the second applicant’s head and cut the air supply so as to make him suffocate (in the applicant’s submission, the notorious method of torture used by Russian law-enforcement agencies and known as “slonik” (elephant)). They hit and kicked him, stabbed him with a bayonet and simultaneously hit him on his head with a thick stick. He was also repeatedly administered further electric shocks and they squeezed sensitive parts of his body with pliers. The police officers gave the second applicant names of various individuals, some of whom he knew because they were his neighbours in Gudermes, and requested that he testified that they were all members of an illegal armed group headed by a certain R.T. The second applicant confirmed everything what they requested of him and also told them about the weapons a third person had asked him to hide at his place in the beginning of August 2004.

On 26 August 2004, after those weapons had been seized from the applicant’s house, one of the police officers tortured him again with electric current, saying that since the second applicant had those weapons he must have been involved in other crimes.

According to the second applicant, his arrest and detention were not acknowledged or recorded until 27 August 2004 and it was not possible to locate any official records or documents concerning it.

According to the second applicant, on 29 August 2004 he was brought before a court which ordered his placement in custody. When he appeared before the court the second applicant’s trousers were covered with blood and he had a swollen lip. However, the convoying police officers warned him that if he “said too much” he would face be serious reprisals. Following their order and fearing further ill-treatment, when questioned by the prosecutor before the court why he had blood on his trousers, the second applicant replied that he had fallen from the stairs.

On an unspecified date in the beginning of September 2004 the second applicant was transferred to cell no. 10 of the police ward of the Gudermes ROVD. His torture and ill-treatment, including by administering electric shocks, strangling and beatings, continued, the police officers requesting that he confessed to having committed further crimes.

On 20 September 2004, in addition to the usual beatings, the second applicant was threatened with a male rape and one of the police officers attempted to perpetrate it, following which the second applicant agreed to sign further papers, which he did after having been immediately brought in another room with an investigator and a lawyer.

On 24 September 2004 officers U.R. and S.I. again tortured the second applicant. They threatened him by showing him various needles, pliers and other torture devices and then passed electric current through his body, strangled him by using the gas mask and making him inhale cigarette smoke, squeezed various parts of his body with the pliers and beat him up. They also made him drink vodka and brandy by force, knowing that this was unacceptable for the second applicant as a devout Muslim. After that

treatment the second applicant fainted and regained his consciousness when he was already in his cell.

Between 8 October 2004 and an unspecified date in the end of January 2005 the second applicant was transferred to various detention facilities. His health seriously deteriorated during this time and he had frequent heart attacks. In particular, on 17 and 18 October and 5 or 6 November 2004, as well as on 28 and 29 January 2005 an ambulance was called for him to treat him for his condition. During this entire period of time officers and investigators of the Gudermes ROVD continued pressuring him to make him confess of further crimes.

On 24 January 2005 the second applicant was brought before the Gudermes Town Court, where he sought to withdraw his self-incriminating statements given to the investigating authorities, except for those concerning the weapons he had voluntarily disclosed to the police. Having learnt about that fact, on 28 January 2005 officers of the Gudermes ROVD threatened to kill the second applicant for his attempt to retract those statements.

According to undated statements by B.A., the second applicant's uncle, and N.T., the second applicant's mother, in March 2005 they managed to obtain a permission to visit him in the Gudermes ROVD. The visit took place on an unspecified date in March 2005 on the premises of the Gudermes ROVD and in the presence of police officer U.R. and investigator Kh. The second applicant had to be led to the table by the police officer, he looked worn out, pale and sick. The second applicant did not recognise his relatives first and they realised that his eyesight had deteriorated, although he had not had any problems with it prior to his arrest. N.T. also noticed a black bruise on the second applicant's nose and wounds on his hand which was not cuffed. Subsequently, S.-M.D., the second applicant's lawyer, allegedly passed over to B.A. a bag with the second applicant's clothes which were dirty and covered with blood and which they decided to burn before the second applicant's mother saw it. In N.T.'s submission, during the second applicant's trial she learnt from her son's new lawyer A.M. that the second applicant's eyesight had critically deteriorated owing to the haemorrhage in both eyes because of the ill-treatment. According to N.T., lawyer S.-M.D. had been appointed for the second applicant by the investigator and the second applicant's relatives had concluded an agreement with him. However, it turned out later that he had closely cooperated with the investigation. Moreover, S.-M.D. had told her that her son could not expect "normal" approach on the part of the investigating and law-enforcement authorities in view of the crimes of which he was accused and that he would not be able to avoid unlawful methods of investigation. Lastly, N.T. and B.A. submitted that prior to his arrest the second applicant had been a healthy person and had passed the medical checkups necessary to apply for a job of a security guard of a law-enforcement authority.

In the second applicant's submission, as a result of the torture inflicted on him, he became a disabled person.

On 19 March 2007 the second applicant was issued with a certificate attesting to the fact that he had a second-degree disability in connection with the general state of his health.



## *2. The second applicant's complaints about the alleged ill-treatment*

On an unspecified date in the beginning of February 2005 the second applicant complained about his ill-treatment to the prosecuting authorities.

On 3 February 2005 R.M., prosecutor of the Gudermes District visited the second applicant in his cell and promised him to look into the matter. In the second applicant's submission, despite R.M.'s assurance during his visit that he believed him and that he would examine the issue, R.M. subsequently asserted in the documents relating to the applicant's torture allegations that there was no evidence of it.

On 11 February 2005 the second applicant lodged with the prosecutor's office of the Chechen Republic a further complaint, submitting that he had been repeatedly ill-treated after his unlawful apprehension with a view to making self-incriminating statements, as well as incriminating other persons. He asserted that police officers of the Gudermes ROVD had tortured him so that he learnt by heart the statements they had wanted him to give and that they had explicitly told him not to count on his lawyer because, once he would leave, the applicant would be in their hands and would be tortured again. The second applicant averred that all his self-incriminating statements given, in particular, on the premises of the Gudermes ROVD, had been obtained under torture, with the exception of the information concerning the arms hidden at his house in respect of which he admitted his guilt. He requested that all investigative steps involving him be carried out on the premises of the remand prison and not in the Gudermes ROVD where he was under permanent control of his torturers. He further stressed that his health had seriously deteriorated as a result of the torture inflicted on him and that he had already suffered from a series of heart attacks because of it. There is no indication that his complaint was ever replied to.

By decision of 18 May 2005 investigator Kh. of the republican prosecutor's office charged the second applicant with a number of further crimes committed in an illegal armed group, of which the first applicant was also considered to be a member, and including, banditry, unlawful possession and carrying of arms and explosives, trespassing and assaults on law-enforcement officials.

On 22 June 2005 the second applicant lodged with the republican prosecutor's office a further complaint about his repeated ill-treatment, reiterating his earlier submissions and giving the names and ranks of the perpetrators. According to the second applicant, he never received a reply to that complaint.

## **C. The applicants' conviction**

On an unspecified date the criminal case against the first and second applicants and two other individuals was sent for trial to the Supreme Court of the Chechen Republic.

*1. Relevant information concerning the examination of the case at first instance*

**(a) As regards the first applicant**

Before the trial court the first applicant submitted that he had been arrested on 14 November 2004 at the petrol station on the outskirts of Gudermes, where he had been taken off the bus in which he had travelled with his relative. He had been thrown in the trunk of a vehicle and taken to the village of Tsentoroy where the so-called “kadyrovtsy”, as well as Z., head of the Gudermes Operational and Search Bureau, had tortured him by a gas torch, requesting that he signed all documents which would be presented to him later in the Gudermes ROVD. Fearing for his life and the lives of his relatives, he had agreed and had been transferred on the same night to base “Vega” on the outskirts of Gudermes, where he had been held together with four other individuals. In the morning he had been transferred to the base of a certain A.D., where he had been again told to sign everything what would be requested of him later. On 15 November 2004 he had been brought to the Gudermes ROVD and taken to the second floor of the building where police officers A.D., U.R., S.B., I.M., “Sergey” and “Lyokha” had ill-treated and tortured him. During the continuing torture a certain man had repeatedly arrived and had made him sign several papers. The first applicant had subsequently learnt that it was investigator A.I. During the second applicant’s ensuing interrogations the investigator had simply read to the applicant the text of documents prepared in advance and the second applicant had signed them. The authorities of the remand prison (*следственный изолятор*) had not wanted to admit the first applicant because of his terrible state of health as a result of torture. When the first applicant had been brought home to get the hidden arms his relatives had seen that he had been in a bad shape as a result of ill-treatment.

P.M., the first applicant’s sister, stated before the trial court that on 15 November 2004 a group of police officers had searched the house in which she resided together with the first applicant’s family but had not found anything. On the same day police officers had returned with the first applicant, who had been barely able to walk. He had been covered with blood, his head and face had been covered with bruises and he had smelled of smoke. When she had been able to speak to him, he had told her that he had been ill-treated. The first applicant’s relatives had complained about his ill-treatment to the prosecutor’s office but to no avail. The first applicant’s lawyer had told the relatives that his client received medical treatment.

Kh.M., the first applicant’s mother submitted, among other things, that her son had been arrested on 14 November 2004 by the “kadyrovtsy” who had brought him to the village of Tsentoroy and had held him there for three days. She had learnt about his detention in the Gudermes ROVD on the fourth day after his arrest. When she had seen the first applicant herself, he had had burns on his hands and legs. Lawyer M., who represented her son at the material time, had told her that the second applicant had received medical assistance.

L.M., the first applicant’s sister-in-law, stated that she had learnt from the first applicant’s wife that he had been brought home for a search and had bruises all over his body, as well as a burnt hand.

S.Kh., the first applicant's uncle, stated, among other things, that the first applicant had been arrested on 14 November 2004 and that he had learnt about the arrest in the evening on the same day. On 15 November 2004 police officers had brought the first applicant home to participate in the search of his house. The latter had been beaten up, had been barely able to walk and had had to be supported by two police officers when walking. His right hand had been burnt and he had had to hold it against his belly. His face and body had been covered with bruises and abrasions.

M.A., the first applicant's neighbour, submitted that the first applicant had been arrested on 14 November 2004 and brought back home for a search on 15 November 2004. She had seen him on the latter date. He had had a burnt hand, covered with blisters and had been supported by two police officers because he had been unable to walk on his own.

**(b) As regards the second applicant**

The second applicant submitted to the trial court that he had been arrested by the so-called "yamadayevtsy" on the night of 22-23 August 2004 and transferred to the Gudermes ROVD in the evening of 23 August 2004, where he had admitted that he had arms hidden at his house, which had been given to him by a third person. As regards the remainder of his self-incriminating statements, he had given them as a result of torture by police officers and had signed all documents they had given him without reading them. Prior to his arrest he had had no health problems. However, as a result of repeated and severe ill-treatment sustained in detention he permanently suffered from pain in the heart and headaches, an ambulance had been called to him in the police ward on several occasions. The second applicant had not been aware that he could complain about the ill-treatment. He had submitted his first complaint in that respect on 1 or 2 December 2004.

N.T., the second applicant's mother, submitted that her son had been arrested by armed persons who had burst into their house at night and had beaten him up at arrest although he had not resisted it. She further stated that she had seen the second applicant for the first time four to five months after his arrest and that he had been beaten up. Lawyer D., who represented the second applicant at the material time, had told her that her son had not been ill-treated.

*2. Trial judgment*

By judgment of 7 August 2006 the trial court found the first applicant guilty of banditry, several counts of assault on law-enforcement officials, murder, unlawful possession and carrying of arms and explosives, terrorist attacks, a robbery and abduction. The first applicant was sentenced to twenty three years' imprisonment.

By the same judgment the trial court found the second applicant guilty of banditry, unlawful acquisition, possession and carrying of arms and aggravated murder and sentenced him to seventeen years' imprisonment.

In finding the applicants guilty the trial court relied on the pre-trial statements given

(a) by the first applicant on 18 and 23 November and 2 December 2004 and on 3 February 2005, and

(b) by the second applicant made on 25 August 2004 and 9 and 12 March and 12 May 2005.

The trial court also noted that it had regard, among other things, to interview records of the second applicant dated 27 August 2004 and 20 and 23 September 2004. It furthermore relied on a bulk of other pieces of evidence, including witness' statements, ballistic and forensic medical examinations and crime scene inspection reports.

As regards the applicants' and their co-accused allegations that they had been tortured into giving self-incriminating statements, the trial court noted that it had ordered an inquiry into their submissions which had been terminated with the decision of the prosecutor's office of the Gudermesskiy District of 30 November 2005, refusing to open a criminal case into their alleged ill-treatment. The court dismissed the second applicant's allegations of ill-treatment, observing that they had been examined at the pre-trial stage and rejected as unfounded, without providing any further details.

As regards the first applicant, the court pointed out that the examination of his complaint had established that he had been admitted to the police ward of the Gudermes ROVD with bodily injuries. It followed from the decision of 11 May 2005 to open a criminal case into those events that the first applicant had been arrested by unidentified persons before his arrest in connection with the criminal case examined by the trial court and that he had been ill-treated by them. However, the investigator's conclusion that those unidentified persons had requested the first applicant to sign documents in the Gudermes ROVD was based on the first applicant's submissions and after the latter had retracted his earlier statements and started submitting that he had been ill-treated into giving them. Moreover, there was no information about the nature of the documents the first applicant had been allegedly requested to sign later in the Gudermes ROVD and it was unclear whether they had been connected to the criminal case examined by the trial court. The court went on to note that the first applicant had made self-incriminating statements in the presence of various investigators and a privately retained lawyer and that those facts excluded any possibility of pressure being exerted upon him.

Lastly, the trial court noted that, according to their arrest records, the first and second applicants had been arrested on 17 November 2004 and 27 August 2004, respectively, and that they had not made any statements concerning their arrest in the relevant documents. It also pointed out that it considered that the first applicant had sustained his injuries prior to his arrest on 17 November 2004 and that there was no evidence that the second applicant had had any injuries. As regards their relatives' and neighbours' statements, the court considered that they were unreliable.

The applicants appealed against the trial court judgment, submitting, among other things, that they had been convicted on the basis of their self-incriminating statements obtained under torture.

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

By judgment of 16 January 2007 the Supreme Court of the Russian Federation re-classified some of the first and second applicants' acts and reduced the first applicant's imprisonment term to twenty two years. The appellate court upheld the first instance judgment in the remaining part.

## COMPLAINTS

The applicants complain under Article 3 of the Convention that they were subjected to torture and that the domestic authorities failed to carry out an effective investigation of their allegations.

The applicants submit under Article 5 §§ 1, 2 and 3 that they were deprived of liberty in an arbitrary and unlawful manner, were held in unacknowledged detention, were not informed of the reasons for their arrest and were not brought promptly before a judge.

Under Article 6 of the Convention the applicants complain that the domestic courts' admission of their self-incriminating statements obtained at the pre-trial stage under torture had rendered the proceedings against them unfair.

The second applicant complains that the authorities unlawfully searched his home on the night of his apprehension on 22-23 August 2004.

Lastly, the applicants submit that, contrary to Article 13 of the Convention, they were deprived of effective remedies in respect of their above-mentioned grievances under Article 3.

## QUESTIONS TO THE PARTIES

1. Having regard to the applicants' submissions, have the domestic authorities carried out special operations in Gudermes on 14 November and 22 August 2004, aimed, in particular, at arresting the first and second applicants? If so, were the law-enforcement authorities and their officials involved in the operations identified and interviewed in the course of the domestic inquiries/investigations?

2. Having regard to the first applicant's submissions, was there a violation of Article 3 of the Convention on account of his alleged repeated ill-treatment, threats and intimidation in the period between 14 November 2004 and 30 January 2005?

3. Did the second applicant exhaust the domestic remedies in respect of his complaint about the alleged ill-treatment? Has he complied with the six month requirement in respect of that complaint? Having regard to the second applicant's submissions, was there a violation of Article 3 of the Convention on account of his alleged repeated ill-treatment, threats and intimidation in the period between 22 August 2004 and 30 January 2005?

4. In addressing questions nos. 2 and 3 above the parties are requested to deal, *inter alia*, with the following points:

(a) After the first applicant's arrest on 14 November 2004 and the second applicant's arrest on 22 August 2004:

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

between 14 November 2004 and 30 January 2005, and (β) the second applicant was held between 22 August 2004 and 30 January 2005?

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

- What was the time of the applicants' admission to the facility/law-enforcement authority premises?

- Were the applicants examined upon admission by the medical staff with a view to recording their eventual injuries, state of health 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

- Were the applicants given access to a lawyer? If so, when?

- Were they given the possibility of informing a family member, friend, etc. about their detention and their location and, if so, when?

(b) What activities involving (i) the first applicant were conducted in the time span between 14 November 2004 and 30 January 2005 and (ii) the second applicant in the time span between 22 August 2004 and 30 January 2005, at what facilities/premises of what law-enforcement authorities and at which times of the day? What was the applicants' procedural status? What confessions and/or statements did the applicants give during that period (please submit relevant documents, in particular, records containing the applicants' statements/confessions and on-site verifications of their statements, if any, which are **legible**/provide their typed copies, where necessary)? Were the applicants given access to a lawyer before and during each such activity?

5. Have the authorities complied with their positive obligation under Article 3 of the Convention to carry out an effective investigation into the first and second applicants' allegations of ill-treatment? In particular:

(a) What is the state of investigation in case no. 45576, opened into the first applicant's allegations of ill-treatment?

(b) Were the investigating authorities who carried out the inquiry/ies/investigation(s) into the applicants' allegations of ill-treatment independent from the investigating authorities who were responsible for investigating the criminal case against them?

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

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

- whether forensic medical examinations/medical expert examinations were performed in respect of the first and second applicants in order to establish the nature and the origin of their injuries?

- when were the applicants questioned/interviewed in respect of their allegations of ill-treatment in the framework of the inquiry/investigation 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 investigation in case no. 45576 concerning the first applicant's alleged ill-treatment;
- an entire copy of the case-file concerning the inquiry into the applicants' ill-treatment initiated by the Supreme Court of the Chechen Republic and terminated with the decision of 30 November 2005 refusing to open a criminal case;
- copies of all complaints about the ill-treatment and apprehension lodged by the second applicant;
- entire copies of the first and second applicants' medical files;
- excerpts from logbooks of detainees admitted to the detention facility in respect of all facilities in which (i) the first applicant was held in the time span between 14 November 2004 and 30 January 2005, (ii) the second applicant was held between 22 August 2004 and 30 January 2005 for the relevant dates and in respect of both applicants;
- excerpts from logbooks of primary medical examination of persons admitted to facilities (*журналы медицинского осмотра лиц, содержащихся в ИВС/СИЗО; журналы первичного опроса о состоянии здоровья лиц, содержащихся в ИВС/СИЗО*) in which (i) the first applicant was held in the time span between 14 November 2004 and 30 January 2005, (ii) the second applicant was held between 22 August 2004 and 30 January 2005;
- forensic medical expert report no.124 in respect of the first applicant;
- arrest record in respect of the second applicant (*протокол о задержании*).

6. Did the first and second applicant exhaust domestic remedies and did they comply with the six months requirement in respect of their complaints under Article 5 §§ 1, 2 and 3 of the Convention? If so and having regard to their submissions, was there a violation of Article 5 §§ 1, 2 and 3 of the Convention in respect of the first and second applicants?

7. On what self-incriminating statements obtained at the pre-trial stage (please, indicate their dates and provide their copies) did the domestic courts rely in finding the first and second applicants guilty in the proceedings which ended with the final judgment of the Supreme Court of Russia of 16 January 2007? Did the admission of those statements, obtained allegedly under duress, and the domestic courts' relying on them in convicting the applicants, render the proceedings against the applicants unfair in breach of Article 6 §§ 1 and 3 (c) of the Convention (see *Gäffen v. Germany* [GC], no. 22978/05, §§ 165-66, ECHR 2010, with further references)?

8. Did the second applicant exhaust domestic remedies and comply with the six months requirement in respect of his complaint under Article 8 of the

Convention concerning the search of his house on 22-23 August 2004? Was there a violation of Article 8 of the Convention on account of the allegedly unlawful search of his home on that date?

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