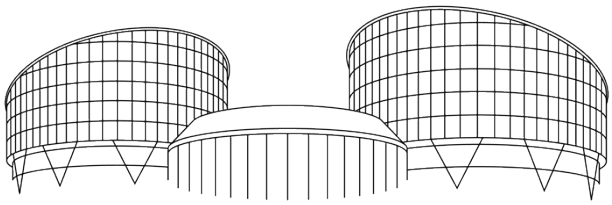

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GISAYEV v. RUSSIA

(Application no. 14811/04)

JUDGMENT

STRASBOURG

20 January 2011

FINAL

20/06/2011

This judgment has become final under Article 44 § 2 (c) of the Convention. It may be subject to editorial revision.

In the case of Gisayev v. Russia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 14 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 14811/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Akhmed Khamzatovich Gisayev ("the applicant"), on 19 April 2004.

2. The applicant was represented by Mr P. Leach, Mr W. Bowring, Mr K. Koroteyev and Ms D. Vedernikova, lawyers of Memorial Human Rights Centre, a non-governmental organisation based in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, that he had been subjected to torture and that the authorities had not carried out an effective investigation into that matter, that his detention had been unlawful and that he had not had effective remedies in respect of those complaints.

4. On 1 September 2005 the President of the First Section decided to apply Rule 41 of the Rules of Court and to grant priority treatment to the application.

5. On 13 September 2007 the President of the First Section decided to give notice of the application to the Government. Under the provisions of the former Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

6. The Government objected to the joint examination of the admissibility and merits of the application and to the application of Rule 41 of the Rules of Court. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1973 and lives in the city of Grozny, in the Chechen Republic.

A. The applicant's abduction, detention and ill-treatment

1. The applicant's account

(a) The applicant's kidnapping

8. In the morning of 23 October 2003 the applicant, his parents Kh.G. and S.B. and three siblings, Z.G., M.G. and Z.Kh.G., were at home at 25, Shakespeare Street, Katayama district of Grozny.

9. At about 7 a.m. on 23 October 2003 five grey UAZ vehicles without registration numbers arrived at the house. A group of twenty to thirty men got off the vehicles and burst into the applicant's house. The intruders were wearing camouflage uniforms with insignia on the forearm indicating "Armed Forces of Russia" (*Вооруженные Силы России*), black masks and green helmets with plexiglass parts to protect their faces, those helmets being, according to the applicants, a usual part of the equipment of special-purpose squads of the Russian security forces, such as the Federal Security Service ("FSB"). All intruders carried sub-machine guns, wore bullet-proof jackets and vests used for carrying full sub-machine gun cartridges. Some of them were, in addition, armed with pistols and were carrying black Kenwood walkie-talkies, through which they were communicating. They spoke unaccented Russian. According to the applicant and his relatives, the intruders' actions were very well co-ordinated.

10. The intruders took the applicant's family members outside and searched the house, without giving any explanations or presenting any warrants. One of the armed men ordered the Gisayevs to produce their identity papers. Having checked them, he ordered his subordinates to put the applicant in one of the UAZ vehicles. Shortly thereafter the applicant was placed in the vehicle and one of the intruders, sitting in the front passenger seat, ordered another man, whom he referred to as "Number 12", to put a shirt over the applicant's head. He also told someone over his walkie-talkie: "To the base station, we carry out an arrest, do not disturb" ("*По опорному пункту, у нас задержание, не беспокоить*").

11. After the applicant had been put in the vehicle, his father repeatedly requested the intruders to explain the reasons for the applicant's arrest, to

name the State authority to which they belonged and to which he could apply in connection with the applicant's detention. Although the armed men initially disregarded his questions, one of them finally replied: "We will check him and let him go. You can request further information from the FSB."

12. Shortly thereafter the intruders got into their vehicles and drove off in the direction of the Staropromyslovskoye highway in Grozny. While the applicant and his relatives were outside, they had an opportunity to memorise several details concerning the vehicles. In particular, they noticed that they were armoured and equipped with loopholes for riflemen and had on their roofs square boxes with long antennas. Subsequently, the applicant and his relatives learnt that those boxes were containers for radio-frequency suppression, which formed part of the special equipment of the FSB and the Main Intelligence Directorate of the Russian army (the "GRU").

13. When the applicant's relatives went back inside, they discovered that some items and money had been taken.

(b) The applicant's detention and ill-treatment between 23 October and 8 November 2003

(i) Detention and ill-treatment in the first facility

14. After the abductors had taken off with the applicant, they drove for about twenty minutes. On its way the vehicle honked while passing through a checkpoint, stopped for a while and then continued moving. Shortly thereafter the vehicle stopped and honked again and the applicant heard the sound of a gate opening. He was then ordered to get out. While doing so, he managed to look around and concluded that he was near the "Avtobaza" station on the Staropromyslovskoye highway, where the premises of the operational-search bureau ORB-2, the FSB, the Organised Crime Unit ("the UBOP"), the military commander's office and the government of the Chechen Republic were located.

15. The applicant's abductors took him inside an unknown building to a room located on the fourth floor, sat him down in the corner and handcuffed him to a heating pipe. When they left, the applicant managed to remove the shirt from his face and saw that he was in a room where there was a table and a chair. On the chair he saw a camouflage jacket with Russian military insignia on its sleeve. On the table there was a phone.

16. Later the same day the servicemen interrogated the applicant as to whether he was a member of illegal armed groups or knew something about them. In his submission, they considered that he must have had that information based, among other things, on the fact that he had used to work in the Ministry of the Interior under the Maskhadov regime. He refused to confess to anything. They then threatened him with violence and mentioned

that his family was in danger because of his reluctance to speak. Then they left the room and locked the door.

17. After a while several persons entered the room; they asked the applicant if he had any information on the Chechen rebels and weapon hoards. The applicant denied his involvement in any illegal activities; the men beat him with a truncheon. Then they attached electric wires to his right hand and right foot and started passing an electric current through his body. They also burned his hands and feet with cigarettes, beat and insulted him. The applicant was denied any food and water. Then the servicemen again handcuffed him to the pipe and left him alone.

18. Some two hours later five to six persons returned to the applicant's room and gave him some water. Immediately thereafter they put a plastic bag over his head. About two hours later a few more men entered the room. They plastered the applicant's eyes and mouth with adhesive tape and began to beat and kick him. The applicant was lying face down; one of the servicemen stood on his back. The servicemen connected an electric wire to the applicant's handcuffs and to the little toe of his right foot and passed, again, an electric current through his body. The men told the applicant that they would blow up his family house unless he confessed that he was a rebel fighter. They tortured him in that way for about three hours. At about midnight they handcuffed the applicant to the pipe and left.

19. In the morning of 24 October 2003 the servicemen brought the applicant to the ground floor and allowed him to wash the blood off his body. The applicant discovered that his nose was swollen, his right wrist and right ankle were burned and one of his lips was badly cut. Then the servicemen brought the applicant back to the room on the fourth floor and continued to interrogate him even more violently.

20. In the evening of 24 October 2003 the servicemen again used an electric current on the applicant, beat and abused him. Then they tied him to the pipe and left. At night the applicant moaned in pain; having heard the noise, the servicemen returned and beat him again.

21. In the morning of 25 October 2003 two servicemen whom the applicant had not seen before entered the room and beat him. They threw some sharp objects at the applicant's head; when it started bleeding, they bandaged his head with a piece of cloth to stop the bleeding and continued to beat him. One of the servicemen beat the applicant on the abdomen and back with another sharp object, and kicked him on the throat and shoulder.

22. According to the applicant, when speaking among themselves, the servicemen often used specific terms. In particular, some of them would ask others if anything happened while they had been on duty or when they would take leave. Over the phone, which was in the room where the applicant was held, the servicemen would inform their interlocutors that someone “had gone to the military commander's office”. In the applicant's presence they were addressing each other as “Number 6” or “Number 12”.

On several occasions the persons who had tortured the applicant, when leaving the room, were addressing others saying "You have been called by the commander" or "Get down to the canteen and fetch us some food, don't forget the apples". Once at night the applicant heard the sounds of machine guns coming from outside. The person who was in the room with him took the phone and asked someone over it: "Why are you shooting?".

(ii) The applicant's transfer to the second facility

23. On 25 October 2005 the man who had been in command of the operation when the applicant was abducted came to the applicant's room and told the others that the applicant's relatives were at the gate. He called someone over the phone several times asking if the applicant's relatives had left. He also told the person to frighten them to make them leave. Among themselves, the servicemen who were in the room were discussing how the applicant's relatives could have learnt about his whereabouts and from whom they might have obtained that information.

24. Shortly thereafter, at about 3 or 4 p.m. on 25 October 2003 the servicemen put a black plastic bag over the applicant's head, plastered his eyes with adhesive tape and took him outside the building. Then they placed him in a car, put on some loud music and drove for around forty or fifty minutes. Despite the music, the applicant was able to hear that the car was moving through busy streets. He also heard the servicemen talking over their walkie-talkies. During the ride they told the applicant that they were going to shoot him. According to the applicant, the car was moving in the direction of the Minutka Square or Khankala. When the car stopped, the servicemen dragged the applicant out and placed him in a boot of another car. That car drove for about twenty or thirty minutes stopping four times, presumably at checkpoints. Then the servicemen took the applicant out of the boot and took him to the basement of a building which was unfamiliar to him. The applicant's abductors referred to the place as "Khankala".

(iii) The applicant's detention and ill-treatment in the second facility

25. In the basement the servicemen tied the applicant to a pole and started interrogating him. They asked him whether he knew anything about rebel fighters and weapon hoards; the applicant replied in the negative. The servicemen beat him all over his body, including the face, head and solar plexus. After two hours of beating they ordered the applicant to lie on the left side of his body and tied him to the table legs and left. When they left, he managed to lift the plastic bag off his eyes so that he could see a cellar of concrete blocks measuring around 5 x 10 square metres. After a while the servicemen brought him a blanket and a pillow.

26. In the morning of 26 October 2003 the servicemen gave the applicant some tea and a piece of bread and asked him whether his real

name was Lyanov, not Gisayev. The applicant replied that he had never forged his identity papers to change his name.

27. While kept in the basement, the applicant had to lie on the floor covered with water. Occasionally he heard the noise of helicopters and armoured vehicles outside. At times different persons came to the basement; they threatened the applicant, insulted and beat him.

28. On the fourth day of the detention in the basement a man entered and hit the applicant on the face. The applicant fell; the man ordered him to rise. Then two other men arrived; they put a plastic bag over the applicant's head, plastered his eyes and mouth and told him that his death had come. The applicant asked them to give his corpse to his parents after his death; the men replied that they would feed his dead body to dogs. For the next three hours they passed an electric current through the applicant's body and beat him. Then the applicant vomited and nearly fainted; he was bleeding. Later, when the applicant regained consciousness, several servicemen beat him again.

29. Over the following days the servicemen repeatedly came to the basement and ill-treated the applicant; at times they used an electric current. They surrounded the applicant and took turns to hit him; they stood on the applicant's back and beat him with truncheons; they hung him up by his arms and left him hanging for a long time. From time to time they attached an electric cable to the applicant's ear and passed electricity though it. Several times they put a gas-mask on his face so that he was forced to inhale a substance with a strong suffocating smell.

30. The servicemen threatened the applicant with murder again and again. They forced him to drink alcohol and smoke cigarettes to make sure that he was not a radical Islamic fundamentalist, which was particularly insulting for the applicant, a devout Muslim. They also put to him all sorts of questions concerning his religious beliefs and the Muslim traditions of the Chechen people in which they appeared to be interested.

31. The servicemen spoke unaccented Russian; they employed legal terms used by the police and FSB officers. According to the applicant, there were offices above his room in the basement. He heard people saying that the special-purpose squad (“the OMON”) had arrived, that someone needed to be sent to a particular location in a helicopter, that a special-purpose squad would take off to the town of Malgobek in Ingushetiya. Every morning a woman called “Nadya” would arrive at the office upstairs and tell the others that she had had ordered from the stock a certain quantity of soap, bedding or tinned food. The applicant also heard the noise of armoured vehicles, helicopters and a working military radio station coming from the outside.

(iv) Detention in the third facility

32. On an unspecified date several servicemen entered the basement, put a plastic bag on the applicant's head, plastered his eyes with adhesive tape and told him that they were going to shoot him. They took the applicant outside the building and put him in the boot of a car. After a half-an-hour ride the car stopped; the servicemen took the applicant out of the boot and led him inside a building. There they attached him to a pipe and left.

33. At some point the servicemen took the plastic bag off the applicant's head and gave him food and water. The applicant spent a day and a half in that room; he was not beaten during that period. Then the servicemen took the applicant to another room and handcuffed him to a bed. He spent two more days there. Then a man came who asked the applicant if he had seen any faces, apparently of those who had beaten him. The applicant replied in the negative. The man told him that he had not been detained but kidnapped.

(c) The applicant's release

34. In the evening of 8 November 2003 the servicemen again put a plastic bag on the applicant's head and told him that he would be released. They commented that the applicant would have to leave Chechnya; otherwise they would kill him and his family. Then they put the applicant in a car; after a half-an-hour ride the car stopped. A man asked the applicant in Chechen if he was Akhmed from the Katayama district; the applicant replied in the affirmative. The man told the applicant to get out of the car and escorted him to another car. There he removed the plastic bag from the applicant's head and told him not to worry and that he would bring him home. The applicant saw that the man was his relative who was working with the law-enforcement authorities. When the applicant looked around, he realised that the cars were parked on the Staropromyslovskoye highway in Grozny near a fence over which was written "Ministry of Defence of the Russian Federation", about five hundred metres away from the buildings of the FSB, the city military commander's office, the UBOP, ORB-2 and the Chechen Government.

35. The applicant saw his relative give something to two servicemen wearing camouflage uniforms with the Russian military insignia. One of them, a forty-year-old man of medium height, carried a gun; the other was a tall brown-haired man in his mid-thirties. Later the applicant discovered that his relatives had paid a ransom of some 1,500 US dollars for his release.

36. Then the applicant's relative brought him home. According to the applicant, he could not communicate the name of his relative because the latter feared for his life.

37. The above description of the events is based on the applicant's five-page typed complaint to the prosecutor's office of the Staropromyslovskiy District of Grozny dated 11 February 2004, his eleven-page written statement made on 26 March 2004 and his written

statement of 21 June 2004; the applicant's father's statements of 26 March and 22 December 2004 and 2 February 2005; the applicant's mother's statements of 22 December 2004 and 2February 2005; written statements by Z.Kh.M. made on 6 July 2004 and 2 February 2005; a written statement by Z.M. made on 2 February 2005; a written statement by M.Z. of 2 February 2005; a detailed sketch of the area of the Staropromyslovskoye highway, on which are located the premises of the FSB, the UBOP, the ORB-2, the Ministry of Defence and other authorities mentioned by the applicant, with the indication of where those authorities' premises, as well as their checkpoints, fences and car parks, are to be found, accompanied by the applicant's detailed description and written explanation.

2. The Government's account

38. On 23 October 2003 unidentified armed persons in camouflage uniforms and masks, driving five grey UAZ vehicles, burst into the applicant's house at 25, Shakespeare Street, Grozny, and abducted the applicant.

B. The applicant's relatives search for him

39. On 23 October 2003 the applicant's father complained about his son's abduction to the prosecutor's office of the Staropromyslovskiy District of Grozny ("the district prosecutor's office") and the police. However, those State authorities denied having any information on the applicant's whereabouts and also refused to institute a criminal investigation into his abduction.

40. The applicant's father also reported the circumstances of his son's kidnapping to the Special Envoy of the Russian President in Chechnya for Rights and Freedoms ("the Special Envoy") and the State Council of the Chechen Republic. On 28 October 2003 the Special Envoy requested the prosecutor's office of the Chechen Republic ("the republican prosecutor's office") that requisite measures be taken to establish the applicant's whereabouts.

41. On an unspecified date in October 2003 the applicant's relatives applied to the local police in connection with his abduction. The police officers allegedly told them that in the early morning on 23 October 2003, while they had been on duty, unspecified FSB officers informed them over radio channels that the latter were carrying out an arrest on Shakespeare Street and that the police officers were not to interfere with the operation.

42. On the same day two young men who knew about the abduction of the applicant allegedly came to the applicant's father and told him that they had been in the city centre on the morning of 23 October 2003 and had seen five UAZ vehicles, which had first been driven through the city centre and had then entered the premises of ORB-2, located on the

Staropromyslovskoye highway near the premises of the UBOP, the military commander's office, the FSB and the Ministry of Defence.

43. On an unspecified date the applicant's relatives went to ORB-2 and tried to obtain information concerning him. However, the persons to whom they talked denied having arrested him. At one point two men approached the applicant's relatives. They introduced themselves as FSB officers and asked the applicant's father who had given him the information that his son had been abducted by the FSB. When he refused to reply, they became aggressive and insisted that he tell them his source of information. Faced with his refusal to do so, they ordered him to leave, saying that the place was dangerous and that he could be shot dead. They also said that they did not have the applicant. Having heard that, the applicant's relatives returned home.

44. On 26 October 2003 a friend of the applicant, an official of a law-enforcement agency, came to the applicant's relatives and told them that the applicant had been abducted by officers of ORB-2, which was under direct command of the FSB. He also told them that after his abduction the applicant had been held for three days on the premises of ORB-2 and then transferred to Khankala for further interrogation.

45. Subsequently, the applicants found a person who was an officer of the FSB and who negotiated with the abductors the applicant's release in exchange for 1,500 US dollars (USD). The applicant's relatives collected the money and gave it to that man.

C. The applicant's state of health after his release

1. The applicant's account

46. Upon his return home the applicant experienced major health problems. He suffered from insomnia and severe headaches; at some point he had a fever. His extremities ached and wounds festered. He had bruises, burns and cuts all over his body. He was not able to walk on his own and needed assistance in moving around the house. The applicant's health was so poor that he could not visit a doctor for several weeks following his release. According to the applicant, after his release he had to undergo medical examinations and treatment on a permanent basis and to take various medication including painkillers, to ease the pain.

47. In support of his submissions concerning his state of health the applicant also referred to statements of his relatives mentioned in paragraph 37 above.

2. Medical evidence

48. On 3 December 2003 the applicant was examined by a doctor. According to a certificate of that date, he submitted to the doctor that he had been held in detention between 23 October and 7 November 2003 and had been beaten on numerous occasions. The applicant complained, among other things, about headache, pain in the lower back and frequent urination. The certificate noted, among other things, the following injuries: a 3 × 5 square-centimetre scar in the cervical region of the head, a scar measuring 7 × 3 square centimetres on the right hip, a round scar measuring 1 × 1 square centimetres on the right wrist. The applicant was diagnosed with "numerous scars on his head and body" and an examination by a neuropathologist was recommended.

49. According to a certificate of 3 December 2003, on that date the applicant was examined by a neuropathologist, to whom he complained about headaches, dizziness, insomnia, overall fatigue, numbness of extremities and pain in the lower back. The certificate noted that the applicant had a closed craniocerebral injury, was unstable in the Romberg test and had tremor of eyelids and hands. The palpation of the spine and chest area was painful. The applicant was diagnosed with "after-effects of closed intracranial injury", "astheno-neurological syndrome" and "post-traumatic osteochondrosis of the thorax region".

50. On 5 December 2003 the applicant was examined by a neurologist. According to his medical certificate of the same date, the applicant was diagnosed with chronic prostatitis.

51. According to a certificate of 28 December 2004, the applicant was diagnosed with continuing after-effects of a craniocerebral injury, including encephalopathy of the first and second degree.

52. According to the applicant's medical report dated 10 March 2005, from 12 to 26 January 2005 he underwent in-patient treatment in the neurological department of hospital no. 3 in Grozny. The document, in so far as relevant, reads as follows:

> "After-effects of closed craniocerebral injury, severe brain contusion in the form of persistent intercranial hypertension; recurring hypertensive-hydrocephalic crises (three to four times a week); recurring vestibular crises (one to two times a week), accompanied by loss of coordination; strongly pronounced astheno-neurotic syndrome; mombalgia.
>
> Complaints about: recurring headaches accompanied by dizziness and vomiting; weakness in arms and legs; attacks of dizziness accompanied by loss of coordination; loss of memory of current events; lower back pain becoming stronger in a static position and while walking.
>
> An morbi: The patient has been sick since he was abducted, detained in a basement and ill-treated (in his words). The applicant has had the above-mentioned complaints since that time; underwent in- and outpatient treatment on numerous occasions, has

been under continuous supervision of a neuropathologist. The effectiveness of the treatment is negligible.

...

The overall state of health is of medium gravity.

...

Muscular reflexes in arms reduced...

Muscular reflexes in legs reduced...

...

Established numbness in hands and legs."

D. Investigation into the applicant's alleged kidnapping and torture

1. The applicant's account

53. On 1 November 2003 the district prosecutor's office instituted an investigation into the applicant's abduction under Article 126 § 2 of the Russian Criminal Code (aggravated kidnapping).

54. On 27 November 2003 the district prosecutor's office replied to the head of the State Council of the Chechen Republic that on 1 November 2003 it had launched an investigation into the abduction of the applicant. A copy of that letter was forwarded to the applicant's relatives.

55. On 23 December 2003 the Memorial Human Rights Centre, acting on the applicant's relatives' behalf, requested the district prosecutor's office to inform them of the progress in the investigation into the kidnapping.

56. On 5 February 2004 the applicant requested the district prosecutor's office to open an investigation into his unlawful abduction, detention and ill-treatment, to grant him the status of victim of a crime and to order and carry out his medical examination. He also vaguely mentioned the search of his home carried out on the night of the kidnapping, but did not make any distinct complaint in this respect.

57. On 11 February 2004 the applicant wrote to the district prosecutor's office, giving a detailed written description of the circumstances of his abduction, detention and ill-treatment and requesting to be admitted to the criminal proceedings as a victim and a civil party. He also reiterated his request for a medical examination. He stated that he feared for his life because his abductors and torturers were working in law-enforcement bodies, that he was about to leave the Chechen Republic because of it and requested protection for his family and himself. The applicant enclosed

copies of medical certificates of 3 December 2003. The applicant's letter was received by the district prosecutor's office on 20 February 2004.

58. On 1 June 2004 the applicant requested the district prosecutor's office to update him on the progress in the investigation into his kidnapping and to inform him whether his requests lodged on 11 February 2004 had been granted.

59. On 5 July 2004 the district prosecutor's office informed the applicant that on an unspecified date the investigation into his kidnapping in case no. 50127 had been stayed for failure to identify those responsible. The letter also mentioned that despite the applicant's repeated summonses to the district prosecutor's office, he had failed to appear, and that the issue of granting him victim status depended on his personal appearance.

60. On 28 July 2004 the applicant complained about the investigators' inactivity to the republican prosecutor's office. He referred to his numerous and repeated complaints about the abduction and ill-treatment lodged with the district prosecutor's office and claimed that they had been left unanswered. He further requested that the investigation in case no. 50127 be resumed.

61. On 27 August 2004 the republican prosecutor's office replied that on an unspecified date the investigation had been reopened and that unspecified investigative measures were being taken to resolve the crime.

62. On 30 September 2004 the district prosecutor's office informed the applicant that the investigation was underway and summoned him to their premises.

63. On 15 October 2004 the applicant replied that he had already requested to be granted the status of the victim of a crime in his absence because he had fled the Chechen Republic to hide from his kidnappers. He asked the investigators to arrange for his medical examination anywhere outside Chechnya. He also stressed that he was ready to provide to the investigation any information which it might wish to request from him in writing and without delay.

64. On 9 November 2004 the district prosecutor's office informed the applicant that they could not admit him to the proceedings as a victim in his absence and requested him either to come to the prosecutor's office or to indicate his whereabouts, as well as to inform them in which hospital he had been treated after his release.

65. On 28 January 2005 the applicant complained about the inactivity of the investigators to the Staropromyslovskiy District Court of Grozny (“the District Court”). He submitted, in particular, that, despite the fact that he had provided detailed information on his abduction and ill-treatment and had apprised the district prosecutor's office of his fear for his life, the latter had taken no steps to investigate the crime against him and conditioned the grant of victim status on his showing up at their office.

66. By a decision of 16 March 2005 the district prosecutor's office granted the applicant the status of victim of a crime in case no. 50127. The decision stated that at about 7 a.m. on 23 October 2003 a group of twenty to thirty armed persons in camouflage uniforms, who had arrived in grey UAZ vehicles without registration plates, had burst into the applicant's house and had taken the applicant to an unknown destination. It also stated that since his abduction the investigation had no information on the applicant's fate.

67. On 17 March 2005 the District Court examined the applicant's complaint of 28 January 2005 and dismissed it for the reason that the investigators had already admitted him to the proceedings as a victim. The court specifically indicated that the investigator's persistent refusal to grant the applicant victim status had been unlawful and asked the former to inform the applicant of the progress in the investigation.

68. On 15 May 2005 the applicant wrote to the district prosecutor's office, requesting to be provided information on the progress in the investigation and seeking access to the case file.

69. On 20 May 2005 the district prosecutor's office replied to the applicant that the investigation was in progress and that he was to come to the office to obtain access to the case-file materials.

70. On 6 June 2007 the applicant again wrote to the district prosecutor's office, requesting information on the progress in the investigation and the specific investigative steps taken, the name of the investigator in charge of the case, the reasons for the failure to carry out his medical examination and to append to the case file as material evidence the clothes in which he had been ill-treated.

71. On 21 June 2007 the district prosecutor's office granted the applicant's request of 6 June 2007 in part concerning his access to the documents from the case file related to the investigative steps taken with the applicant's participation. It dismissed the remainder of the request and also informed the applicant that on an unspecified date the investigation had been suspended owing to failure to identify the perpetrators.

72. On 8 August 2007 the applicant wrote to the district prosecutor's office. He submitted that he had given his clothes in which he had been ill-treated to investigator D. The latter had requested him to provide those clothes in order to append them to criminal case file no. 50127 as material evidence and to carry out a biological forensic examination, which was particularly important in solving the crime. According to the applicant's letter, D. had subsequently informed him that the examination of the clothes had been carried out and that it had found on them traces of blood and of tissue fluids. Accordingly, the applicant requested the district prosecutor's office to clarify whether his clothes had indeed been examined and to inform him of the developments in the investigation.

73. On 27 August 2007 the district prosecutor's office informed the applicant that on an unspecified date the investigation in case no. 50127 had

been suspended owing to failure to identify the perpetrators. As to the clothes issue, the applicant was to contact the investigator in charge of his case.

74. On 25 October 2007 the Leninskiy Interdistrict Investigating Unit of the Investigating Department in the Chechen Republic of the Investigative Committee with the Prosecutor's Office of the Russian Federation ("the investigating unit") informed the applicant that on the same date it had reopened the investigation in case no. 50127.

2. Information submitted by the Government

75. On 1 November 2003 the district prosecutor's office instituted a criminal investigation into the applicant's abduction under Article 126 § 2 of the Criminal Code (aggravated kidnapping). The case file was given the number 50127.

76. On an unspecified date the investigators interviewed the applicant as a witness. He stated that at about 7 a.m. on 23 October 2003 a group of armed persons in masks and uniforms had burst into his house. They had put him against the wall and searched him. At about that time his father had gone outside and asked the intruders what was going on. They had replied that they were officials of the FSB but refused to produce any documents. The intruders had then searched the house, without providing any official authorisation, such as an arrest warrant, but had not found anything. After that, despite the applicant's parents' attempts to stop them, the armed men had taken the applicant to one of the UAZ vehicles stationed at the gate. They had put a shirt over his head and put him in the vehicle. The applicant had then been taken to an unknown place. He had been led to the fourth floor of an unknown building and handcuffed to a pipe, whereupon the abductors had started beating him and asking whether he knew any rebel fighters. He had replied in the negative. The abductors had tortured him with electric wire, beaten him up with truncheons and had put a plastic bag over his head. On the third day he had been transferred to another place. There he had been kept in a basement, tied to a pole and severely beaten up. For thirteen days the abductors had tortured the applicant, requesting that he confess to something. Subsequently, he had been returned to the first place of his detention, from where they had taken him to a hospital.

77. On an unspecified date the investigators also interviewed the applicant's father. He stated that in the morning of 23 October 2003, while he had been at home with his family, around twenty to thirty armed men in camouflage uniforms and masks had burst into his yard. They had ordered the family to produce their identity papers. The applicant's father had returned home to fetch them and when he had come back, he had seen the applicant standing against the wall with the intruders pointing their guns at him. When he had asked the intruders what the applicant had done, they had replied that they would take the applicant with them and check on him but

had refused to say where. Despite the applicant's father's attempts to prevent them from taking the applicant away, the intruders had put him into their vehicle and had driven off. The applicant's mother, interviewed on an unspecified date, provided a similar account of the events.

78. On an unspecified date the investigators interviewed the applicant's neighbour M.I. as a witness. She stated that in the morning on 23 October 2003 she had heard noise and shouting coming from the applicant's house. Having gone outside, she had seen that several UAZ vehicles were parked at the applicant's house. She had not seen anything else and had learnt about the applicant's abduction from his relatives.

79. On unspecified dates the investigators interviewed L.Sh., B.I., Z.B. and A.Ya. as witnesses. The Government did not specify who those persons were but stated that they had given accounts of the events of 23 October 2003 similar to that given by M.I.

80. On 16 March 2005 the applicant was granted victim status in the proceedings in case no. 50127. On the same date his forensic medical examination was carried out. According to its conclusions, the applicant had the following injuries: scars on the occipital part of the head, the right thigh and the back of the right hand. However, owing to the time that had elapsed since the infliction of the injuries, it was impossible to establish their origin.

81. According to the Government, the investigation in case no. 50127 was pending.

82. Despite specific requests by the Court the Government did not disclose any documents from criminal case no. 50127. They stated that the investigation was in progress and that disclosure of the documents would be in violation of Article 161 of the Code of Criminal Procedure, since the file contained information of a military nature, such as disposition of military and special troops and particulars of their activities, as well as personal data concerning the witnesses or other participants in the criminal proceedings.

E. The applicant's alleged intimidation

83. In his observations submitted to the Court on 28 March 2008 the applicant stated that he had been intimidated by State agents, referring to the following events described in his written statements of 8 April 2005 and 24 April 2006.

84. On an unspecified date after the applicant's release several persons allegedly approached the applicant's father, telling him not to complain about the applicant's abduction to the authorities and to be glad that the applicant was alive.

85. On an unspecified date, during the applicant's interview at the district prosecutor's office, an investigator allegedly told him that it was dangerous to try to identify the applicant's abductors and torturers because they were officials of State authorities.

86. On an unspecified date in March 2005, during the applicant's interview at the district prosecutor's office, an investigator allegedly told him in a threatening tone that persons in the applicant's situation were disappearing, that he was lucky to have returned home and that it would be better to close the investigation. When the applicant subsequently went to the district prosecutor's office, seeking access to the criminal case-file materials, an investigator asked him why he needed those documents and told him that if he wished to complain to the Strasbourg Court, it might end up badly for him. After that, on an unspecified date a group of persons in camouflage uniforms, who were driving a white VAZ-2107 vehicle, allegedly came to the applicant's parents' home, introduced themselves as officials of the prosecutor's office and told the applicant's brother that only fools were complaining in Chechnya. Following that, on an unspecified date the applicant was allegedly approached by a local police officer who told him that his fellow colleagues were tired of replying to requests of the prosecutor's office concerning the applicant's criminal case and advised the applicant to agree to its termination. In the applicant's submission, the investigators also insulted his lawyer.

87. On an unspecified date in April 2006 a number of persons driving a VAZ-21099 vehicle allegedly came to the applicant's house. One of them wore a camouflage uniform. They told the applicant that he was lucky to be alive and advised him in a threatening tone to write a request for the investigation into his alleged ill-treatment to be closed, to find a job and to live like everyone else.

II. RELEVANT INTERNATIONAL DOCUMENTS AND DOMESTIC LAW

A. Council of Europe materials

88. For an overview of the public statements of the European Committee for the Prevention of Torture (“the CPT”) on the issue of ill-treatment of detainees in the Chechen Republic by members of law enforcement authorities in the period 2000–2003, see *Chitayev and Chitayev v. Russia* (no. 59334/00, §§ 97-98, 18 January 2007).

B. Domestic law

1. Criminal-law remedies against ill-treatment

(a) Applicable criminal offences

89. Abuse of office associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment (Article 286 § 3 of the Criminal Code).

(b) Investigation of criminal offences

90. The Code of Criminal Procedure of the Russian Federation, in force since July 2002 (the CCrP), establishes that a criminal investigation may be initiated by an investigator or prosecutor upon the complaint of an individual (Articles 140 and 146). Within three days after receiving such complaint the investigator or prosecutor must carry out a preliminary inquiry and take one of the following decisions: (1) to open criminal proceedings if there are reasons to believe that a crime has been committed; (2) to refuse to open criminal proceedings if the inquiry reveals that there are no grounds to initiate a criminal investigation; or (3) to refer the complaint to the competent investigative authority. The complainant must be notified of any decision taken.

2. Disclosure of information concerning the preliminary investigation

91. Article 161 of the CCrP provides that data from the preliminary investigation cannot be disclosed. Under Article 161 § 3, information from the investigation file may be divulged with the permission of a prosecutor or investigator and only in so far as it does not infringe the rights and lawful interests of the participants in the criminal proceedings and does not prejudice the investigation. It is prohibited to divulge information about the private life of the participants in the criminal proceedings without their permission.

3. Provisions pertaining to arrest and detention

92. Article 22 § 1 of the Constitution of the Russian Federation stipulates that everyone has the right to liberty and security. Arrest, placement in custody and custodial detention are permissible only on the basis of a court order. The term during which a person may be detained prior to obtaining such an order cannot exceed forty-eight hours (Article 22 § 2 of the Constitution). The same principle is proclaimed in Article 10 of the CCrP, which provides that no one can be arrested or remanded in custody unlawfully, in the absence of a court order and for a period exceeding forty eight hours.

93. Under Article 91 of the CCrP, an investigating authority can arrest a person on suspicion of having committed a criminal offence punishable by imprisonment (i) at the time of the offence or immediately thereafter; (ii) if eyewitnesses pointed to him as the perpetrator of the crime; or (iii) if the suspect bore or was in possession of evident traces of the crime or if such traces were found on his clothes or at his home.

94. Within three hours after the delivery of a suspect to an investigating authority, a record of the arrest is to be drawn up, indicating the time and date of its compilation, as well as the date, time, place and grounds for a person's arrest and other relevant information (Article 92 §§ 1 and 2). A prosecutor is to be informed in writing about the arrest within twelve hours and the suspect is to be granted access to a lawyer and interviewed (Article 91 §§ 3 and 4). If no court order to place the person in custody or to extend his arrest is issued or received within forty eight hours, the detained suspect is to be immediately released (Article 94 §§ 2 and 3). Upon release, he is to be provided with a certificate indicating the authority which had arrested him, the date, time, place and legal grounds for detention, as well as the date, time and grounds for the release (Article 94 § 5).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

95. The applicant complained that he had been subjected to torture and that the authorities had failed to carry out an effective investigation into his allegations, in breach of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

96. The Government argued that the applicant's complaint was inadmissible for failure to exhaust domestic remedies because the domestic investigation into his complaint had not been completed. On the merits, they submitted that the investigation had not established that the applicant had been subjected to inhuman or degrading treatment by State agents. The applicant's statement that his abductors had been FSB agents was based on his assumptions. Although the abductors had allegedly mentioned that they were from the FSB, there was no evidence to support that submission. The abductors had not introduced themselves, had not produced any documents

or indicated the purpose of their intrusion. Moreover, according to witness' statements, the UAZ vehicles used by the abductors did not have registration plates or other identification. The fact that the abductors were wearing camouflage uniforms or were armed did not mean that they were State agents. A number of rebel fighters had passed themselves off as members of Russian law-enforcement authorities.

97. The Government further stated that, given that the applicant had been released for a ransom, it was clear that money was the only reason for his abduction. Moreover, one of his relatives had mentioned that some money and belongings had been missing after the intruders had taken the applicant away. Furthermore, the applicant's submissions concerning the circumstances of his abduction were contradictory. Whilst he had stated to the domestic authorities that the abductors had taken him to a hospital, in his application form he submitted that he had first been examined by a doctor on 3 December 2003. It remained unclear why the applicant had not applied to a hospital immediately after his release, if he had the serious health issues he described. In any event, a forensic examination of the applicant could not establish the origin of his injuries.

98. As to the investigation conducted by the domestic authorities, the Government stressed that it was not an obligation of result but one of means. The investigating authorities had taken a significant number of investigative steps. They had interviewed the applicant's relatives and neighbours and checked his allegation that he had been detained in ORB-2. However, that submission had not been confirmed. Moreover, the applicant had hampered the investigation by failing to disclose the identity of his relative who had participated in his release and by hiding himself from the investigation, which had entailed, among other things, the belated grant of victim status to him.

99. The applicant contested the Government's preliminary objection, claiming that the investigation into his ill-treatment had been ineffective. He stated that the fact that his abductors had worn uniforms with insignia, carried specific arms usually used by members of State armed forces, and had been equipped with special means of communication, proved that they were State agents. Moreover, their actions had been well-coordinated and indicative of strict discipline and subordination. The abductors had spoken unaccented Russian and had used specific military terms and orders. The places of the applicant's detention had been equipped with telephone communication facilities. There had been armoured vehicles and helicopters and the applicant had also heard shooting outside. In the applicant's submission, it was hardly feasible that private persons could have kept him in detention and tortured him, without the knowledge of State officials, on the premises of ORB-2, which were, moreover, only 500 metres away from the premises of the Prosecutor General's Office, the FSB and the Government of the Chechen Republic.

100. As regards the allegedly lucrative purpose of his detention and torture, the applicant stressed that he had been tortured with a view to obtaining information on Chechen rebel fighters, because his abductors had considered that his previous job in law-enforcement agencies of the Chechen Republic under the Maskhadov regime was an indication of his support for the rebels. They had never asked him about his own money or income or the property of his family, as they would have done if they had abducted him solely to obtain a ransom. According to the applicant, he had been released for ransom because his abductors had received no useful information from him and had simply used that opportunity to demand some money.

101. The applicant further stated that he had never hidden from the investigation. After his release he had stayed at his father's house for over two weeks and had been visited there by local police officer D., so the authorities knew his whereabouts but had done nothing in that period of time. Immediately upon his release the applicant had been afraid to apply to hospitals in the Chechen Republic. He had taken painkillers and antibiotics on his own. Moreover, fearing for his life, he had had to stay at night with his relatives and not in his father's house.

102. As to the investigation, the applicant asserted that it was being conducted formalistically and without any genuine determination to identify the perpetrators. Contrary to the Government's submission, his medical examination had not been carried out. The clothes in which he had been abducted and tortured had not been appended to the criminal file as material evidence and had never been examined. When the applicant was interviewed in March 2005, the investigator had refused to include in the interview record a significant number of details concerning the applicant's abduction, saying that it had been irrelevant and that, in any event, his superiors would not let him solve the crime and punish those responsible. The hypothesis of ORB-2 officials' involvement in the applicant's abduction had not been verified. Moreover, at the end of 2003 the investigators had tried to obtain the applicant's consent to closing the investigation in case no. 50127 and to the archiving of the file. Even though the applicant had refused to agree, the investigation had been suspended on numerous occasions. The investigators had been constantly refusing the applicant access to the case-file materials and had, either overtly or in substance, disregarded all his requests concerning the conduct of the investigation.

B. The Court's assessment

1. Admissibility

103. The Government argued that the investigation into the applicant's allegations of torture was pending and invited the Court to dismiss his

complaints under Article 3 for failure to exhaust domestic remedies. The applicant challenged their submission by stating that the investigation had proved to be ineffective.

104. The Court notes that the applicant's relatives immediately complained about his abduction to the district prosecutor's office (see paragraph 39 above) and that upon his release the applicant raised before the same authority his complaint about the alleged torture (see paragraphs 56 and 57 above). It transpires that both complaints were examined within the framework of criminal case no. 50127. Bearing in mind that the circumstances of the applicant's abduction and alleged ill-treatment were closely interrelated, the Court does not find it unreasonable that they were investigated within the same criminal case. It notes that the proceedings in case no. 50127 have been pending since 1 November 2003. The Government and the applicant dispute the effectiveness of the investigation.

105. The Court considers that the Government's objection raises issues concerning the effectiveness of the investigation which are closely linked to the merits of the applicant's complaints. It thus decides to join this objection to the merits of the case and considers that the issue falls to be examined below.

2. Merits

(a) Effectiveness of the investigation

(i) General principles

106. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

107. The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their

decisions (see *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006, with further references). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, etc. (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. The investigation into the alleged ill-treatment must be prompt. Lastly, there must be a sufficient element of public scrutiny of the investigation or its results; in particular, in all cases, the complainant must be afforded effective access to the investigatory procedure (see, among many other authorities, *Mikheyev*, cited above, §§ 108-110, and *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 137, ECHR 2004-IV (extracts)).

(ii) Application of these principles to the present case

108. Turning to the circumstances of the present case, the Court considers that the applicant's detailed complaints about the alleged torture, accompanied by medical documents (see paragraphs 56 and 57 above), amounted to an "arguable claim" of ill-treatment at the hands of State agents and warranted an investigation by the authorities in conformity with Article 3 of the Convention.

109. As the Court has observed above, it transpires that the applicant's complaint about the alleged torture was being examined within the framework of the criminal case previously opened in respect of his abduction. Against this background and bearing in mind that the circumstances concerning the abduction and the alleged torture were closely interrelated, in assessing the quality of the investigation the Court will have regard to the proceedings in case no. 50127 in their entirety.

110. The Court would also note at the outset that the Government did not disclose any documents from investigation file no. 50127. It therefore has to assess the effectiveness of the investigation on the basis of the few documents submitted by the applicant and the information about its progress presented by the Government.

111. In the Government's submission, in the framework of criminal case no. 50127 the investigators interviewed the applicant, his parents and several neighbours, granted the applicant victim status and arranged for his medical examination. However, in view of their refusal to provide any documents from the file, it is impossible for the Court to establish not only how promptly those measures were taken, but whether they were taken at all. The Court finds this state of affairs particularly deplorable, as regards the applicant's medical examination, because such medical evidence plays a

decisive role in establishing the relevant facts both in the domestic proceedings and in the proceedings before it (see *Artyomov v. Russia*, no. 14146/02, § 154, 27 May 2010).

112. It furthermore appears that a number of crucial investigative steps were never taken. In particular, there is no indication that the investigators interviewed the applicant's two sisters and a brother, who had witnessed his abduction and could have provided information about the abductors' clothing, conduct, vehicles or other details which could have been relevant to the investigation. There is no evidence that any steps were taken to identify the abductors' vehicles or their itinerary, nor to find possible witnesses of their passage; the applicant had been apprehended in broad daylight and the possibility that the convoy of five UAZ vehicles could have been seen on its way from the applicant's house could not be regarded as completely without foundation.

113. In the same vein, it does not appear that the investigators made any attempts to interview the local police officers who had been on duty at the time of the abduction and whom the abductors had allegedly ordered over their walkie-talkies not to intervene. Nothing in the material available to the Court suggests that any attempts have been made to verify the applicant's submission that he was detained on the premises of ORB-2 and then at the Khankala military base. Nor does it transpire that the investigators ordered a forensic examination of clothes in which the applicant had been tortured. Moreover, assuming that the applicant's parents were interviewed by the investigators, it transpires from the Government's summary of their statements that the interviewing took place shortly after the applicant's abduction (see paragraph 77 above). There is nothing to suggest that any of the applicant's relatives were questioned after his release, although they could have furnished information relevant to the establishment of the facts concerning the applicant's alleged torture, such as, for example, his state of health upon release.

114. In the Court's opinion, the above-mentioned omissions of the investigation critically undermined its ability to establish the relevant facts. In fact, it is struck by the manifestly disproportionate response of the authorities to the serious allegations of ill-treatment made by the applicant, which, in the Court's opinion, can be characterised only as a lack of genuine determination to elucidate the relevant circumstances and to identify and punish those responsible.

115. The Government claimed that the applicant himself had hampered the investigation by "hiding" from the authorities and refusing to disclose the name of the relative who had participated in his release. On a more general level, the Court is prepared to accept that the lack of cooperation on the part of a victim of alleged ill-treatment and, in particular, his or her refusal to appear before an investigating authority or to provide information, may negatively affect the investigation's capacity to establish all relevant

circumstances. However, in the present case it cannot accept the Government's argument as convincing for the following reasons.

116. In the first place, it is observed that in his complaints about torture the applicant informed the authorities that he feared for his safety because his submissions were incriminating for State officials and explicitly asked the district prosecutor's office for protection. However, it does not appear that his request entailed any reaction on the part of the latter authority. In this connection the Court notes that it has already emphasised the need to take into account the particular vulnerability of victims of torture and ill-treatment (see, among other authorities, *Aksoy v. Turkey*, 18 December 1996, §§ 97–98, *Reports* 1996-VI).

117. In any event, in his complaints the applicant stressed that he was ready to provide further information at the request of the authorities, should they consider it necessary. Moreover, the Court is perplexed by the fact that the investigators took no steps to verify the extremely detailed information already contained in the applicant's written complaints and appear to have confined their investigating activities to occasional summoning of the applicant to the district prosecutor's office. More strikingly, it transpires that even after he had complied with their request to appear, there is no indication that a new impetus was given to the investigation or that the investigators took any further investigative steps. In the Court's view, the same considerations apply to the applicant's refusal to communicate information on his relative.

118. Having regard to the applicant's repeated and mostly unanswered requests to be provided with information on the progress in the investigation (see paragraphs 58, 60, 68 and 70 above), the Court has strong doubts as to whether the authorities secured him sufficient access to the investigatory procedure. In this connection it is also significant for the Court that, despite his repeated requests, the applicant was granted victim status only after he had complained about the investigator's refusal to do so to the District Court (see paragraphs 65–67 above).

119. Lastly, the Court notes that the investigation was adjourned and resumed on numerous occasions. It also transpires that there were lengthy periods of inactivity on the part of the investigating authorities when no investigative measures were being taken.

120. Having regard to the Government's preliminary objection that was joined to the merits of the complaint, inasmuch as it concerns the fact that the domestic investigation is still pending, the Court notes that the investigation, having been repeatedly suspended and resumed and plagued by critical delays and omissions, has been pending for many years with no tangible results.

121. Having regard to its findings above, the Court dismisses the Government's preliminary objection and concludes that the authorities failed to carry out a thorough and effective investigation into the applicant's

allegations of ill-treatment. Accordingly, there has been a violation of Article 3 of the Convention on that account.

(b) The applicant's alleged ill-treatment at the hands of the authorities

(i) General principles

122. The Court reiterates that Article 3, taken together with Article 1 of the Convention, implies a positive obligation on the States to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI). Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-111, Series A no. 241-A, and *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

123. It is further reiterated that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has adopted the standard of proof "beyond reasonable doubt", but has added that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita*, cited above, § 121).

124. In cases in which there are conflicting accounts of events, the Court is inevitably confronted when establishing the facts with the same difficulties as those faced by any first-instance court. When the respondent Government have exclusive access to information able to corroborate or refute the applicant's allegations, any lack of cooperation by the Government without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ruslan Umarov v. Russia*, no. 12712/02, § 82, 3 July 2008, and *Taniş and Others v. Turkey*, no. 65899/01, § 160, ECHR 2005–VIII).

125. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see *Gäfgen v. Germany* [GC], no. 22978/05, § 93, ECHR 2010-..., with further references).

(ii) The Court's assessment of evidence

126. Turning to the circumstances of the case, the Court notes that the applicant alleged that on 23 October 2003 he had been abducted by a large group of State agents, who had held him in unacknowledged detention and had tortured him on a permanent basis until his release on 7 November 2003, with a view to obtaining information on, among other things, Chechen rebel fighters.

127. The Government did not challenge the applicant's description of the events concerning the abduction and ill-treatment but denied that State agents had been implicated in them, referring to the absence of conclusions from the ongoing investigation.

128. In that connection, the Court reiterates its findings in paragraphs 111–121 above to the effect that the investigation was beset by critical flaws and omissions which rendered it ineffective and incapable of establishing the circumstances of the applicant's alleged ill-treatment.

129. The Court also observes that, despite its specific requests for a copy of the investigation file concerning the applicant's abduction and ill-treatment, the Government refused to produce any documents from it, referring to Article 161 of the Code of Criminal Procedure and stating, among other things, that the file contained sensitive information of a military nature. In this connection the Court reiterates that it has already found this explanation insufficient to justify the withholding of key information requested by it (see, among other authorities, *Imakayeva v. Russia*, no. 7615/02, § 123, ECHR 2006-XIII (extracts)).

130. In view of this refusal and bearing in mind the principles referred to above, the Court finds that it can draw inferences from the Government's conduct in respect of the well-foundedness of the applicant's allegations.

131. Turning to the applicant's submissions, the Court notes that he presented a very detailed description of his abduction and the ensuing detention and alleged ill-treatment.

132. As regards the abduction, he referred, among other things, to such specific details as the insignia of Russian military forces on the camouflage uniforms of the abductors, the fact that they had worn bulletproof jackets and special helmets, forming part of the usual equipment of the members of special-purpose squads, and that they had been equipped with walkie-talkies over which they had communicated among themselves and given orders to the local police (see paragraphs 9 and 10 above). The abductors' vehicles, whose presence at the crime scene appears to have been confirmed by witnesses referred to by the Government (see paragraphs 78 and 79 above), were said to have been armoured and equipped with loopholes for riflemen and containers for radio-frequency suppression (see paragraph 12 above).

133. It follows from the applicant's submissions that the abductors' actions were well-coordinated and indicative of subordination and strict discipline, that they were referring to each other as “Number 6” or

"Number 12" and proceeded to check the identity papers of the applicant and his relatives (see paragraph 10 above).

134. It is also significant for the Court that the applicant's five relatives, who had witnessed his abduction, referred to all the elements enumerated above in their detailed written statements submitted to it (see paragraph 37 above).

135. The applicant's account concerning his ensuing detention and ill-treatment remained as detailed and consistent as his previously mentioned submissions (see paragraphs 14–35 above), with the applicant referring to the specific equipment of the premises where he was held, military terms and expressions used by his torturers, the nature of the questions put to him during interrogations and other relevant details (see, in particular, paragraphs 16, 17, 22, 30 and 31 above). The applicant's account was, moreover, accompanied by a detailed sketch of the area where he had been presumably detained, with the enclosed description of the checkpoints and other buildings and objects located there, as well as his description of the itinerary presumably taken by his abductors (see paragraph 37 above). The Court also does not lose sight of the fact that the applicant's father's submission that he had gone to the building of the UBOP to search for his son and had been chased away by a number of officials appears to coincide with the applicant's statement that his transfer to the second detention facility had been prompted by his relatives' visit and with his description of how it had occurred (see paragraph 23 and 43 above).

136. The Court further observes that, according to the applicant's submissions and statements by his relatives, upon his release he had bruises, burns and cuts all over his body, suffered from insomnia and severe headaches and could barely walk on his own (see paragraphs 46–47 above). He also furnished a number of medical certificates dated between 3 December 2003 and 10 March 2005 and attesting to scars on his head, hip and wrist, numbness in the extremities, after-effects of craniocerebral injury, brain contusion, post-traumatic osteochondrosis of the thorax region, chronic prostatitis, encephalopathy and a number of further illnesses (see paragraphs 48–52 above). It is noted that in that list, besides scars on different parts of his body, some illnesses were explicitly referred to as "post-traumatic".

137. Having regard to the applicant's submissions and the documents furnished in support of his allegations, the Court finds that he presented a generally coherent and convincing picture of his abduction, detention and ill-treatment at the hands of State agents and considers that his submissions remained consistent both before it and before the domestic authorities. It further notes that the Government did not dispute the veracity of the applicant's submissions. In so far as they claimed that the applicant had submitted to the investigators that the abductors had taken him to a hospital,

they did not produce a copy of the interview record in question. This submission is therefore without relevance for the Court's analysis.

138. It is further noted that the Government did not contest the accuracy of the statements by the applicant's relatives nor the authenticity of the medical documents furnished by him. They likewise did not argue that he had sustained his injuries before or after his abduction and detention. Instead, they merely referred to the absence of findings of the domestic investigation as to the circumstances in which the applicant had been ill-treated.

139. In this connection the Court reiterates that, although the investigation has been pending for over six years, it has failed to produce any tangible results.

140. It further reiterates its settled case-law to the effect that where an applicant makes out a prima facie case and the Court is prevented from reaching factual conclusions owing to a lack of relevant documents, it is for the Government to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicant, or to provide a satisfactory and convincing explanation of how the events in question occurred. The burden of proof is thus shifted to the Government and if they fail in their arguments issues will arise under Article 2 and/or Article 3 (see *Toğcu v. Turkey*, no. 27601/95, § 95, 31 May 2005, and *Akkum and Others v. Turkey*, no. 21894/93, § 211, ECHR 2005-II (extracts)).

141. The Court notes that the Government refused to provide a copy of the criminal case file at its request and that it found the reasons for their refusal unconvincing. The Court finds equally unconvincing their submission that the applicant had been abducted and ill-treated for ransom, particularly in the absence of an indication that this theory was at any time genuinely pursued by the domestic investigating authorities.

142. In the light of the foregoing, the Court is satisfied that the applicant has made a prima facie case that he was abducted and ill-treated by State agents. Drawing inferences from the Government's failure to submit the requested documents and to provide a plausible explanation as to what had occurred to the applicant after his abduction and how he had sustained his injuries, the Court finds that the applicant was kidnapped and held in unacknowledged detention by State agents, who ill-treated him as described above.

(iii) Assessment of the level of severity of the ill-treatment

143. The Court reiterates that in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to

deliberate inhuman treatment causing very serious and cruel suffering. The Court has previously had before it cases in which it has found that there has been treatment which could only be described as torture (see *Aksoy*, cited above, § 64; *Aydın v. Turkey*, 25 September 1997, §§ 83-84, *Reports* 1997-VI; *Selmouni v. France* [GC], no. 25803/94, § 105, ECHR 1999-V, and, more recently, *Maslova and Nalbandov v. Russia*, no. 839/02, §§ 106-108, ECHR 2008-... (extracts), and *Akulinin and Babich v. Russia*, no. 5742/02, § 44, 2 October 2008). The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. In any event in respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Selmouni*, cited above, § 99).

144. The Court finds that in the instant case the applicant was kept in a permanent state of physical pain and anxiety owing to his uncertainty about his fate and to the level of violence to which he was subjected throughout his unacknowledged detention. The existence of physical pain and suffering is attested by the medical certificates and the statements of the applicant and his relatives concerning his ill-treatment and its after-effects. In particular, the applicant submitted that he had been severely beaten and subjected to other forms of ill-treatment which caused injuries and other serious health problems, this not being refuted by the Government. The sequence of the events also suggests that the pain and suffering were inflicted on him intentionally, in particular, with a view to extracting from him information on his alleged connections to paramilitary groups active in the Chechen Republic.

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

146. Accordingly, there has also been a violation of Article 3 on that account.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

147. The applicant complained that he had been unlawfully detained for fifteen days in breach of Article 5 of the Convention. Article 5 reads, in so far as relevant:

> "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;

...

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

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

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

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

A. Submissions by the parties

148. The Government submitted that the investigation had obtained no evidence that the applicant had been deprived of liberty by State agents in breach of Article 5 of the Convention. They claimed that the fact that there were no records of the applicant's "arrest" and ensuing "detention", and that there had been no judicial authorisation for such measures, indicated that he had been abducted.

149. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

150. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

151. The Court notes that it has established that after his arrest on 23 October 2003 the applicant was held in unacknowledged detention until his release on 8 November 2003.

152. It has frequently emphasised the fundamental importance of the guarantees contained in Article 5 to secure the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. In that context, it has repeatedly stressed that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrary detention. To minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure. The unacknowledged detention of an individual is a complete negation of these guarantees and discloses a most grave violation of Article 5 (see, among other authorities, *Çakıcı v. Turkey* [GC], no. 23657/94, § 104, ECHR 1999-IV, and *Chitayev and Chitayev*, cited above, § 172).

153. Having regard to its above finding that the applicant was detained by the authorities on 23 October 2003 and the fact that the Government presented no explanation about his detention from that date until his release on 8 November 2003, or any documents by way of justification, the Court concludes that during that period the applicant was held in unacknowledged detention in complete disregard of the safeguards enshrined in Article 5, and that this constitutes a particularly grave violation of his right to liberty and security under Article 5 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

154. The applicant complained that there had been no effective remedies in respect of the violations of his rights secured by Articles 3 and 5 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."

A. Submissions by the parties

155. The Government argued that the applicant had effective remedies at his disposal, as required by Article 13 of the Convention. In particular, he had been granted victim status, which had enabled to him to participate effectively in the investigation concerning the alleged ill-treatment. Furthermore, the applicant had successfully applied to a higher-ranking prosecutor, who had reopened the investigation into his ill-treatment complaint, and to a court, which issued a decision on the applicant's complaint on 17 March 2005. The Government also referred to favourable

court decisions issued in similar circumstances, without providing copies of them. In their submission, the applicant could also have applied to civil courts for compensation under Articles 151 and 1069 of the Civil Code. In that connection the Government referred to a successful example of the use of that remedy by an unnamed person, without providing a copy of the related decision.

156. The applicant contested that objection, stating that the criminal investigation had proved to be ineffective and that his complaints to that effect had been futile.

B. The Court's assessment

1. Admissibility

157. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

158. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. Given the fundamental importance of the right to protection of life, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and infliction of treatment contrary to Article 3, including effective access for the complainant to the investigation procedure leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV, and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005).

159. The Court refers to its above findings that the applicant had an arguable claim that he had been ill-treated by the representatives of the authorities and that the domestic investigation into that matter had been inadequate (see paragraphs 108 and 121 above). Consequently, any other remedy available to the applicant, including a claim for damages, had limited chances of success. While the civil courts have the capacity to make an independent assessment of fact, in practice, the weight attached to preliminary criminal enquiries is so important that even the most convincing evidence to the contrary furnished by a plaintiff would often be dismissed as "irrelevant" (see *Chitayev and Chitayev*, cited above, § 202; *Khadisov and*

Tsechoyev v. Russia, no. 21519/02, § 160, 5 February 2009; and *Menesheva v. Russia*, no. 59261/00, § 76, ECHR 2006-III).

160. The Court therefore finds that there has been a violation of Article 13 in conjunction with Article 3 of the Convention.

161. As regards the applicant's reference to Article 5 of the Convention, the Court notes that according to its established case-law the more specific guarantees of Article 5 §§ 4 and 5, being a *lex specialis* in relation to Article 13, absorb its requirements (see, among other authorities, *Medova v. Russia*, no. 25385/04, § 133, ECHR 2009-... (extracts)). It also notes that it has found a violation of Article 5 of the Convention as a whole on account of the applicant's unacknowledged detention. Accordingly, it considers that no separate issue arises in respect of Article 13 read in conjunction with Article 5 of the Convention in the circumstances of the present case.

IV. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S INTIMIDATION

162. In his observations on the admissibility and merits of the case the applicant complained that he had been intimidated by State officials in connection with his application to the Court, in breach of Article 34 of the Convention, the relevant parts of which provide:

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

A. Submissions by the parties

163. The Government made no comments concerning the applicant's submissions about the alleged intimidation.

164. The applicant maintained the complaint.

B. The Court's assessment

165. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports* 1996-IV). In this context, "pressure" includes not only direct coercion and flagrant acts of intimidation but also other improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing

a Convention remedy (see *Kurt v. Turkey*, 25 May 1998, § 159, *Reports* 1998-III).

166. Whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see *Akdivar and Others* and *Kurt*, both cited above, §§ 105 and 160 respectively).

167. Turning to the circumstances of the present case, the Court recalls that it has found that the applicant was a victim of particularly severe ill-treatment at the hands of State authorities which, as it has established, amounted to torture. Against this background it cannot exclude that he could feel vulnerable and be susceptible to eventual influence on him by representatives of State authorities. However, it is unable not only to find that the alleged instances of pressure were connected to his application to this Court but also to establish whether they took place at all.

168. In the first place the Court notes that, in the applicant's own submission, the majority of the alleged contacts between him and the authorities appear to have concerned the domestic investigation into his abduction and ill-treatment (see paragraphs 84–87 above). More importantly, the Court cannot but observe that the applicant's submissions concerning those contacts are very vague and confusing. He was able neither to indicate particular dates when the contacts had allegedly taken place, nor to give any further details concerning them, this being even more striking given his extremely detailed and consistent submissions concerning the circumstances of his ill-treatment and detention, as examined by the Court above. It is also noted that, although, in his submission, some of the alleged incidents were witnessed by third persons, including his relatives, no evidence, such as statements from those persons, was adduced to confirm his allegations. Lastly, the Court finds it surprising that, although his statements referring to the alleged intimidation had been made in 2005 and 2006, it was only two years later that he brought the issue to its attention, which fact also does not add to the overall credibility of his submissions.

169. In the light of the foregoing, the Court considers that an alleged breach of the State's obligation under Article 34 of the Convention has not been established.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

170. Lastly, the applicant complained under Articles 8 and 14 of the Convention that his abductors had unlawfully searched his house and that he had been discriminated against in the enjoyment of his Convention rights,

the violations of which he complained having occurred because of his residence in Chechnya and his ethnic background as a Chechen.

171. As regards the applicant's complaint under Article 8, the Court notes that in his complaints to the investigators, whilst providing an extremely detailed account of the alleged ill-treatment, the applicant barely mentioned the alleged unlawful search of his home on 23 October 2003. It is thus doubtful that he properly exhausted the domestic remedies in respect of that complaint. In any event, even assuming that the applicant had no effective remedies to exhaust, he raised this complaint before the Court for the first time in his application form of 7 May 2005, that is more than six months after the date of the alleged violation.

172. As to the applicant's complaint under Article 14, it is observed that no evidence has been submitted to the Court that suggests that the applicant was treated differently from persons in an analogous situation without objective and reasonable justification, or that he has ever raised this complaint before the domestic authorities. It thus finds that this complaint has not been substantiated.

173. It follows that the applicant's complaints under Articles 8 and 14 should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

174. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

175. The applicant claimed 1,500 United States dollars (USD) in respect of pecuniary damage, submitting that it was the amount his relatives had paid to State agents for his release.

176. The Government argued that the applicant had failed to adduce any documents to confirm that that amount had been paid and that, even if that sum had been paid, there was no evidence that the abductors were State agents. Lastly, they stated that extortion of a ransom was a crime and the applicant was not therefore to be compensated for it.

177. The Court considers that the applicant's claim is unsubstantiated and that it has therefore to be dismissed.

B. Non-pecuniary damage

178. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage for the mental and physical suffering which he had experienced because of his unlawful arrest, detention and ill-treatment and which he had continued to experience after his release, owing to the authorities' failure to investigate his related complaints.

179. The Government argued that, should the Court find a breach of the Convention in the applicant's case, a finding of a violation would constitute appropriate just satisfaction and that, in any event, his claims were excessive.

180. The Court has found a violation of Articles 3 and 13 of the Convention on account of the applicant's torture and the lack of an effective investigation into the matter. It also established that the applicant had been deprived of liberty in violation of Article 5 of the Convention. The Court thus accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations. It awards the applicant EUR 55,000, plus any tax that may be chargeable to him.

C. The applicant's request for investigation

181. The applicant also requested, referring to Article 41 of the Convention, that "an independent investigation which would comply with the requirements of the Convention be conducted" into his abduction and ill-treatment. He relied in this connection on the case of *Assanidze v. Georgia* ([GC], no. 71503/01, §§ 202-203, ECHR 2004-II).

182. The Government stated that an independent investigation complying with the Convention requirements was already being conducted at the domestic level.

183. The Court notes that in several similar cases it has decided that it was most appropriate to leave it to the respondent Government to choose the means to be used in the domestic legal order in order to discharge their legal obligation under Article 46 of the Convention (see, among other authorities, *Kukayev v. Russia*, no. 29361/02, §§ 131-134, 15 November 2007; *Medova,* cited above, §§ 142-143, and *Mutsolgova and Others v. Russia*, no. 2952/06, § 168, 1 April 2010). It does not see any exceptional circumstances which would lead it to reach a different conclusion in the present case.

D. Costs and expenses

184. The applicant was represented by lawyers from the NGO EHRAC/Memorial Human Rights Centre. The aggregate claim in respect of costs and expenses related to the applicant's legal representation

amounted to 2,432.40 pounds sterling (GBP), to be paid into the representatives' bank account in the United Kingdom. They submitted the following breakdown of costs:

(a) GBP 1,000 for preparing the application form, reviewing and providing comments on the reply to the Government's observations, for ten hours of work by Mr P. Leach at a rate of GBP 100 per hour;

(b) GBP 1,257.40 for translation costs, as certified by invoices;

(c) GBP 175 for administrative and postal costs.

185. The Government pointed out that the applicant should be entitled to the reimbursement of his costs and expenses only in so far as it had been shown that they had actually been incurred and were reasonable as to quantum (see *Skorobogatova v. Russia*, no. 33914/02, § 61, 1 December 2005).

186. The Court has to establish first whether the costs and expenses indicated by the applicant were actually incurred and, second, whether they were necessary (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

187. Having regard to the details of the information submitted by the applicant, the Court is satisfied that these rates are reasonable. It notes, however, that the applicant failed to furnish any evidence, such as for example, fee notes, in respect of Mr Leach's services and that he likewise failed to substantiate his claim for administrative and postal costs. As to the remainder of the applicant's claims under this head, the Court is satisfied that those costs and expenses have been actually and necessarily incurred.

188. Having regard to the details of the claims submitted by the applicant, the Court awards him the amount of EUR 1,957, together with any value-added tax that may be chargeable to the applicant, the net award to be paid into the representatives' bank account in the United Kingdom, as identified by the applicant.

E. Default interest

189. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the Government's objection as to the applicant's failure to exhaust domestic remedies in respect of his complaint under Article 3 of the Convention and rejects it;

2. *Declares* the complaints under Articles 3, 5 and 13 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure to conduct an effective investigation into the applicant's allegations of ill-treatment;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment inflicted on the applicant by State agents;

5. *Holds* that there has been a violation of Article 5 of the Convention;

6. *Holds* that there has been a violation of Article 13 in conjunction with Article 3 of the Convention;

7. *Holds* that no separate issue arises under Article 13 of the Convention as regards the alleged violation of Article 5 of the Convention;

8. *Holds* that the respondent State has not failed to comply with its obligation under Article 34 of the Convention in respect of the applicant's alleged intimidation;

9. *Holds*

(a) the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 55,000 (fifty-five thousand euros) plus any tax that may be chargeable to the applicant in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of payment;

(ii) EUR 1,957 (one thousand nine hundred and fifty-seven euros) plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the representatives' bank account in the United Kingdom;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President