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

FORMER SECTION II

CASE OF SHAMAYEV AND OTHERS v. GEORGIA AND RUSSIA

(Application no. 36378/02)

JUDGMENT

STRASBOURG

12 April 2005

FINAL

12/10/2005

In the case of Shamayev and Others v. Georgia and Russia,

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

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr L. LOUCAIDES,
Mr K. JUNGWIERT,
Mr V. BUTKEVYCH,
Mr M. UGREKHELIDZE,
Mr A. KOVLER, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 15 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 36378/02) against Georgia and 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 thirteen nationals of those States, Mr Abdul-Vakhab Shamayev, Mr Rizvan (or Rezvan) Vissitov, Mr Khusein Aziev, Mr Adlan (or Aslan) Adayev (or Adiev), Mr Khusein Khadjiev, Mr Ruslan Gelogayev, Mr Akhmed Magomadov, Mr Khamzat Issayev, Mr Robinzon Margoshvili, Mr Giorgi Kushtanashvili, Mr Aslambek Khanchukayev, Mr Islam Khashiev *alias* Rustam Elikhadjiev *alias* Bekkhan Mulkoyev and Mr Timur (or Ruslan) Baymurzayev *alias* Khusein Alkhanov (see paragraphs 54 and 55 below) of Chechen and Kist[1] origin ("the applicants"), on 4 and 9 October 2002. The applications of Mr Khanchukayev and Mr Adayev reached the Court on 9 October 2002. They were joined to the other applicants' complaints, which were lodged on 4 October 2002.

2. The applicants, seven of whom had been granted legal aid limited to the admissibility stage, were represented before the Court by Ms L. Mukhashavria and Ms M. Dzamukashvili (authorities to act received on 9 October and 22 November 2002), lawyers who both worked for the association "Article 42 of the Constitution" in Tbilisi. The above-mentioned seven applicants were also represented by Ms N. Kintsurashvili, a lawyer working for the same association (authority dating from 4 August 2003). The lawyers were assisted by Ms V. Vandova, an adviser.

3. The Georgian Government were represented by Mr L. Chelidze, then by Ms T. Burdjaliani, who was replaced from 9 August 2004 by Ms E. Gureshidze, General Representative of the Georgian Government

1. A Chechen ethnic group living in Georgia.

before the Court. The Russian Government were represented by Mr P. Laptev, Representative of the Russian Federation at the Court.

4. The applicants submitted, in particular, that their transfer to the Russian authorities would be contrary to Articles 2 and 3 of the Convention. They asked that the extradition proceedings against them be suspended, that the Russian authorities provide information on what would happen to them in Russia and that their complaints under Articles 2, 3, 6 and 13 of the Convention be examined by the Court.

A. Admissibility proceedings

5. Between 3.35 p.m. and 4.20 p.m. on 4 October 2002 the applicants' representatives sent the Court, through a series of interrupted faxes containing the names of eleven applicants (Mr Adayev and Mr Khanchukayev were not mentioned – see paragraph 1 above), a request for application of Rule 39 of the Rules of Court.

6. At 5 p.m. on the same date (8 p.m. in Tbilisi), given that the President of the Second Section was unavailable, the Vice-President of the Section (Rule 12) decided to indicate to the Georgian Government, in application of Rule 39, that it would be in the interests of the parties and the proper conduct of the proceedings before the Court not to extradite the eleven applicants to Russia until the Chamber had had an opportunity to examine the application in the light of the information which the Georgian Government would provide. The latter were invited to submit information on the grounds for the applicants' extradition and the measures that the Russian Government intended to take in their regard should the extradition go ahead. It was also decided to give notice, as a matter of urgency, of the introduction of the application and its object to the Russian Government (Rule 40).

7. At 6 p.m., the Registry of the Court telephoned the General Representative of the Georgian Government, who was in Strasbourg on official business, in order to notify him of the introduction of the application and of the Court's decision. A few minutes later his assistant telephoned the Court from Tbilisi and asked that the names of the applicants be dictated to him, which they were.

8. At 6.50 p.m. the Russian Government received a fax indicating the Court's decision in respect of Russia, together with the decision taken in respect of Georgia.

9. It proved impossible to send the Court's decision to the Georgian Government by fax. At the other end of the telephone line, the technical staff at the Ministry of Justice, apparently on duty, referred alternately to electricity problems and a lack of paper in the fax machine.

10. The General Representative of the Georgian Government was re-contacted. He indicated that the Court's message had been transmitted to the

Government and promised to take the necessary steps to resolve the problem with the fax line, referring vaguely to a problem beyond his control.

11. At 7.45 p.m., following the unsuccessful attempts to send the fax, the Registry of the Court contacted the Deputy Minister of Justice with responsibility for extradition matters and for supervising the Office of the Georgian Government's General Representative before the Court, on his mobile phone, to inform him of the problems encountered and to reiterate the Court's decision. The Deputy Minister was told that, in the absence of a functioning fax line, this communication counted as official notification of the Court's decision. He took note of the decision and promised to attempt to restore the line.

12. Following a connection failure at 7.56 p.m., the letter setting out the Court's decision went through at 7.59 p.m. (10.59 p.m. in Tbilisi). According to the extradition papers, five of the applicants were handed over to the Russian authorities at Tbilisi Airport at 7.10 p.m. (10.10 p.m. in Tbilisi).

13. The application was allocated to the Second Section of the Court (Rule 52 § 1). Within that Section, the Chamber that would examine the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1. On 8 October 2002 the Vice-President of the Second Section informed that Chamber of his decision of 4 October 2002, which was approved.

14. On 22 October 2002, under Rule 47, an application against Georgia and Russia was lodged on behalf of thirteen applicants by their representatives.

15. On 23 October 2002 the Court asked the Russian Government to inform it of the name and address of the detention facilities in which the extradited applicants were being held. On 1 November 2002 the Russian Government asked the Court for written assurances that this information would remain confidential and would not be improperly divulged.

16. On 5 November 2002 the Court extended until 26 November 2002 the interim measure in respect of the eight applicants detained in Tbilisi. It also decided to examine, of its own motion under Article 5 §§ 1, 2 and 4 of the Convention, which is the *lex specialis* in matters of detention, the complaints submitted by the applicants under Articles 6 and 13, and to give notice of the application to the respondent Governments (Rule 54 § 2 (b)). It further decided to give priority to the application (Rule 41) and to make the President of the Section personally responsible for protecting the confidentiality of any information that would be submitted by the Russian Government. The latter were then re-invited to provide the address of the detention facilities in which the extradited applicants were being held and the contact details of their lawyers.

17. On 14 November 2002, in conditions of strict confidentiality, the Russian Government communicated the address of the establishment in which the extradited applicants were being held.

18. On 19 November 2002, at the Court's request, the Russian Government gave undertakings to the Court in connection with all thirteen applicants. In particular, they promised that

> "(a) the death penalty [would] not be applied to them;
> (b) their safety and health [would be] protected;
> (c) they [would be] guaranteed unhindered access to medical treatment and advice;
> (d) they [would be] guaranteed unhindered access to legal assistance and advice;
> (e) they [would be] guaranteed unhindered access to the Court and free correspondence with it; and
> (f) the Court [would have] unhindered access to the applicants, including through free correspondence with them and the possible organisation of a fact-finding mission".

19. On 20 November 2002 Ms N. Devdariani, Ombudsperson of the Georgian Republic, applied to join the proceedings as a third party (Article 36 § 2 of the Convention).

20. On 23 and 25 November 2002 the Georgian Government requested that the interim measure be lifted, on the ground that they had received the requisite assurances from the Russian Government as to the future treatment of the eight applicants if they were extradited. On 25 November they also submitted photographs of the individuals concerned. On 26 August 2003 they submitted photographs of the cells in which the non-extradited applicants were then being held. Photographs of the extradited applicants were provided by the Russian Government on 23 November 2002 and on 22 January and 15 September 2003.

21. On 26 November 2002, in the light of the undertakings given by the Russian Government on 19 November 2002, and considering that the question of compliance with those undertakings and the extradition procedure in Georgia would be examined during the subsequent proceedings, the Court decided not to extend the period of application of the interim measure indicated on 4 October 2002. In view of the sensitivity of the case, its political impact and the requests by the Governments, the Court also decided to classify all the documents in the case file as confidential *vis-à-vis* the public, in accordance with Rule 33 §§ 3 and 4 as then in force.

22. On 6 December 2002 three applicants – Mr Gelogayev, Mr Khashiev and Mr Baymurzayev – applied to the Court, requesting a stay of execution of the extradition order issued against them on 28 November 2002. On the same date the Acting President of the Section decided not to indicate the requested interim measure to the Georgian Government.

23. On 24 January 2003 Ms E. Tevdoradze, a member of the Georgian parliament, asked the Court for leave to intervene in the proceedings as a third party (Article 36 § 2 of the Convention).

24. On 17 June 2003 the Court decided to hold a hearing on the admissibility of the application and to indicate to the Russian Government, under Rule 39, that it would be in the interests of the parties and the proper conduct of the proceedings before the Court, especially the preparation of the hearing, to grant Ms Mukhashavria and Ms Dzamukashvili unhindered access to the extradited applicants. In addition, the Court dismissed the requests for leave to intervene as third parties (Article 36 § 2 of the Convention) submitted by Ms N. Devdariani and Ms E. Tevdoradze (see paragraphs 19 and 23 above).

25. By a decision of 16 September 2003, after a hearing on admissibility (Rule 54 § 3), the Chamber declared the application admissible and joined two preliminary objections by the Russian Government to the examination of the merits. The Court further decided to organise fact-finding visits to Russia and Georgia, under Article 38 § 1 (a) of the Convention and Rule 42 § 2 as then in force, with a view to establishing the facts of the case.

B. Proceedings on the merits

26. The Chamber instructed three delegates – Mr J.-P. Costa, Mr A.B. Baka and Mr V. Butkevych – to carry out an investigation in the two countries. The visit to Georgia was due to take place from 28 to 31 October 2003. On 3 October 2003, following a request by the Georgian Government, it was decided to adjourn the visit on account of campaigning for the Georgian parliamentary election, scheduled for 2 November 2003.

27. The following may be noted from the voluminous exchange of correspondence with the Russian Government to which the fact-finding visit gave rise.

28. On 30 September 2003 the Court informed the Russian Government that its delegation would visit Russia in order to hear the extradited applicants on 27 October 2003 and to see their cells in the pre-trial detention centre ("SIZO") in town B (see paragraph 53 below). As the Government raised no objections in their subsequent correspondence, preparations were made for the visit.

29. On 20 October 2003 the Russian Government produced a ruling of 14 October 2003 by the Stavropol Regional Court denying the Court access to Mr Shamayev, Mr Vissitov, Mr Adayev and Mr Khadjiev on the ground that the criminal case against them was pending before it. The ruling stated that the Court delegation would only be able to visit those persons once the judgment had been delivered and become final. It also specified that the Regional Court had established that Mr Shamayev, Mr Vissitov and Mr Adayev had never applied to the Court, while Mr Khadjiev claimed to have lodged an application with the Court against Georgia challenging his unlawful extradition, and insisted on a meeting with the judges from the Court.

30. The communication of 20 October 2003 also contained a letter dated 15 October 2003, signed by Mr Kartashov, judge at the Stavropol Regional Court, refusing the Court leave to hear Mr Aziev, the fifth extradited applicant. The judge claimed that a hearing in that applicant's case was due to be held on 29 October 2003 and that "the legislation on Russian criminal procedure [did] not allow for the question of contact between the judges of the European Court and Mr Aziev to be examined before the hearing and in any other context".

31. In submitting those documents, the Russian Government maintained that the Court's planned fact-finding visit would infringe domestic criminal legislation and required that it be postponed until such time as a final judgment had been given in the applicants' case. They added that such an approach reflected the principle of subsidiarity between national and European proceedings.

32. On 22 October 2003, taking account of this information, the Court adjourned its fact-finding visit to Russia until a later date. It nonetheless reminded the Russian Government of the provisions of Articles 34 and 38 § 1 (a) of the Convention.

33. On 7 January 2004 new dates for the visit (23-29 February 2004) were proposed to the Russian Government. They were invited to suggest, if need be, other more convenient dates by 9 January 2004. The Court emphasised that the application was being dealt with as a priority (see paragraph 16 above). The Government were also informed that if the fact of holding the visit inside the applicants' pre-trial detention centre would create security problems, a secure location could be proposed and the applicants transferred to it.

34. In their letter of 8 January 2004, the Russian Government criticised the Court's press release on the adjournment of its visit in October 2003 and pointed out that, according to the Russian Constitution, the judicial authorities (in this case, the Regional Court) were independent and that, furthermore, the Convention was based on the principle of subsidiarity.

35. On 13 January 2004 they maintained that the criminal case against the extradited applicants was pending before the Stavropol Regional Court and that, until a final and binding judgment had been given, the Court's delegation could not meet the applicants. However, they did not rule out the possibility that the Stavropol Regional Court would alter its decision of 14 October 2003 and advised the Court to apply to it with a request to that effect. The Government explained that, by virtue of the principle of subsidiarity, the issue of contact with the applicants was solely a matter for the Regional Court and that no one, not even an international judicial body, was entitled to amend or overturn its decision.

36. Furthermore, the Russian Government asked the Court to take the same approach as it had for Georgia (see paragraph 26 above) and to adjourn its fact-finding visit to Russia in view of the presidential election

scheduled for 14 March 2004. They also submitted that the Court might experience difficulties in the North Caucasus region in February on account of the risk of terrorist attacks or poor weather conditions.

37. On 19 January 2004, reminding the Russian Government of their undertakings of 19 November 2002, the Court informed them that it would carry out its visit at the beginning of May 2004. The option of transferring the applicants to a safer location was again raised. The Court stated that if the necessary guarantees and arrangements for the conduct of the investigation were not forthcoming on this occasion, it would be required to cancel its visit and to draw the appropriate conclusions under the Convention.

38. In response, the Russian Government reaffirmed on 23 January 2004 that it would only be possible to visit the applicants once the judgment in their case had become final. Their undertakings of 19 November 2002 to the Court, particularly with regard to unhindered access to the applicants, concerned only the investigation phase and not the period when the case was being examined by the courts. In any event, the trial before the Stavropol Regional Court would be public and no one would be prevented from "either attending it or following the deliberations and looking at the defendants".

39. The dates proposed by the Court were rejected by the Russian Government on the ground that the period between 1 and 11 May coincided with Russian public holidays to commemorate victory in the Second World War; they also stated that they were taking all necessary measures to ensure the proper conduct of the visit. The idea of transferring the applicants to another location was also dismissed on security grounds.

40. In their next letter of 5 February 2004, the Russian Government claimed that they had taken all the security measures necessary for the Court's delegation, including an air escort, but that they could not, however, exclude the possibility of a terrorist attack. In response, the Court suggested to the Russian Government that the fact-finding visit be conducted after 12 May 2004, in other words after the public holidays in Russia, on condition that they gave a prior unconditional assurance that the delegation would have unhindered access to the applicants on that occasion. Once such an undertaking had been given, the Court would assess the risks connected with the potential terrorist attack mentioned in the letter.

41. On 2 and 11 February 2004 the Russian Government asked that the fact-finding visit to Georgia be adjourned in view of the Russian presidential election, due to be held on 14 March 2004. On 5 and 13 February 2004 respectively, the Court dismissed these requests.

42. On 31 October 2003 and 9 February 2004 the Georgian Government listed the witnesses whom they considered it necessary for the Court to hear. The Russian Government did the same on 23 January 2004, but on 19 February 2004 they withdrew their list of witnesses on the ground that

the Court had not acceded to their various procedural requests (see paragraphs 36 and 41 above and 243 below). The applicants did not call any witnesses.

43. From 23 to 25 February 2004 six of the non-extradited applicants and twelve witnesses were heard at the Georgian Supreme Court in Tbilisi. Ms Mukhashavria, Ms Kintsurashvili and delegations from both Governments took part in these proceedings. Two applicants – Mr Khashiev and Mr Baymurzayev – did not appear, as they had been reported missing since 17 February 2004 by the Georgian authorities. Two witnesses – Mr R. Markelia and Mr A. Tskitishvili – failed to appear because they were out of the country.

44. On the last day of the proceedings, the Court considered that it was necessary to hear Mr Arabidze, Mr R. Khidjakadze and Mr G. Gabaydze, the applicants' representatives before the domestic courts, but the lawyers were unable to appear immediately. Questions were accordingly put to them in writing, to which the Court received replies on 17 April 2004 (see paragraph 212 below).

45. On 8 March 2004 the Court asked the two Governments to provide information on the disappearance of Mr Khashiev and Mr Baymurzayev and, if applicable, on their health and place of detention in Russia. On 13 and 29 March 2004 the Governments submitted information about those disappearances (see paragraph 101 below).

46. On 17 March 2004 the Court informed the Russian Government of the exact dates of its fact-finding visit (5-8 June 2004). Reminding them that the previous attempts to conduct the visit had met with failure, it invited the Government to inform it by 8 April 2004 whether, on this occasion, they undertook to guarantee that the delegation would have free and unhindered access to the four applicants who had been extradited on 4 October 2002 (Mr Adayev, the fifth applicant, having been released in the meantime – see paragraph 107 below), and to the two applicants who had been arrested in Russia following their disappearance in Tbilisi (see paragraphs 100 et seq. below). Drawing the Government's attention to Article 38 § 1 (a) of the Convention, the Court also reminded them that, in the absence of unconditional confirmation and the necessary resources to carry out the visit, it would be obliged to abandon its attempt to obtain access to the applicants and to prepare the judgment on the basis of the evidence in its possession.

47. On 21 April 2004 the Stavropol Regional Court decided to deny the Court access to Mr Aziev. This decision was based on the same grounds as the ruling of 14 October 2003 (see paragraph 29 above).

48. On 8 April 2004 the Russian Government informed the Court that, in spite of their determination to cooperate with it, the Court would not be able to hear Mr Shamayev, Mr Khadjiev, Mr Adayev and Mr Vissitov, since proceedings were pending before the appeal court. They made no reference

to Mr Aziev or to the two applicants who had disappeared (see paragraph 43 above) and subsequently been arrested in Russia on 19 February 2004.

49. Given its unsuccessful attempts to persuade the Russian Government to adopt a more cooperative attitude, the Court decided on 4 May 2004 to cancel its fact-finding visit to Russia and to proceed with preparation of the judgment on the basis of the evidence before it (see, by analogy, *Cyprus v. Turkey*, no. 8007/77, Commission's report of 4 October 1983, Decisions and Reports 72, p. 73, § 52).

50. Also on 4 May 2004 it invited the parties to send it their final submissions on the merits of the case (Rule 59 § 1), together with their corrections to the verbatim record of the proceedings in Tbilisi (Rule A8 § 3 of the Annex to the Rules). On 11 June 2004 the Georgian Government filed its written observations on the merits of the case. After two extensions of the relevant deadlines, the Russian Government and the applicants also filed their observations, on 20 July and 9 August 2004 respectively. On 11 June and 9 August 2004 the Governments submitted their corrections to the verbatim record of the proceedings.

51. On 7 and 13 September 2004 the Governments submitted their respective comments on the applicants' claims for just satisfaction, in accordance with Rule 60 § 3.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

52. The applicants, Mr Abdul-Vakhab Shamayev, Mr Rizvan (or Rezvan) Vissitov, Mr Khusein Aziev, Mr Adlan (or Aslan) Adayev (or Adiev), Mr Khusein Khadjiev, Mr Ruslan Gelogayev, Mr Akhmed Magomadov, Mr Khamzat Issayev, Mr Robinzon Margoshvili, Mr Giorgi Kushtanashvili, Mr Aslambek Khanchukayev, Mr Islam Khashiev *alias* Rustam Elikhadjiev *alias* Bekkhan Mulkoyev and Mr Timur (or Ruslan) Baymurzayev *alias* Khusein Alkhanov (see paragraphs 54 and 55 below)[1], are thirteen Russian and Georgian nationals who were born in 1975, 1977, 1973, 1968, 1975, 1958, 1955, 1975, 1967, 19...[2], 1981, 1979 (or 1980) and 1975 respectively.

53. On 17 and 18 October 2002 Mr Shamayev, Mr Vissitov, Mr Aziev, Mr Adayev and Mr Khadjiev, namely the applicants who had been extradited from Georgia to Russia on 4 October 2002, were placed in a pre-trial detention centre ("SIZO") in A, a town in the Stavropol region, in the North Caucasus (see paragraph 17 above). Their place of custody between 4

1. All the applicants' names have been transliterated into English.
2. Mr Kushtanashvili did not wish to indicate his date of birth.

and 17/18 October 2002 remains unknown. On 26 July 2003 Mr Shamayev, Mr Khadjiev, Mr Vissitov and Mr Adayev were transferred to a SIZO in town B, in the Stavropol region. Following the Court's request, on 7 October 2003 the Russian Government communicated the address of this SIZO and confirmed that Mr Aziev was also detained there (see also paragraph 242 below). They did not specify the date on which he had been transferred.

54. Having been unable to hear the applicants extradited to Russia (see paragraph 49 above), the Court has used the surnames provided by Ms Mukhashavria and Ms Dzamukashvili for four of them. The name of Mr Khusein Khadjiev, the fifth applicant, is that mentioned on his application form, which reached the Court on 27 October 2003 (see paragraph 235 below).

55. As to the non-extradited applicants, Mr Margoshvili has been free since his acquittal on 8 April 2003 (see paragraph 94 below); Mr Gelogayev was released following a judgment of 6 February 2004 (see paragraph 99 below); Mr Khanchukayev, Mr Issayev, Mr Magomadov and Mr Kushtanashvili were released on 5 and 6 January 2005 and 18 February 2005 (see paragraph 98 below). The identity of those six applicants has been established by the Court (see paragraphs 110-15 below). After disappearing in Tbilisi on 16 or 17 February 2004, Mr Khashiev and Mr Baymurzayev were arrested by the Russian authorities on 19 February 2004. They are apparently detained at present in the Essentuki pre-trial detention centre (see paragraph 101 below). Having been unable to hear them in Russia (see paragraphs 46 et seq. above), the Court will refer to them by the surnames communicated by their representatives when lodging the application.

56. The facts of the case, as submitted by the parties and established by the Court during its fact-finding visit to Tbilisi, may be summarised as follows.

A. Events concerning the extradition proceedings

1. Period prior to the application to the Court

57. Between 3 and 5 August 2002 the applicants crossed the Russo-Georgian border near the Guirevi checkpoint (Georgia). Some of them were injured and were carrying sub-machine guns and grenades. Having asked the Georgian border guards for help, they apparently handed over their weapons voluntarily. An identity check was carried out. As a result, the names of the individuals claiming to be Abdul-Vakhab Shamayev, Rizvan (or Rezvan) Vissitov, Khusein Aziev, Adlan (or Aslan) Adayev (or Adiev), Khusein Khadjiev (or Khosiin Khadjayev, Khajiev), Ruslan Mirjoyev, Adlan (Aldan) Usmanov, Khamzat Issiev, Ruslan Tepsayev, Seibul (or Feisul) Bayssarov, Aslan Khanoyev, Timur (or Ruslan) Baymurzayev (or

Baemurzayev) and Islam Khashiev were recorded. Only the first five applicants would appear to have been in possession of Russian passports.

58. The applicants were immediately transferred by helicopter to Tbilisi; they were initially placed in a civilian hospital, where those who were injured were operated on. On 5 August 2002 Mr Tepsayev (Margoshvili), Mr Vissitov, Mr Baysarov (Kushtanashvili), Mr Aziev, Mr Shamayev, Mr Khadjiev and Mr Issiev (Issayev) were charged with importing weapons in breach of the customs regulations (Article 214 § 4 of the Criminal Code), illegally carrying, handling and transporting weapons (Article 236 §§ 1, 2 and 3 of the Code) and crossing the border illegally (Article 344 of the Code). On 6 August 2002, further to an application by the Ministry of Security's investigating body, the Vake-Saburtalo Court of First Instance, in Tbilisi, ordered that they be placed in pre-trial detention for three months. According to the orders of 5 and 6 August, Mr Shamayev was arrested on 3 August and six other applicants on 6 August 2002.

59. On 6 August 2002, Mr Khanoyev (Khanchukayev), Mr Baymurzayev, Mr Khashiev, Mr Usmanov (Magomadov), Mr Mirjoyev (Gelogayev) and Mr Adayev were placed under investigation on the same charges. On 7 August 2002 the Vake-Saburtalo Court of First Instance ordered that they be placed in pre-trial detention for three months. It appears from those orders that Mr Usmanov (Magomadov) and Mr Mirjoyev (Gelogayev) were arrested on 7 August, Mr Adayev on 5 August and the three other applicants on 6 August 2002.

60. On the basis of those orders, on 6 and 7 August 2002 the applicants were transferred to Tbilisi Prison no. 5, with the exception of Mr Margoshvili, who was placed in the central prison infirmary. On an unspecified later date Mr Adayev was also hospitalised (see paragraph 142 below). According to the detention orders, all the applicants have Russian nationality.

61. On 1 November 2002 the pre-trial detention orders in respect of Mr Margoshvili, Mr Issayev and Mr Kushtanashvili were extended for three months by the Tbilisi Court of Appeal. On 4 November 2002 the same court also extended by three months the pre-trial detention orders in respect of Mr Khanchukayev, Mr Gelogayev, Mr Khashiev, Mr Magomadov and Mr Baymurzayev.

62. On 6 August 2002 Mr V.V. Ustinov, Procurator-General of the Russian Federation, travelled to Tbilisi and met his Georgian counterpart. He handed over the extradition request for the applicants. As the latter had been placed under investigation in Georgia and the documents submitted in support of the extradition request were considered inadequate in the light of Georgian legislation and international law, Mr N. Gabrichidze, the Georgian Procurator-General, declined verbally to extradite the applicants (see paragraphs 182 et seq. below). At the same meeting the Georgian Procurator-General's Office asked its Russian counterpart to submit the

relevant documents in support of the extradition request, together with assurances as to the treatment the applicants would receive in the event of extradition and confirmation that their rights would be respected.

63. It appears from the file that the Georgian Procurator-General transmitted those demands on the same date in writing. He informed his Russian counterpart that on 6 August 2002 criminal proceedings had been instituted in Georgia against all of the applicants, that seven were being held in pre-trial detention and that the six others would soon be brought before a court for a ruling on their detention. He noted that the extradition request did not contain information on the identity, nationality and home addresses of the persons concerned or documents or the statutory provisions concerning the offences with which they were charged in Russia or duly certified detention orders. The Georgian Procurator-General concluded that, in view of those circumstances, "he [was] unable to examine the extradition request in respect of those individuals".

64. On 12 and 19 August and 30 September 2002 the Russian authorities sent their Georgian counterparts the required documents, namely:

(i) the investigation orders in respect of each of the applicants, issued by the decentralised service of the federal Procurator-General's Office in Chechnya, dated 8 August 2002;

(ii) the international search warrant in respect of the applicants, issued by the Russian authorities on 15 August 2002;

(iii) certified copies of the provisional detention orders in respect of each of the applicants, issued on 16 August 2002 under Article 108 of the new Code of Criminal Procedure by the Staropromislovsk Court of First Instance (Grozny) on an application by the investigator responsible for the case;

(iv) extracts from the case file of the criminal proceedings brought against the applicants in Russia, setting out the charges against them;

(v) photographs;

(vi) copies of passports, with photographs;

(vii) copies of Form no. 1[1];

(viii) other information on the applicants' nationality and identity.

65. The Georgian Government submitted to the Court only copies of the documents listed under items (i), (ii) and (iii). The documents listed in item (iv) had apparently been classified as "confidential" by the Russian authorities in the interest of the proper administration of justice.

66. According to the orders of 8 August 2002, which were submitted to the Court by the Georgian Government, the applicants were under investigation in Russia for causing bodily harm to employees of the police and security forces (a crime punishable by life imprisonment or the death penalty – see Article 317 of the Criminal Code, paragraph 260 below);

1. Form no. 1 is a document containing a photograph of the individual concerned; it is prepared by the relevant sections of the Ministry of the Interior when an identity card is provided to that individual, and proves *ipso facto* his or her nationality.

organising illegal armed groups and participation in such groups, with aggravating circumstances (punishable by a sentence of up to five years' imprisonment under Article 208 § 2 of the Criminal Code); gunrunning with aggravating circumstances (punishable by two to six years' imprisonment under Article 222 § 2 of the Criminal Code); and illegal crossing of the Russian Federation's border in July 2002, with aggravating circumstances (punishable by up to five years' imprisonment under Article 322 § 2 of the Criminal Code). (The same documents, submitted by the Russian Government, are dated 13 August 2002 with regard to Mr Adayev and Mr Vissitov.)

67. As Article 6 of the Georgian Criminal Code prohibits the extradition of an individual to a country in which the crime with which he or she is charged is punishable by the death penalty (see paragraph 256 below), the Georgian Procurator-General's Office asked the Russian authorities to guarantee that that penalty would not be imposed on the applicants.

68. In his letter of 26 August 2002, Mr V.V. Kolmogorov, Russian Acting Procurator-General, informed his Georgian counterpart that an investigation had been opened in Russia after an attack on Russian army units by illegal armed groups in a border area on 27 July 2002. Having learned that thirteen individuals who illegally crossed the border shortly after this attack had been arrested in Georgia, and having questioned three witnesses, the Russian authorities had placed those individuals under investigation. Given that the individuals concerned had been armed when they crossed the border, and having regard to other evidence, the Russian authorities believed that they were the perpetrators of the above attack. Mr Kolmogorov pointed out that the Georgian authorities had stated that they would be prepared to extradite the applicants if the Russian side submitted the necessary documents. Since all of those documents had been handed over on 19 August 2002, the Russian authorities repeated their request for extradition of the individuals concerned on the basis of the Minsk Convention, concluded under the auspices of the Community of Independent States (CIS – see paragraph 266 below). Mr Kolmogorov provided assurances that, given the moratorium on the death penalty in force in Russia since 1996, the individuals concerned would not be sentenced to death. At the same time, he asked that the case file in the criminal proceedings brought against the applicants in Georgia be sent to the Russian authorities, who would take responsibility for the subsequent proceedings.

69. On 27 August 2002 Mr V.I. Zaytsev, Russian Deputy Procurator-General, informed the Georgian authorities that a moratorium on the death penalty was in force in Russia and that, pursuant to a judgment of the Constitutional Court of 2 February 1999 (see paragraph 262 below), no one could be sentenced to death by any court in a subject of the Federation.

70. On 22 September 2002 the charges against the applicants in Russia were redefined and extended. The applicants were also placed under

investigation for terrorism. The texts of the relevant orders, issued separately in respect of each applicant, are identical, as were those of 8 August 2002 (see paragraph 66 above).

71. In his letter of 27 September 2002, Mr Kolmogorov informed his Georgian counterpart that the applicants had also been placed under investigation for terrorism and banditry with aggravating circumstances, crimes which were punishable by eight to twenty years' imprisonment (Articles 205 § 3 and 209 § 2 of the Criminal Code). He gave assurances that the Russian Procurator-General's Office "[promised] the Georgian authorities that, in accordance with the rules of international law, these individuals [would enjoy] all the defence rights provided by law, including the right to assistance by a lawyer, [and would] not be subjected to torture or to treatment or punishment that was cruel, inhuman or contrary to human dignity". In addition, he pointed out that "since 1996, a moratorium on the death penalty [had] been in force and that, consequently, the individuals who were to be extradited [would] not risk being sentenced to death". As in the letter of 26 August 2002, the thirteen applicants are cited by name, without exception.

72. After examining the documents submitted by the Russian authorities, information from the Georgian Ministry of Security and evidence gathered at the time of arrest, the Georgian Procurator-General's Office identified, firstly, Mr Abdul-Vakhab Akhmedovich Shamayev, Mr Khosiin Khamidovich Khadjiev, Mr Khusein Mukhamedovich Aziev, Mr Rezvan Vakhidovich Vissitov and Mr Adlan Lechievich Adayev (the names are spelt as they were written in the extradition orders). In view of the seriousness of the charges brought against them in Russia, the Georgian Deputy Procurator-General signed the extradition orders on 2 October 2002. On the following day Mr P. Mskhiladze, Director of International Relations at the Procurator-General's Office, wrote to the Prisons Department at the Ministry of Justice in order to organise the execution of the orders (see paragraph 178 below). The five applicants were due to be transferred from prison to the airport at 9 a.m. on 4 October 2002.

73. However, on the evening of 3 October 2002, Mr Gabaydze, a lawyer for several of the applicants before the domestic courts, appeared on television claiming that he had obtained alarming information from a confidential source to the effect that the extradition of certain applicants was imminent (see paragraphs 124, 214 and 216 below). The following morning the applicants' lawyers, relatives and friends, and representatives of the Chechen minority in Georgia, blocked off the area around the prison and held a demonstration.

2. Period subsequent to the application to the Court on 4 October 2002

74. At 10.10 p.m. on 4 October 2002 the five applicants were handed over to representatives of the Russian Federal Security Service (FSB) inside

the perimeter of Tbilisi Airport. The applicants' representatives have submitted footage of certain scenes of the extradition, broadcast on the Georgian Rustavi-2 channel on the evening of 4 October 2002. Four individuals are seen being hauled onto an aeroplane by Georgian special troops, who yank the prisoners' chins up in a harsh manner for the cameras. Mr Shamayev, Mr Adayev, Mr Vissitov and Mr Khadjiev are identifiable from the photographs in the Court's possession (see paragraph 20 above). Mr Aziev is not seen at any point. Mr Khadjiev has an injury to the neck and red marks around his jaw. Mr Vissitov is injured in the left eye. However, it is impossible to assess the extent of their injuries from the recording, which also shows the applicants' arrival in Russia. The extradited men, wearing blindfolds, are shown being removed from the plane by uniformed masked men, one on each side of the prisoners, who are being held bent double with their arms crossed behind their backs and their heads pointing downwards.

75. The recording ends with the following words, spoken by a Georgian journalist: "...Unless the Georgian authorities provide rapid proof that they have not handed over innocent unidentified individuals to Russia, it will be quite obvious that this extradition is a gift to Mr Putin on the eve of the Summit of the member States [of the Community of Independent States]" (held in Chişinău on 6 and 7 October 2002).

76. On 8 October 2002 Mr Ustinov informed the Representative of the Russian Federation at the Court that the Russian authorities had provided their Georgian counterparts with all the necessary guarantees concerning the applicants' treatment in the event of extradition. In his words, "five of the thirteen Chechen terrorists having been handed over, the Georgian side [was] unnecessarily delaying the extradition of the others, on the sole ground that their identity had to be established".

77. In his letter of 16 October 2002, the Russian Deputy Procurator-General thanked the Georgian authorities "for granting the request to extradite five terrorists". He claimed that the applicants had been examined by doctors on their arrival in Russia, "their health [had been] found to be satisfactory", lawyers had been "assigned", the investigation was being conducted "in strict conformity with the requirements of the legislation on Russian criminal procedure" and that "documents [existed] proving that they [had] Russian nationality". He repeated the assurance, "provided to the Georgian authorities on numerous occasions", that, "in accordance with the requirements of Articles 2 and 3 of the Convention and of Protocol No. 6, these persons [would] not be sentenced to the death penalty and [would] not be subjected to torture or to inhuman, cruel or degrading treatment". Furthermore, measures to identify the non-extradited applicants from photographs had made it possible to identify them as the perpetrators of the attack against the Russian army on 27 July 2002 in the Itum-Kalinsk district (Chechen Republic). Promising that "other comprehensive identification

procedures [would be] conducted after their extradition", the Russian Deputy Procurator-General repeated the request for extradition of the applicants still held in Tbilisi, in accordance with Articles 56, 67 and 80 of the Minsk Convention.

78. On 28 October 2002 the Russian Procurator-General's Office again sent the Georgian authorities the judicial investigation orders in respect of Mr Gelogayev (named as Mirjoyev), Mr Khashiev and Mr Baymurzayev, and sought their extradition. (The lawyers point out that by this date the three individuals in question had already denied that those surnames, originally given to the Georgian authorities, were theirs.)

79. In his reply of 29 October 2002, the Georgian Procurator-General indicated that the names which appeared in the provisional detention orders issued by the Russian court against the eight applicants held in Tbilisi were not their real surnames and that the applicants had to be identified before their extradition could be agreed. He explained that "in contrast to the names of the five individuals extradited on 4 October 2002", there were "serious doubts" as to the names of the six prisoners wanted by the Russian authorities and that the seventh and eighth prisoners referred to by the surnames Tepsayev and Bayssarov were in fact named Margoshvili and Kushtanashvili. They had been born in Georgia, not Chechnya. The Procurator-General regretted that "the Russian authorities [were] insisting on the extradition of Mr Tepsayev and Mr Baymurzayev, when they knew full well that Tepsayev was not Tepsayev and Baymurzayev was not Baymurzayev". In his opinion, this also raised doubts concerning the veracity of the information provided by the Russian authorities with regard to the six other applicants.

80. On 21 November 2002 Mr Gelogayev, Mr Magomadov, Mr Kushtanashvili, Mr Issayev, Mr Khanchukayev, Mr Baymurzayev and Mr Khashiev contacted the President of Georgia and the Speaker of the Georgian parliament. They asked not to be extradited to Russia, claiming that they were "absolutely certain that they would be subjected to torture and to inhuman treatment by the Russian military and other authorities, and that they would be shot without being brought before any court".

81. In a statement of 15 October 2002 the Ministry of Foreign Affairs of the "Chechen Republic of Ichkeria" declared that on 5 October 2002 Mr Khusein Aziev, an extradited applicant, had died as a result of the ill-treatment inflicted on him. On 18 October 2002 the Russian Government informed the Court that this information was false and claimed that all the extradited applicants, including Mr Aziev, were safe and sound, were in good health and were being held in good conditions in a SIZO in the Stavropol region. On 23 October 2002 the Court asked the Russian Government to send it the exact address of this establishment so that it could correspond with the applicants (see paragraph 15 above).

82. The applicants' representatives have misgivings about the credibility of the Russian Government's response. They refer to a certain Khusein Yusupov, an individual of Chechen origin who was detained at the Georgian Ministry of Security until the end of September 2002, who subsequently seemed to have disappeared. According to the Georgian authorities, he was released. According to Mr Yusupov's mother, who went to meet him on the day he was due to be released, her son did not leave the prison. The lawyers believe that he could have been "informally" handed over to the Russian authorities in order to "replace" the deceased applicant. They drew the Court's attention to the ill-treatment allegedly inflicted on Mr Aziev prior to his extradition (see paragraphs 125 and 135 below).

3. Extradition proceedings subsequent to the lifting of the interim measure by the Court on 26 November 2002

83. On 28 November 2002, having concluded that Mr Baymurzayev, Mr Mirjoyev and Mr Khashiev were named Alkhanov Khusein Mauladinovich, Gelogayev Ruslan Akhmedovich and Elikhadjiev Rustam Osmanovich respectively and that they were Russian citizens, the Georgian Procurator-General's Office agreed to their extradition to Russia. The extradition order expressly stated that it was to be served on the applicants and that it was to be explained to them that an appeal lay before the courts.

84. On 29 November 2002 the applicants appealed to the Krtsanisi-Mtatsminda Court of First Instance (Tbilisi). Their lawyers pointed out that the extradition request had not been drawn up using their clients' real names and that it included photographs of them taken by the Georgian authorities during their detention in Tbilisi Prison no. 5. They complained that the detention orders in respect of their clients, issued on 16 August 2002 by the Staropromislovsk Court of First Instance (Grozny) (see paragraph 64 above), contained no reference to a maximum length of detention and that the applicants' defence rights had been totally breached in the proceedings which had resulted in those orders. In view of these shortcomings, they sought a refusal of the impugned extradition request. Further, basing their argument on Russia's failure to ratify Protocol No. 6 to the European Convention on Human Rights, they concluded that the Russian assurances were scarcely sufficient for the purposes of the European Convention on Extradition. They considered that, in order to be satisfactory, these assurances ought to have come from the President of the Russian Federation.

85. On 5 December 2002 this appeal was dismissed. On 25 December 2002 the Georgian Supreme Court overturned that decision and remitted the case.

86. On 13 March 2003 the court to which the case had been remitted held that the extradition of Mr Khashiev and Mr Gelogayev was legal. For the first time, it was stated before that court that on 27 October 2000 and

1 November 2001 (1 February 2002 according to the Supreme Court – see paragraph 88 below) Mr Baymurzayev and Mr Gelogayev had been granted refugee status in Georgian territory. The Acting Minister for Refugees stated before the court that that status had been granted under the Refugee Act (see paragraph 257 below). Having established that Mr Baymurzayev had never been deprived of his refugee status in accordance with a procedure prescribed by law, the court concluded that it was impossible to extradite him to Russia. With regard to Mr Gelogayev, the court noted that, by a decision of 25 November 2002, the Ministry for Refugees had withdrawn his refugee status, on the basis of a letter from the Ministry of the Interior dated 20 November 2002 and a report from the Committee on Refugee Status.

87. Basing its decision on an expert report and on explanations provided by the representatives of the Procurator-General's Office, the court ruled that it was established that the extradition request from the Russian authorities had been accompanied by photographs of the applicants taken on 7 August 2002 by the Georgian authorities, while those individuals were imprisoned in Tbilisi Prison no. 5. According to the court, communication of the photographs to the Russian authorities had been justified since it had been necessary in order to identify the persons concerned.

88. On 16 May 2003 the Supreme Court upheld this decision in so far as it concerned the impossibility of extraditing Mr Baymurzayev. It ordered that Mr Gelogayev's extradition be suspended pending completion of the administrative proceedings instigated by him against the decision of 25 November 2002 to withdraw his refugee status. As to Mr Khashiev, the Supreme Court noted that his photograph, taken by the Georgian authorities, had been sent to the Russian authorities for the purpose of identifying him, but that this had been unsuccessful. Furthermore, the defence submitted a copy of a Russian passport indicating that Mr Khashiev was not in fact named either Khashiev or Elikhadjiev, but Mulkoyev (see paragraphs 83 above and 101 below). At the request of the Georgian Procurator-General's Office, the Russian authorities had apparently checked the authenticity of this copy and had replied on 6 May 2003 that such a passport had never been issued. Given those circumstances, the Supreme Court considered that Mr Khashiev's identity had not been established and decided to suspend his extradition; it sent this part of the case back to the Procurator-General's Office for further investigation.

B. Criminal proceedings brought against the applicants by the Georgian and Russian authorities

1. Proceedings before the Georgian courts for illegal crossing of the border

89. Mr Khanchukayev and Mr Magomadov were tried by the Tbilisi Regional Court for illegally crossing the border and were acquitted on 15 July 2003 on the ground that there was no *corpus delicti* in their actions. In particular, it was established that both of the applicants had been injured and had been obliged to cross the Russo-Georgian border in circumstances of "dire necessity" in which they were obliged to evade a confrontation with the Russian armed forces and the siege in which they had been trapped since 25 July 2002. The Regional Court found that they had been forced to commit the offence because they had no other option and that "they had naturally considered that what was transgressed [national security, the border, etc.] was less important than what was preserved, namely their own lives". It was noted that the investigating authorities had not questioned the border guards involved and had prosecuted the two applicants solely on the basis of their own statements. The Regional Court had examined the border guards, who had stated that, at the point where the applicants had crossed into Georgia, the border was not marked, even by a flag, and that as such it was unidentifiable and delimited in an approximate manner by the two States concerned. They confirmed that, at the material time, the areas adjoining the border, and the border itself, were being shelled by the Russian army and that the applicants had offered no resistance whatsoever in handing over their weapons and had requested asylum in Georgia.

90. This judgment was upheld on appeal on 2 December 2003; however, Mr Khanchukayev and Mr Magomadov could not be released, since they had been placed in pre-trial detention on 18 December 2002 in connection with the criminal case arising from acts of violence against State employees during the night of 3 to 4 October 2002 (see paragraphs 96 et seq. below).

91. On 9 October 2003, on the same grounds as in the case of Mr Khanchukayev and Mr Magomadov, the Tbilisi Regional Court acquitted Mr Issayev of illegally crossing the border. In particular, it established that Mr Issayev had two gunshot wounds on his left forearm when he entered Georgia. He had met Mr Khadjiev and Mr Aziev, who were also escaping from Russian shelling, in the forest. All three had sought refuge in the cabin of a Georgian shepherd named Levan. Another group of Chechens had also taken shelter there. Having learned from the shepherd that they were already in Georgian territory, the escapees had sent their host to request help from the Georgian border guards. They had voluntarily handed over their weapons and requested asylum in Georgia. Those elements had been confirmed to the Regional Court by the border guards in question (see paragraph 89 above).

92. The court also established that Mr Issayev's arrest had been brought to the attention of the Russian authorities by the Georgian Ministry of Security. After his arrest, Mr Issayev had corrected the name of his father three times before it was finally ascertained that he was the son of a certain Movli. In line with those changes, the Russian authorities had also amended

the documents supporting their extradition request in respect of this applicant. The court considered that "the documents submitted by the Russian prosecution service and included in the case file seemed to have been drawn up in a contrived manner with a view to securing the extradition of the individual concerned". They did not suggest that this individual "had been known to the Russian law-enforcement agencies ... prior to his arrest in Georgia".

93. The acquittal was upheld on appeal on 11 December 2003. However, Mr Issayev could not be released because he had been placed under investigation in the criminal proceedings arising from acts of violence against State employees (see paragraphs 96 et seq. below).

94. On 8 April 2003 Mr Kushtanashvili and Mr Margoshvili, Georgian citizens, were acquitted on charges of carrying, handling and transporting weapons illegally. The other aspect of the case (illegally crossing the border and infringing customs regulations) was remitted for additional investigation. Their pre-trial detention was commuted to judicial supervision and they were immediately released. On 20 May 2003 Mr Kushtanashvili was rearrested in the light of the decision of 28 February 2003 ordering that he be placed in pre-trial detention in connection with the case concerning acts of violence against State employees (see paragraphs 96 et seq. below).

95. On 6 February 2004 Mr Gelogayev, Mr Khashiev and Mr Baymurzayev were also acquitted by the Tbilisi Regional Court of crossing the border illegally. On 16 April 2004 the Georgian Supreme Court quashed that judgment and remitted the case for further consideration.

2. Case concerning acts of violence against Georgian State employees

96. At 9 a.m. on 4 October 2002, in the presence of two witnesses, Mr R. Markelia, investigator, drew up a damage assessment report of cell no. 88, where eleven applicants had been detained before being removed a few hours previously (see paragraph 123 below). Damage was observed: in particular, the furniture had been taken apart and the walls had been damaged. On 9 October 2002 proceedings were instituted. On 1 November 2002 the Procurator-General's Office submitted a number of objects for analysis, with a view to determining whether they had been part of the furnishings in cell no. 88. The expert report, dated 25 December 2002, identified the following objects: stick-shaped pieces of metal and metal discs, removed by hand from the window-bars and the bunk beds in cell no. 88; the foot of the cell ventilator; pieces of brick removed from the cell walls and placed inside a pair of jeans, the legs of which had been knotted; a sharpened spoon embedded in a plastic cigarette lighter to make a knife; a soup spoon, sharpened along one side; and other objects which had been part of the cell and its furnishings.

97. On 29 and 30 November and 16 December 2002 the non-extradited applicants, with the exception of Mr Margoshvili, were charged with premeditated resistance by a group of prisoners involving the use of force against State employees, and with refusing to obey lawful orders from prison warders with the intention of prejudicing the proper functioning of the prison. On 30 November and 16 December 2002 the indictments, together with translations into Russian, were served on the applicants.

98. On 24 May 2004 Mr Kushtanashvili, Mr Magomadov, Mr Issayev and Mr Khanchukayev were convicted at first instance and were each sentenced to four years' imprisonment. According to the judgment, the prisoners in cell no. 88 had seen on television that "certain Chechens" were to be extradited but, not knowing which of them were affected by that measure, they had opposed the prison wardens who tried to remove them from the cell. They were armed with metal objects which had been removed from the bed-frames and plumbing and with projectiles made from pieces of brick wrapped in sheets and clothing. They had caused injury to prison wardens and members of the special forces. On 26 August 2004 the Tbilisi Court of Appeal upheld that judgment. On 25 November 2004, ruling on an appeal on points of law by the applicants, the Georgian Supreme Court quashed the appeal judgment and sentenced the applicants to two years and five months' imprisonment. The period spent in detention since their arrest was counted as part of this sentence. Mr Khanchukayev was released on 5 January 2005, Mr Magomadov and Mr Issayev on 6 January 2005 and Mr Kushtanashvili on 18 February 2005.

99. On 6 February 2004, in the same case, Mr Gelogayev, Mr Khashiev and Mr Baymurzayev were convicted at first instance and given a one-year prison sentence. As the length of time spent in pre-trial detention was deducted from this sentence, those three individuals were released immediately. On 16 April 2004 the Supreme Court overturned that judgment and remitted the case for a fresh examination.

Disappearance of Mr Khashiev (Elikhadjiev, Mulkoyev) and Mr Baymurzayev (Alkhanov) subsequent to their release

100. Following their release on 6 February 2004, Mr Khashiev and Mr Baymurzayev moved in with a relative in Tbilisi; they were joined by Mr Gelogayev. On 16 February 2004 they left the house for an appointment at the Ministry for Refugees, but disappeared before ever arriving there. On 25 February 2004 the Georgian media, citing a Russian agency report, announced that the missing men were being held in a Russian prison in the town of Essentuki, on suspicion of having crossed the Russo-Georgian border illegally. On 5 March 2004 Ms Mukhashavria informed the Court of this and stated that she was anxious about the health of Mr Baymurzayev, who apparently needed an operation on his jaw. She explained that, following their release, the three applicants had not left their residence

unless accompanied by their representatives. As the latter had assured them that they had nothing to fear in Tbilisi, Mr Khashiev and Mr Baymurzayev had dared to venture out alone for the first time on the day in question.

101. On 13 March 2004 the Georgian Government claimed that an investigation by the Ministry of the Interior had ascertained that the two applicants had disappeared on 16 February 2004 at 10.30 a.m. They had subsequently been arrested by the Russian authorities near the village of Larsi (Republic of North Ossetia) for crossing the border illegally. On 29 March 2004 the Russian Government alleged that the two applicants had been arrested in Larsi on 19 February 2004 by the Federal Security Service on the ground that they were on the list of wanted persons. At the time of his arrest, Mr Khashiev had been carrying a false passport in the name of Mulkoyev (see paragraph 88 above). On 20 February 2004 Mr Khashiev and Mr Baymurzayev, under the names of Rustam Usmanovich Elikhadjiev and Khusein Mauladinovich Alkhanov, had been placed under investigation and imprisoned in Essentuki Prison, pursuant to a decision by the Staropromislovsk Court (Grozny). Transferred on 6 March 2004 to a SIZO in town A, they had been returned to Essentuki on 22 March 2004 for the purposes of the investigation.

102. On 8 April 2004 the Russian Government submitted photographs of these applicants, of their cells and of the SIZO in town A (shower room, medical unit and kitchen). Mr Khashiev and Mr Baymurzayev were apparently detained separately; each was held in a cell measuring 16.4 sq. m, equipped with a window, toilet facilities and a radio connection. The cells contained four prisoners, the number they had been designed for. According to Mr Khashiev's "prisoner card", he had been placed under strict surveillance. The applicants had never complained about their conditions of detention. The photographs showed them face on and from the side, and had been taken in two different rooms which did not appear to be the same as the cells shown in the above-mentioned photographs.

103. According to medical certificates dated 24 March 2004, Mr Khashiev was in good health and had no recent injuries. Mr Baymurzayev was suffering from a broken lower jaw, complicated by osteomyelitis. In 2000 he had received a shrapnel injury to the chin and had had an operation on his jaw in 2002. He had broken the same bone again in 2003. On 12 March 2004 he had undergone an X-ray examination in Russia and on 15 March 2004 he had been examined by a stomatologist, who recommended in-patient surgical treatment.

104. Mr Gelogayev was heard by the Court in Tbilisi and spoke of his distress caused by the disappearance of his two companions. He speculated that they may have been secretly extradited in exchange for certain political concessions obtained by the Georgian President during his first official visit to Russia after his election in January 2004.

105. It appears from documents submitted by the Georgian Government on 19 September 2004 that on 28 March 2004 the Tbilisi procurator's office opened an investigation into the kidnapping of Mr Khashiev and Mr Baymurzayev. The Georgian Government offered no explanation on this subject.

106. On 5 and 30 November 2004 Ms Mukhashavria submitted copies of the judgments delivered by the Supreme Court of the Chechen Republic on 14 September and 11 October 2004 respectively in the cases of Mr Khashiev (Mr Elikhadjiev, Mr Mulkoyev) and Mr Baymurzayev (Mr Alkhanov). She claimed to have obtained them with the help of individuals close to the applicants. In the judgments Mr Khashiev is referred to as Elikhadjiev Rustam Usmanovich and Mr Baymurzayev as Alkhanov Khusein Mauladinovich (see paragraph 83 above). The first was cited as having been born in 1980 in Grozny and the second in 1975 in the village of Aki-Yurt in Ingushetia. During the trial Mr Khashiev alleged that he had been arrested on 16 February 2004, not at the Russian border, but on Tbilisi's Rustaveli Avenue. He had then been transferred to Essentuki (see paragraph 101 above).

According to the judgments, Mr Khashiev and Mr Baymurzayev were part of an armed group formed in the Pankisi Gorge (Georgia) by a certain Issabayev for the purpose of exterminating members of the federal armed forces in Chechnya and local residents who cooperated with those troops. In July 2002 they had allegedly crossed illegally into the Itum-Kalinsk region in Chechnya, with about sixty members of the armed group in question. On 27 July 2002, surrounded by Russian border guards, the group had opened fire and attacked the guards. Eight Russian soldiers had been killed and several others injured. Given the lack of evidence of their direct participation in that attack, Mr Khashiev and Mr Baymurzayev were acquitted on the charge of terrorism and of the offences set out in Article 205 § 3 and Article 317 of the Criminal Code (see paragraphs 66 and 71 above). They were also acquitted of the offences listed in Article 188 § 4 and Article 208 § 2 of the same Code (see paragraph 66 above) on the ground that there was no *corpus delicti* in their actions. Mr Khashiev and Mr Baymurzayev were convicted of participation in an illegal armed group, crossing the border illegally and of carrying, transporting and handling weapons illegally; they were sentenced to thirteen years' and twelve years' imprisonment respectively, to be served in a closed prison. Mr Khashiev was also convicted of using a false passport in the name of Mulkoyev (see paragraph 101 above). In imposing those sentences, the Supreme Court stated that it took account of the applicants' ages and the fact that they had no criminal record. Mr Baymurzayev's health (serious deformation of the lower jaw) was also taken into consideration. An appeal to the Supreme Court of the Russian Federation lay against those judgments.

3. Criminal proceedings against the applicants extradited to Russia

107. According to the Russian Government, Mr Shamayev, Mr Khadjiev, Mr Vissitov and Mr Adayev were brought before the Stavropol Regional Court for trial "in the summer of 2003". Mr Aziev was allegedly brought before the same court on 26 August 2003. On 24 February 2004 the Russian Government informed the Court orally in Tbilisi that, on 18 February 2004, the Stavropol Regional Court had delivered judgment against the first four applicants. The prosecution had called for sentences of nineteen years' imprisonment for Mr Shamayev and Mr Khadjiev and eighteen years' imprisonment for Mr Vissitov and Mr Adayev. The court had sentenced Mr Shamayev and Mr Khadjiev to three years' and six years' imprisonment respectively, to be served in an ordinary prison, and had sentenced Mr Vissitov to ten years' imprisonment in a closed prison and Mr Adayev to one year and six months' imprisonment in an ordinary prison. Mr Adayev had been released immediately because he had already been in detention for this length of time. Mr Aziev had requested the assistance of an interpreter and submitted a number of procedural requests, with the result that his case had been severed from that of the others and the investigation in his regard was still ongoing.

108. The Russian Government submitted that they were unable to provide the Court with a copy of the judgment of 18 February 2004. They claimed that, under the new Code of Criminal Procedure adopted by the Russian Duma in accordance with the Council of Europe's recommendations, only the convicted person could obtain a copy of the judgment concerning his or her case. The Government expressed their willingness to cooperate with the Court, but regretted that, on this occasion, such cooperation was impossible on account of the Council of Europe's recommendations. They advised the Court that if it wished to obtain the document in question it should write to the Russian court concerned. The Court learned from a letter of 8 April 2004 from the Russian Government that an appeal had been lodged against the judgment of 18 February 2004 (see paragraph 48 above). In their submissions of 20 July 2004, the Government gave the Court to understand that the appeal court had quashed the judgment in question in its entirety (see paragraph 272 below).

109. On 25 February 2004 the Russian Government submitted to the Court in Tbilisi photographs of the SIZO in town B and of the four extradited applicants' cells, taken on 19 February 2004 (Mr Adayev, the fifth applicant, had been released on the previous day). These photographs show a spacious and well-equipped kitchen and laundry and a shower room. The applicants' cells are large and well lit, and each has a large window. They contain long tables and benches. The toilets are open, but separated by a low wall from the rest of the room. There are sinks with soap and toothpaste, brooms and water tanks in each cell, and heating pipes under the windows. Radio sets can be seen in certain cells. The package from the

Government also contained a video cassette. This recording shows the four cells as described above. On the basis of the photographs of the applicants in the Court's possession (see paragraph 20 above), it is possible to identify Mr Shamayev in cell no. 22 and to recognise Mr Khadjiev in cell no. 15. On the other hand, it is very difficult, if not impossible, to spot Mr Vissitov in cell no. 18, given the backlighting and the absence of any close-ups. According to the off-camera voice commenting on the pictures, Mr Aziev had refused to be filmed. Nonetheless, a recording was made of his cell (no. 98) in which the prisoners' faces cannot be made out but their silhouettes can be seen from a distance. In each cell the number of beds is equal to or greater than the number of prisoners present during the filming.

C. Information obtained by the Court

1. Identity of the applicants heard by the Court

110. Mr Khamzad(t) Movlievich Issiev (Issayev), *alias* Khamzat Movlitgalievich Issayev, stated that his real name was Khamzat Movlievich Issayev, that he was of Chechen origin and that he had been born on 18 October 1975 in the village of Samachki, in Chechnya.

111. Mr Seibul (Feisul) Bayssarov stated that he was called Giorgi Kushtanashvili, that he was a Georgian citizen who belonged to the Kist ethnic group and that he had been born in the village of Duisi, in the Akhmeta region of Georgia.

112. Mr Aslan Khanoyev stated that his real name was Aslambek Atuievich Khanchukayev, that he was a Russian national of Chechen origin, and that he had been born on 25 February 1981 in the village of Selnovodsk, in Chechnya.

113. Mr Adlan (Aldan) Usmanov stated that he was in fact named Akhmed Lechayevich Magomadov, that he had been born on 4 July 1955 in Pavlodar in Kazakhstan, and that he was of Chechen origin.

114. Mr Ruslan Mirjoyev stated that his real name was Ruslan Akhmedovich Gelogayev, that he was of Chechen origin and that he had been born on 16 July 1958.

115. Mr Tepsayev stated that he was in fact Robinzon Margoshvili, son of Parola, that he was a Georgian citizen of Kist origin, and that he had been born on 19 April 1967 in the village of Duisi, in the Akhmeta region of Georgia.

116. With the exception of Mr Margoshvili, who was detained in the prison infirmary (see paragraph 60 above), those applicants confirmed that they had known the extradited applicants in prison and had been held with them in the same cell. The photographs of the applicants, submitted by the Governments on 23 and 25 November 2002, were shown to them for

identification. The names on the photographs had previously been covered over by the Court's Registry.

117. Each of the applicants (except for Mr Margoshvili) recognised himself in the relevant photograph submitted by the Georgian Government. Mr Robinzon Margoshvili (formerly Ruslan Tepsayev) was identified by the other applicants as Ruslan (four times) and Ruslan Tepsayev (once).

118. With regard to the two missing applicants, namely, Mr Timur (Ruslan) Baymurzayev *alias* Khusein Alkhanov, and Mr Islam Khashiev *alias* Rustam Elikhadjiev *alias* Bekkhan Mulkoyev (see paragraph 43 above), the first was identified as Baymurzayev (once), Timur (once), Khusein (twice) and Khusein Alkhanov (once). The second was named as Islam (twice), Bekkhan (twice), Mulkoyev (once) and Bekkhan Mulkoyev (once).

119. With regard to the extradited applicants, four applicants identified Abdul-Vakhab and one applicant identified Abdul-Vakhab Shamayev in the photograph submitted by the Russian Government as that of Mr Abdul-Vakhab Shamayev. The photograph of Mr Khusein Khadjiev was identified as Khusein (three times), Khusein Khadjiev (once) and Khusein Nakhadjayev (once). Three applicants identified Khusein Aziev and two applicants identified Khusein in the photograph submitted as that of Mr Khusein Aziev. Mr Adlan (Aslan) Adayev (Adiev) was identified as Aslan Adayev (twice) and Aslan (three times). On the other hand, all five applicants identified the person in the photograph submitted by the Russian Government as Mr Rizvan (Rezvan) Vissitov as a certain Musa.

2. Representation of the applicants heard by the Court and object of their application to it

120. By virtue of the authorities to act submitted on 9 October 2002, the six non-extradited applicants were represented before the Court by Ms Mukhashavria and Ms Dzamukashvili. On the basis of the authorities to act dated 4 August 2003, those applicants, with the exception of Mr Margoshvili, were also represented by Ms Kintsurashvili.

121. During the proceedings in Tbilisi, at which only Ms Mukhashavria and Ms Kintsurashvili were present, five applicants confirmed that, with the assistance of Ms Mukhashavria and Ms Dzamukashvili, they had lodged an application with the Court against Georgia and Russia in order to challenge their extradition and have it stayed. They stated that they wished to pursue their application and continue to be represented by the same lawyers in the proceedings that would ensue before the Court (or, in some cases, by the lawyers then present in the room). As he had only a very basic knowledge of Georgian, Mr Margoshvili, the sixth applicant who was heard, had difficulty in understanding the questions put by the Court. However, he maintained that he was complaining about his arrest under the Chechen name of Tepsayev, as he was merely a simple Georgian shepherd.

Mr Margoshvili confirmed that he had applied to the Court, that the lawyers present in the room were his representatives and that he wished to pursue his complaint.

3. The events concerning the extradition of 4 October 2002

(a) Facts as submitted by the applicants who were heard by the Court

(i) Facts common to all the applicants

122. Five of the applicants who appeared were heard by the Court in Russian with interpretation into English, one of the Court's two official languages. Having stated that he was unable to read Russian, Mr Margoshvili, the sixth applicant, took the oath in Georgian; he also expressed himself in that language.

123. During the few weeks before 4 October 2002, eleven applicants had found themselves detained in the same cell (no. 88) in Tbilisi Prison no. 5. A total of fourteen prisoners had been held in the cell. Mr Adayev and Mr Margoshvili, the twelfth and thirteenth applicants, had been in the prison infirmary at the time.

124. The applicants had had a television set in their cell. Although rumours had been circulating for a while about their possible extradition to Russia, it was only on 3 October 2002 that they learned from the 11 p.m. news bulletin on Rustavi-2 that the extradition of five or six of their number was imminent (see paragraph 216 below). No names having been given, they were unaware of who exactly would be affected by that operation. They had received no prior information or official notification on this matter. The applicants understood that the information gleaned from the television was accurate when, between 3 and 4 a.m., prison wardens arrived and asked them to leave the cell so that it could be disinfected (or searched, according to Mr Kushtanashvili). The applicants categorically refused to comply, with the result that the prison governor named four individuals and asked them to leave the cell. In response, the applicants asked that nothing be done until daybreak and that their lawyers be summoned; this request was refused. About fifteen hooded members from the Georgian Ministry of Justice's special forces then entered the cell and removed the applicants one by one. They used truncheons and applied electric shocks. The applicants were beaten as they lay on the floor in the corridor. The four applicants affected by the extradition order were immediately removed and the others were placed in solitary confinement. Around 4 a.m. Mr Adayev, the fifth applicant against whom an extradition order had been issued, was transferred directly from the prison infirmary.

125. All of the applicants heard claimed that they had put up only verbal resistance to leaving the cell. They complained that they had been beaten, insulted and “treated like animals” by the special troops. Following this

incident, Mr Issayev had two fractured ribs and an eye injury, the scar from which was still visible. Mr Kushtanashvili sustained injuries from truncheon blows. Mr Khanchukayev sustained extensive bruising. Mr Magomadov had a broken tooth, a laceration to the ear, an injury to the frontal bone and extensive bruising on his back and legs. Mr Gelogayev had extensive bruising on his body and other injuries (to the shoulder and cheek) and had suffered an inflammation of the left kidney, injuries which he himself described as "trivial" (see paragraphs 200, 201 and 211 below). All of the prisoners were injured more or less seriously. In particular, the applicants referred to broken ribs and a fractured shoulder in some cases, and blood-splattered heads in others. According to Mr Kushtanashvili and Mr Khanchukayev, the applicants who were to be extradited were given the most severe beatings. Mr Issayev, Mr Magomadov and Mr Khanchukayev had heard that Mr Aziev had died as a result of his injuries. According to Mr Gelogayev, Mr Aziev must have had a broken spine, since he was no longer able to walk and was dragged along the corridor by two members of the special troops. He also appeared to have an eye turned inside out. According to Mr Gelogayev, the photograph of Mr Aziev allegedly taken by the Russian authorities after his arrest could have been a copy of an old photograph.

126. Once placed in solitary confinement, the non-extradited applicants were examined by a doctor, who listed each prisoner's injuries in writing. He merely measured the extent of their bruises with a ruler and did not provide treatment. The applicants did not subsequently receive any other medical care.

127. None of the applicants confirmed that he had been informed by a member of the Procurator-General's Office that extradition proceedings were pending against him. They all claimed to have received visits from numerous persons while in prison (officially assigned lawyers, investigators and prosecutors), whose names they did not remember. They remembered having met once, in the absence of their lawyers, a man and a young woman (see paragraphs 162-66 below) who asked them to sign documents drawn up in Russian (in Georgian, according to Mr Kushtanashvili), which they refused to do.

128. With the exception of Mr Kushtanashvili and Mr Margoshvili, the applicants all claimed that they had entered Georgia in search of refuge from the armed combat in Chechnya. They denied having been armed when they crossed the border. They had not been arrested at the border, but had voluntarily given themselves up to the Georgian border guards, from whom they had sought assistance. The latter had tended to their wounds before calling for a helicopter to transport them to Tbilisi.

129. The applicants confirmed that they had all supplied false names to the Georgian authorities. With the exception of Mr Kushtanashvili and Mr Margoshvili (see paragraphs 135 and 143 below), they had acted in this

way to avoid extradition to Russia and to prevent family members and friends who were still in Russia from being endangered should they (the applicants) fall into the hands of the Russian authorities. Mr Issayev alleged that he was weary of ten years of war in Chechnya and that, if it would put him out of danger, he "[would] willingly change not only his name, but also his appearance". He was convinced that he had escaped extradition on account of his false identity.

130. Mr Gelogayev and Mr Khanchukayev indicated that their officially assigned lawyers (including Ms Magradze, according to Mr Khanchukayev) and an investigator from the Ministry of Security had advised the applicants to say that they were armed when they crossed the border, since this would ensure that they were kept in Georgia pending trial. The applicants had followed this advice.

131. The applicants all denied categorically that they had put up any resistance to State employees during the night of 3 to 4 October 2002.

(ii) Specific facts submitted by each of the applicants

132. Mr Issayev stated that he was opposed to his extradition to Russia on the ground that "no distinction is made there between peaceful civilians, terrorists and fighters". When speaking with the representatives of the prosecution service who visited them in prison, he and his fellow prisoners had always expressed their wish not to be extradited to Russia and their fear of being subjected to ill-treatment in that country. They had asked to be tried in Georgia. They had had no access to the extradition papers. According to Mr Issayev (and also Mr Kushtanashvili), the officially assigned lawyers, the investigator and the representatives of the prosecutor's office had asked the applicants to tell them their real names so that they could help them avoid extradition. Those who had complied had been extradited immediately.

133. Prior to his arrest, in August 2002, Mr Issayev had, he claimed, attempted unsuccessfully to obtain refugee status in Georgia.

134. Mr Kushtanashvili claimed that he was Georgian (of Kist origin) and was a shepherd in the area bordering Chechnya. When the region was being shelled by the Russian armed forces in August 2002, he had met seven injured Chechens who were fleeing. He had descended the mountain slopes on the border with them and taken them to a shepherds' hut. He himself had sustained a head injury that night. He repeatedly claimed not to have clear memories of the events in question on account of this injury.

135. Mr Kushtanashvili explained that, since he had no money, he had given the Georgian authorities and doctors a false Chechen name in order to pass for a fugitive and thus receive free medical care. He did not believe that his Georgian nationality represented an obstacle to extradition and considered that he was still in danger on account of his Chechen origins. In a letter sent to the Court on 13 November 2002, he alleged that, during the

night of 3 to 4 October 2002, the applicants had asked to see their lawyers before leaving the cell as requested. The prison governor had replied that "neither lawyer nor investigator" would turn up and that "[they should] leave the cell voluntarily before [he used] force". In the same letter Mr Kushtanashvili also claimed that Mr Aziev had received a violent blow to the head and that one of his eyes had practically come out of its socket. He had seen him for the last time when a member of the special troops "was dragging him along the corridor like a corpse".

136. Mr Khanchukayev stated that, shortly after his arrest, "extradition started to be mentioned". The applicant, who was afraid of being tortured in Russia, had signed papers, the content of which he could not remember, in the hope of being tried in Georgia and avoiding extradition. In certain cases the applicants had allegedly been threatened with extradition if they refused to sign. After 4 October 2002 he had written to the Georgian President asking him not to authorise his extradition (see paragraph 80 above). He admitted that he was still afraid of extradition and that he lived in a state of uncertainty. At the initial stage of the proceedings before the Court, this applicant claimed that he could not return to Russia on account of the "genocide of the Chechen people" being perpetrated "by Russia throughout the country".

137. Mr Khanchukayev did not recognise the explanatory statement of 23 August 2002 which, according to Mr Darbaydze, he had refused to sign (see paragraphs 163-64 below).

138. Mr Magomadov claimed that he did not know on which side of the border he had been injured, since the border line was not marked in the area in question (see paragraph 89 above). After being knocked out by a shell wound to the head, he had been carried by his comrades. A Georgian general had arrived by helicopter and had introduced himself as commandant of the border troops. He had promised the applicants that he would report the facts to the Georgian President in person and that they would be given refugee status. The general had previously given orders to the effect that the applicants were to receive hospital treatment.

139. During the meeting with a man and young woman from the Procurator-General's Office (see paragraphs 162-66 below), the applicants had been asked to sign documents without being informed of their contents. All of the non-extradited applicants had met those individuals, but in small groups. Mr Magomadov himself had been brought before the two members of the prosecution service in the company of Aslan (Khanoyev *alias* Khanchukayev) and Bekkhan (Khashiev *alias* Mulkoyev) (see paragraph 419 below). Mr Magomadov claimed that he still feared extradition.

140. Mr Gelogayev claimed that he had held refugee status in Georgia since February 2002 (see paragraph 86 above) and had been granted this status in the Akhmeta region, which bordered Chechnya. He had then left

legally for Chechnya, travelling via Baku (Azerbaijan), in the hope of bringing his family to Georgia. Once in Chechnya, he had begun looking for a family member who had been missing for more than a year, and had arrived in the Itum-Kalinsk region. There, he had witnessed armed combat between the Russian federal army and the Chechen fighters, who had been surrounded on 25 July 2002. Georgia had been the only way out. He had received a shrapnel wound to the leg but had nonetheless walked as far as the Georgian border, which he had crossed on 3 August 2002. He had requested asylum from the Georgian soldiers who arrived on the scene by helicopter. He had been hospitalised and operated on in Tbilisi, then transferred to a prison infirmary two days later.

141. Mr Margoshvili stated that in August 2002 he had been wounded while watching his flock in pastureland near the border. He did not know whether he had been wounded by Georgians, Russians or Chechens. After being taken to Tbilisi, he was treated in the prison infirmary, where he was detained for three months. He was informed that he had been arrested because he was carrying weapons. He claimed that he had not been imprisoned "with a weapon, but with a quilted jacket and shepherd's boots".

142. Mr Margoshvili confirmed that he had been in the same infirmary ward as Mr Adayev, one of the five extradited applicants. He did not mention a television set or other information source that would have enabled Mr Adayev to learn, as the other extradited applicants had, that he was likely to be handed over to the Russian authorities in the very near future. At about 4 a.m. on 4 October 2002 Mr Adayev had been taken away, after getting up and following the members of the hospital staff without a word. Masked men were waiting for him in the hospital courtyard. During their stay in the infirmary, Mr Adayev had frequently asked Mr Margoshvili to cut out his tongue, arguing that this would help him to endure questioning more easily if he were extradited. Mr Margoshvili had firmly refused to do so.

143. Mr Margoshvili claimed that he had not assumed a false name of his own volition. Having been taken to hospital in a serious condition, he learned on recovering consciousness that he was being referred to as Mr Tepsayev. At first he had been happy to receive free medical treatment on the strength of this name, but had then rapidly challenged this identity in the infirmary and subsequently before a judge.

(b) Facts as submitted by the State employees

(i) The prison staff

144. The Court heard Mr A. Dalakishvili, in-house inspector at Tbilisi Prison no. 5 (who was on duty on the night of 3 to 4 October 2002), Mr Buchukuri, employee of the Ministry of Justice's Prisons Department (who was also on duty that night), Mr E. Kerdikoshvili, chief inspector of the

Prisons Department's service responsible for transporting foreign nationals, and Mr N. Chikviladze, employee of the Prisons Department, and head of security at Prison no. 1.

145. Those individuals all said that they had not been officially informed of the applicants' imminent extradition and that they had learned later, on the morning of 4 October 2002, that five Chechen prisoners were to be extradited. Mr Buchukuri and Mr Dalakishvili alleged that, as they had been on duty, they were unable to watch television to keep themselves informed. According to Mr Chikviladze, only the prison governor, his deputies and the head of the prison secretariat (special division) had been informed of the applicants' imminent transfer. He had learned from the media that four or five Chechen prisoners were to be extradited, but none of the prison staff had been told their names.

146. The above-mentioned persons confirmed that thirteen or fourteen Chechen prisoners were held in the same cell. According to Mr Tchikviladze, the decision to keep these prisoners together had been based on their religious convictions, so that they would not be hindered in carrying out their daily rites.

147. At about 4 a.m. on 4 October 2002, the above-mentioned prison staff were informed that a loud noise was coming from cell no. 88. Mr Dalakishvili instructed a warden to find out what was happening. The latter looked through the peephole in the cell door and saw that the prisoners were dismantling beds and shouting in a foreign language. According to Mr Chikviladze, after a certain period the warden was no longer able to observe what was going on, as the prisoners had covered over the peephole from the inside. Mr Dalakishvili submitted a written report on the situation to the prison governor, who was still in his office. At the latter's request, Mr Dalakishvili, Mr Buchukuri and Mr Chikviladze, accompanied by other members of staff and the deputy governor, went to the cell to see what was happening. The deputy governor ordered that the cell be opened. According to Mr Dalakishvili, they hoped to talk to the applicants. When the door was opened, they found the cell in chaos, heard shouts and saw that bits of metal and bricks were being thrown in their direction. Mr Chikviladze shouted an order to close the door quickly. He asked that it be left closed until such time as he had reported the situation to his superiors in the Prisons Department. Mr Dalakishvili, who did not understand the reason for such violence, believed that a riot was about to begin and increased the number of wardens on the floor in question.

148. Returning to the prison's administrative wing, Mr Chikviladze saw that the director of the Prisons Department was already there, together with about ten or so other people. He was then officially informed that four prisoners were to be removed with a view to their extradition. A vehicle was apparently ready in a neighbouring courtyard and the airport authorities had been informed. Accompanied by the director of the Prisons Department, the

prison governor and their deputies, the wardens again gathered in front of the cell. The prison governor entered first, with four sealed files under his arm, one for each of the prisoners affected by the extradition order. The others followed him into the cell. According to Mr Kerdikoshvili, the prisoners were standing on their beds and throwing bowls, plates and other objects at them. The governor informed them that an internal measure was to be implemented in the cell and that the prisoners were to leave it. According to Mr Chikviladze, the governor mentioned the need to search the room. The prisoners categorically refused to obey and launched a direct attack.

149. The wardens heard by the Court confirmed that all the applicants were armed with pieces of metal which had been removed from the beds, metal grills which they had removed from the windows and trousers filled with bricks and tied at the end of the legs, which were being used as projectiles.

150. In this connection Mr Chikviladze explained that Prison no. 5 was housed in a building that had been constructed in 1887, and that the walls were so eroded that bricks could be pulled out by hand. Mr Dalakishvili also stated that the walls were in a state of disrepair and that bricks could be removed using one's bare hands. Having subsequently participated in drawing up the damage assessment report (see paragraph 96 above), Mr Chikviladze noted that the cell walls had been damaged and that the metal bed-frames were in several pieces. The water pipe above the sink had apparently been pulled out of the wall.

151. Since the prison governor's arrival in the cell had led to an open attack, masked members of the special troops, who had previously been posted in the staircase, entered the premises at the governor's request. Mr Dalakishvili and Mr Chikviladze considered that the use of special troops had been necessary in view of the scale of the resistance put up by the prisoners. They both agreed that hand-to-hand combat had taken place between the prisoners and members of the special troops. According to Mr Buchukuri, the special troops, who had been placed at the prison administration's disposal in case of necessity, usually carried a truncheon each and could hardly enter the prison armed in any other way.

152. According to Mr Dalakishvili, the applicants had heard rumours about the extradition order from the television. Mr Chikviladze supposed that they could have kept mobile phones illegally in their cell or could have listened to the radio. In addition, certain neighbouring cells contained television sets and their occupants could have passed on the news to the applicants without difficulty.

153. Mr Dalakishvili alleged that, on entering the cell behind the prison governor, he had been injured on the elbow and knee by “projectiles” fabricated on the spot by the prisoners (see paragraph 205 below). He nonetheless returned to his office, where the non-extradited prisoners had

been taken for a check-up. Mr Dalakishvili observed that all of the applicants were covered in dust, but no one was bleeding. He stated that if Mr Magomadov had had a lacerated ear he would have noticed it (see paragraph 125 above). As he himself had not noted any injury and the applicants had not asked for medical assistance, Mr Dalakishvili had not been required to call a doctor at that point. Since the prisoners who were to be extradited had been led away immediately, he had not seen them again in his office and therefore had not seen Mr Aziev.

154. At the end of his shift, on coming across demonstrators outside the prison, Mr Dalakishvili learned that prisoners had been extradited. Given his position, he had been surprised that the authorities had not informed him so that, as was customary, he could inform the prisoners concerned on the day prior to their extradition. He explained to the Court that, under normal circumstances, a written, signed and stamped notification was sent to him by the head of the prison secretariat which managed the prisoners' personal files; Mr Dalakishvili's role was to check the documents for which he was responsible and to inform the individual concerned of the time of departure, so that he or she would have time to prepare. This procedure had not been followed in the instant case.

155. Mr Buchukuri claimed that he had been wounded in the foot by a piece of metal (see paragraph 204 below), that his wound had bled and that he had immediately gone to the prison administration's premises for treatment. Although his wound was not serious, it had required treatment for approximately ten days.

156. Mr Kerdikoshvili stated that, on arriving at the prison, he had learned that the prisoners were refusing to leave their cell, but that no one had explained to him why they were refusing to do so or why they had to be moved. Having followed the prison governor into the cell, he had been injured on the hand (see paragraph 204 below) and had immediately gone downstairs to the infirmary. Other wardens had also been injured and the prison doctor had provided medical treatment.

157. According to Mr Chikviladze, two or three prisoners, armed with pieces of metal, climbed to the top of the bunk beds when the prison governor entered the cell. One of them took aim at Mr Chikviladze several times, but failed to hit him. A member of the special troops then pushed Mr Chikviladze out of the way for his own safety. The most violent prisoners had been the four individuals whose sealed files the governor had brandished; two other prisoners had attempted unsuccessfully to calm them down.

158. Mr Chikviladze considered it likely that, like the State employees, the prisoners could have been injured, given the hand-to-hand fighting that had taken place in the cell.

(ii) A member of the special troops from the Ministry of Justice

159. Mr Z. Sheshberidze explained that the special troops were based not far from Prison no. 5, which they could reach in ten minutes if they ran. On the night in question he and about fifteen of his colleagues had been instructed to defuse the situation in cell no. 88. Unaware of the reason for the disorder, the group had been positioned in staircases near the cell, from where noise and shouting in a foreign language could be heard. The prison governor had entered the cell, but had returned a few minutes later and asked the troops to intervene. They had complied and had performed their task "after encountering limited resistance". The prisoners had been armed with pieces of metal and missile-like objects made from trousers containing a solid mass. Mr Sheshberidze stated that he and his colleagues had indeed been wearing masks, in line with the regulations. On the other hand, they had not worn special vests or any other protective equipment. Armed only with rubber truncheons, they had not carried electric batons or other weapons. They had made the prisoners lie down in the corridor and had handed them over to the prison wardens before leaving the building. Mr Sheshberidze had learned from the television that the applicants had been removed from the cell in order to be extradited.

160. Mr Sheshberidze claimed that he had sustained a small injury (see paragraph 204 below). He denied the allegation that he and his colleagues had beaten the applicants mercilessly and insulted them.

(iii) Representatives of the Procurator-General's Office

161. The Court questioned Mr L. Darbaydze and Ms A. Nadareishvili, trainee prosecutors at the Procurator-General's Office at the relevant time, Mr P. Mskhiladze, director of international relations at the Procurator-General's Office, and Mr N. Gabrichidze, former Georgian Procurator-General.

162. Mr Darbaydze explained that, under the supervision of Mr Mskhiladze, his superior, he had been responsible for various tasks in connection with the disputed extraditions. In particular, Mr Mskhiladze had asked him to visit the applicants in prison, to inform them that the issue of their extradition was being examined by the Procurator-General's Office and to request explanations concerning their nationality. He had carried out this visit on 23 August 2002 with his fellow trainee, Ms Nadareishvili, and without the lawyers being present, since "it was not official questioning, but a request for information". On that date they met only five applicants.

163. Mr Darbaydze had first spoken with Mr Khanchukayev in Russian in a separate room. The latter had provided information orally, but had refused to sign the corresponding document that would provide formal confirmation of his remarks (see paragraph 137 above). On being returned to the room where the other prisoners were being held, Mr Khanchukayev had said something to them in Chechen. The prisoners then collectively

refused to "provide the required explanations and sign the relevant document", on the ground that they were not assisted by a lawyer and a Chechen interpreter.

164. The document that Mr Khanchukayev had refused to sign was an explanatory statement intended for the Procurator-General. It contained the applicant's assertions to the effect that he was Chechen and had been born in Grozny in 1981; had arrived in Georgia on 4 August 2002 and been arrested by the Georgian authorities; had been held for a few days in the Ministry of Security's investigation prison then transferred to Prison no. 5 in Tbilisi; and had been informed at the time of his arrest that he had been arrested for crossing the border illegally. The following sentence can be read at the bottom of this piece of paper: "The prisoner refused to sign this document and requested the assistance of a lawyer." The document had been drawn up by Mr L. Darbaydze, trainee prosecutor. According to the minutes of the meeting, signed only by Mr Darbaydze and Ms Nadareishvili, they had unsuccessfully attempted "to obtain an explanatory statement from the applicant in connection with his extradition".

165. Following this refusal to communicate, Mr Darbaydze postponed the discussion in order to seek the assistance of an interpreter. Mr P. Mskhiladze, his superior, arranged with the Ministry of Security's team of investigators (see paragraph 190 below) that, following an interview scheduled for 13 September 2002, Mr Darbaydze would be able to meet the applicants. Mr Darbaydze thus received an assurance that lawyers and a Chechen-speaking interpreter would be present at the meeting.

166. On 13 September 2002, accompanied by his colleague Ms Kherianova, Mr Darbaydze went to the prison. He met Mr T. Saydayev, an interpreter hired by the Ministry of Security (see paragraph 189 below), and explained to him that, "on account of an ongoing extradition procedure, [he wished] to receive information from the Chechen prisoners that would enable their nationality to be established". The interpreter had translated these remarks, but, since he did not speak Chechen, Mr Darbaydze had been unable to assess the accuracy of the interpretation. In response, the applicants reiterated their refusal to provide information and to sign the corresponding documents, which had been drawn up in Russian. Nonetheless, the documents were read out to them.

167. As the applicants' representatives had indicated that Mr Darbaydze's name did not appear on either of the two "visitors' logs (citizens, lawyers and investigators) for Prison no. 5" covering the periods of 5 August to 12 September and 13 September to 17 October 2002 respectively, Mr Darbaydze explained that on 23 August and 13 September 2002 his name had not been entered in those logs but in the prison's "register of access to the investigation room". Since prosecutors – unlike visitors, lawyers and investigators – had no need of a pass and could enter the prison on the strength of their professional badge alone, he did not

believe that his name could have been entered in the visitors' log mentioned by the lawyers. By the same token, his name did not appear in the "register of requests to bring a prisoner [from his or her cell]" because, on the two dates in question, he had joined the applicants in the investigation room, to which they had been conducted at the request of the Ministry of Security's investigators (see paragraph 190 below).

168. Mr Darbaydze explained that the Ministry of Justice, which was responsible for executing extradition orders, had been informed immediately of the decision of 2 October 2002 (see paragraph 178 below). On the same date Mr Mskhiladze had personally informed the applicants' domestic lawyers by telephone and, furthermore, had served the written extradition orders on them. Mr Darbaydze seemed to remember going to the lawyers' offices for that purpose.

169. According to Mr Darbaydze, at the material time neither the Georgian Code of Criminal Procedure nor any regulatory measure governed the procedure to be followed in lodging an appeal against an extradition order. Article 259 § 4 of the above-mentioned Code alluded to it only vaguely (see paragraph 254 below). This loophole had been remedied by the Georgian Supreme Court's case-law in the *Aliev* case (see paragraph 258 below).

170. Mr Darbaydze stated that, given the lawyers' criticism that neither they nor their clients had been informed of the extradition proceedings and orders, he had contacted Mr Saydayev in December 2002 and had asked him to certify by affidavit that he had indeed gone to the prison on 13 September 2002 and informed the applicants of the extradition proceedings against them. Mr Darbaydze produced the affidavit in question before the Court (see paragraph 196 below).

171. Ms Nadareishvili confirmed that she had been responsible for the extradition case in question within the Procurator-General's Office. On 23 August 2002, together with Mr Darbaydze, she had met five of the applicants in the investigation room of Tbilisi's Prison no. 5. Given those five individuals' refusal to cooperate, she and her colleague had decided against asking that the other applicants be brought to them, as originally planned. Ms Nadareishvili and Mr Darbaydze wished to obtain information about the applicants' dates and places of birth, and their nationalities. They informed the applicants that they were working on the question of their extradition for the Procurator-General's Office and that they were not investigators. The applicants had initially pretended not to speak Russian but had subsequently stated in that language that they did not wish to return to Russia and that some of them had Georgian nationality. This conversation took place without a lawyer or an interpreter.

172. With regard to the fact that her name did not appear in the prison's visitors' log, Ms Nadareishvili claimed not to know the procedure for access

to the prison, since she had visited it for the first and last time on 23 August 2002.

173. Mr Mskhiladze, who was Mr Darbaydze's and Ms Nadareishvili's hierarchical superior, explained that the Georgian Procurator-General's Office had not been satisfied with the documents submitted by the Russian authorities in support of the extradition request concerning the applicants; those documents had been handed over during Mr Ustinov's visit to Georgia (see paragraphs 62 and 63 above). Confirming the facts set out in paragraphs 62-64, 67-69 and 71-72 above, Mr Mskhiladze emphasised that the Georgian authorities had asked their Russian counterparts for firm assurances concerning the treatment that would await the applicants in the event of extradition. He pointed out that those had not been general assurances, but individual guarantees in respect of each applicant, cited by name in the relevant letters. Given that the assurances had come from the Russian Procurator-General's Office and that the Office had the role of prosecutor during criminal trials in Russia, the Georgian authorities had every reason to believe that the death penalty would not be sought in respect of the applicants. They had also taken into account that a moratorium on the death penalty had been in force in Russia since 1996 and that the imposition of such a sanction had been prohibited by the Constitutional Court's judgment of 2 February 1999. Beset by "certain doubts", the Georgian authorities had required the same type of assurance with regard to inhuman or degrading treatment. It was only after it had obtained satisfactory assurances in that respect that the Georgian Procurator-General's Office had begun examining the extradition request.

174. Without denying that the Procurator-General's Office had sent the Russian authorities photographs of the applicants which had been taken in Georgia, Mr Mskhiladze firmly denied that the Russian side had used those photographs in their extradition request or in support of that request. The Russian authorities had indeed submitted the photographs of the applicants which were included with the copies of Form no. 1 (see the footnote on page 12 above). According to Mr Mskhiladze, this was explained by the fact that, at the request of the Ministry of Security's investigation team responsible for examining the illegal border crossing, the Procurator-General's Office had submitted a request for assistance in that criminal case to the Russian authorities, in accordance with the Minsk Convention. The request, accompanied by the applicants' photographs and fingerprints, was intended to identify the persons concerned and had been drawn up at the end of August 2002. Given that the extradition request, supported by photographs of the applicants and other documents, had been submitted on 6 August 2002, Mr Mskhiladze did not believe that the two sets of photographs could be the same.

175. As to the identification of the extradited applicants, Mr Mskhiladze explained that the Russian investigation orders contained their real names

and that the applicants themselves had never contested this. They had also been identified by means of identification procedures in Russia, photographs, identity documents and copies of Form no. 1, submitted by the Russian authorities. In addition, according to the Georgian Ministry of Justice, those individuals did not possess, and had never possessed, Georgian nationality. The Ministry for Refugees had also indicated that they were not on the refugee list. Thus, the extradition orders of 2 October 2002 had not resulted from a hasty procedure. For two months, the Procurator-General's Office had meticulously examined the documents showing that the applicants were accused of serious crimes in Russia, were Russian nationals and were protected by firm assurances from the Russian authorities.

176. Mr Mskhiladze considered that the extradition proceedings had been transparent. At his request, trainee prosecutors who were supervised by him had informed the applicants of the extradition proceedings and had obtained information about their nationality. In addition, the applicants had also been kept informed by the media. Mr Mskhiladze stated that the extradited applicants' lawyers had consequently been able to rely on Article 259 § 4 of the Code of Criminal Procedure (see paragraph 254 below) and to apply to a court at any stage of the proceedings, especially as such an application would have had a suspensive effect on execution of the extradition orders. However, Mr Mskhiladze accepted that he was unaware of instances in which Article 259 § 4 had been used prior to the *Aliev* case (see paragraph 258 below). He pointed out that, following the Supreme Court judgment in that case, three applicants had been able to challenge the extradition orders issued against them (see paragraphs 83 and 84 above).

177. With regard to the issue of access to the extradition files, Mr Mskhiladze explained that the applicants' lawyers had asked to inspect the files, but that this had been refused on the ground that the employees of the Procurator-General's Office responsible for the case needed to be able to study these files themselves. In any event, according to Mr Mskhiladze, the lawyers would have been able to consult the files only if they had decided to apply to a court against the extradition proceedings.

178. Mr Mskhiladze stated that at about 1 p.m. on 2 October 2002 he had personally handed over a copy of the extradition orders – issued that day at noon – to the relevant individual in the Ministry of Justice, with a view to their execution. He had also informed Mr Khidjakadze and Mr Gabaydze, the applicants' lawyers, of the orders by telephone (see paragraphs 212 et seq. below). As he was unable to contact Mr Arabidze, he had asked the latter's colleagues to inform him. He had then sent the lawyers a letter containing a copy of the orders. Mr Mskhiladze submitted to the Court a copy of this letter of notification, which also informed the lawyers that they were entitled to apply to a court on behalf of their clients. As he was unable to send the letter by fax on account of electricity problems – a

regular occurrence in Georgia – Mr Mskhiladze instructed Mr Darbaydze to leave the letter at the lawyers' offices (see paragraph 168 above). Since the lawyers were absent, Mr Darbaydze handed over the envelope to an office employee. The copy of the letter submitted by Mr Mskhiladze has an almost entirely illegible and faded signature, preceded by the words "I confirm receipt on 2 October 2002".

179. Mr Mskhiladze categorically dismissed the above-named lawyers' argument that the extradition had taken place in secret. He considered that, since no execution date was indicated on the extradition orders, the lawyers had had sufficient time to apply to a court between 2 and 4 October.

180. As to Mr Aziev's allegedly alarming condition, Mr Mskhiladze did not rule out the possibility that he had been injured during the incident between the prisoners and special troops and that the journalists had not wished to film him at the airport. In any event, Red Cross representatives had visited each applicant at the airport. Russian television had subsequently shown Mr Aziev being admitted to prison.

181. Mr Mskhiladze dismissed Ms Mukhashavria's argument that the applicants' detention had been directly linked to the fact of Mr Ustinov's lodging of an extradition request against them.

182. Mr Gabrichidze said that on 6 August 2002 Mr Ustinov had visited Georgia with his deputy, several employees of the Russian Procurator-General's Office and special guards. The main purpose of his visit had been to discuss the alarming situation prevailing in the Pankisi Gorge, a Georgian valley which bordered Chechnya. On that occasion he submitted the request for extradition of the applicants and certain supporting documents. Mr Gabrichidze had initially refused this request for the reasons set out in paragraphs 62 and 63 above. Mr Ustinov had not contested that decision, but did however ask that the proceedings be expedited.

183. According to Mr Gabrichidze, the extradition proceedings were conducted with maximum transparency, given that they were covered by the media and the Procurator-General's Office organised regular press conferences on the subject. During the proceedings, firm assurances were obtained from the Russian authorities that the death penalty would not be applied and that the extradited individuals would not be subjected to inhuman and degrading treatment and would receive legal assistance. In addition, account had been taken of the fact that a moratorium on capital punishment had been in force in Russia since 1996 and that the imposition of that penalty was hardly possible since the Constitutional Court's judgment of 2 February 1999. As a Procurator-General himself, Mr Gabrichidze had had no reason to doubt the credibility of guarantees provided by a member State of the Council of Europe.

184. Having concluded that the material in his possession enabled him to consent to the extradition of five applicants, he had contacted his Russian counterpart, asking him to supervise personally the investigation

proceedings in Russia and to ensure that those individuals' procedural rights were fully respected. He had even telephoned Mr Fridinskiy, Russian Deputy Prosecutor-General responsible for the North Caucasus area, who had given verbal guarantees and reassured him by referring to the assurances already provided in writing.

185. Once it had been decided to extradite the five applicants, execution of this measure depended only on the arrival of an aeroplane from Russia. Mr Gabrichidze had instructed Mr Mskhiladze to inform the applicants' lawyers of the decision immediately. Once informed, the latter could have challenged the extradition before the courts. However, Mr Gabrichidze noted that the Code of Criminal Procedure contained only one provision on this subject, which was worded in general terms, did not set out either the procedure or the time-limits for lodging an appeal and did not identify the relevant court. He conceded that, given this deficiency in the legislation and the total lack of precedent, the fact that no appeal had been made was not entirely imputable to the lawyers. Between 1996 (the year in which the Minsk Convention came into force in respect of Georgia) and October 2002, there had been no instance in Georgia of a judicial appeal against an extradition order. Mr Gabrichidze stressed the need to reform Georgian legislation in this area.

186. In view of the rumours concerning Mr Aziev's death, Mr Gabrichidze had telephoned his Russian colleagues; Mr Fridinskiy had assured him that the prisoner in question was alive and in good health. He had subsequently called Mr Fridinskiy on a regular basis; the latter had kept him abreast of progress in the proceedings and had gone so far as to provide very detailed information. This had led Mr Gabrichidze to conclude that Mr Fridinskiy was following the case closely and monitoring the applicants' situation, as he had promised. In conclusion, Mr Gabrichidze maintained that, had the Georgian authorities wished to subject the applicants to arbitrary extradition, they would have handed them over on 6 August 2002 to Mr Ustinov, who had been accompanied by a special unit for that very purpose (see paragraph 182 above).

(iv) The head investigator in the illegal border-crossing case

187. Mr Bakashvili, an employee of the Ministry of Security, had led a team of investigators in the proceedings against the applicants for crossing the border illegally. He had personally dealt with the cases of Mr Khanchukayev, Mr Gelogayev, Mr Khashiev, Mr Magomadov, Mr Baymurzayev and Mr Adayev. Of those, only Mr Adayev had been in possession of a Soviet passport; this document stated that he was named Aslan Lechievich Adayev, was a Russian national and had been born on 22 July 1968. The identity of the other applicants listed above had initially been established on the basis of their own statements. Subsequently, a

request for assistance in criminal matters was sent to the Russian authorities through the Procurator-General's Office (see paragraph 174 above). The "reports on identification by a third party using photographs", the statements by the applicants' neighbours and close family, as well as other documents provided by the Russian authorities, had made it possible to establish that Mr Khanoyev was Khanchukayev Aslanbeg Atuyevich, that Mr Mirjoyev was called Gelogayev Ruslan Akhmedovich, that Mr Khashiev was called Mulkoyev Bekkhan Seidkhatanevich, that Mr Usmanov was Magomadov Akhmad Lechievich and that Mr Baymurzayev was named Alkhanov Khusein Movladinevich.

188. With regard to the secrecy surrounding their real identity, the applicants told the investigator they were afraid that their relatives and friends left behind in Chechnya would be persecuted. They had confessed to being armed when they crossed the Georgian border and had cooperated during the investigation. They had not explicitly referred to their fear, but had stated on several occasions that they did not wish to be extradited to Russia.

189. The investigation had been conducted in Chechen with assistance from Mr Saydayev, an interpreter hired from time to time under contract. The applicants all spoke Russian very well and, with the exception of the investigation interviews, had spoken with the investigator in that language.

190. Mr Bakashvili explained that one day he had been in the investigation room in Prison no. 5 with the interpreter and the lawyers for the applicants for whose cases he was responsible. The other investigators from his team were working with other applicants in neighbouring rooms. The interpreter was helping each of the investigators in turn. On leaving the room, he had met Mr Darbaydze, accompanied by a colleague, who had explained to him that a request to extradite the applicants was being examined by the Procurator-General's Office and that he needed to obtain information about their nationality. Mr Bakashvili had replied that it was not his task to instruct the interpreter or the lawyers to assist the prosecutor in that task. He had advised him to make arrangements directly with them.

191. Mr Bakashvili confirmed that, unlike investigators, prosecutors did not require a pass and could enter prisons with their badges.

(c) Facts submitted by the interpreter

192. Mr T. Saydayev, a student of international law, confirmed that he had been hired as an interpreter by the Ministry of Security's investigation team. He stated that he had met Mr Darbaydze at Prison no. 5 on only one occasion, namely 13 September 2002 (see paragraph 166 above). On that day, while he was in an investigation room with five or six Chechen prisoners, Mr Darbaydze, accompanied by a female colleague, had informed him that he represented the Procurator-General's Office. He had explained to him in Georgian that this was an extradition case and that he required

information about the nationality of the prisoners in question (see paragraph 166 above). Mr Darbaydze had also asked him where he had learned to speak Georgian and Chechen so well. Considering that their conversation so far had been introductory, Mr Saydayev had asked the prosecutor what specifically he wanted interpreted for the prisoners. Mr Darbaydze had then asked him if the applicants were willing to provide the information necessary to establish their nationality. The interpreter had translated this question into Chechen. The prisoners had replied that they refused to provide any information on that subject. Mr Darbaydze had left immediately on hearing the interpretation of that reply.

193. The lawyers had not been present during this discussion and the prosecutor had not held any individual meetings with the applicants. Mr Darbaydze had merely asked Mr Saydayev to put the above question to the prisoners and had left the room following their refusal to answer. He had not handed over any documents. Mr Saydayev had provided Mr Darbaydze with a strictly one-off service on the date in question, one that was not governed by any contractual or friendly relationship.

194. During the investigation, the applicants referred to extradition proceedings several times among themselves, in Chechen; according to Mr Saydayev, the very expression made them afraid. Those discussions had always been marked by doubts and suppositions. At a meeting prior to 13 September 2002, Mr Bakashvili had asked the applicants about their wishes and whether they needed to see a doctor. The applicants had replied that the only thing they wished was not to be extradited. They explained that they watched television in their cell and had heard rumours that they might be extradited to Russia.

195. As regards the affidavit of 6 December 2002 (see paragraph 170 above), Mr Saydayev explained that following their meeting on 13 September 2002, Mr Darbaydze had visited him at home and asked him to swear before a notary that he had met the applicants in Mr Darbaydze's presence and that they had refused to take part in discussions. Mr Darbaydze apparently needed this statement on account of problems with his superiors.

196. In the affidavit in question, entitled "Statement for the Deputy Minister of Justice" and handwritten by Mr Saydayev, he stated:

> "On 13 September 2002, at Tbilisi Prison no. 5, I assisted investigators from the Ministry of Security as an interpreter in the case of Mr A. Adayev, Mr T. Baymurzayev and other individuals (thirteen persons in total). Once the investigators' work was complete, Mr L. Darbaydze, trainee prosecutor at the Department of International Relations in the Procurator-General's Office, arrived to question the same Chechen prisoners. He first informed them that the question of their extradition was being examined by the Procurator-General's Office and then asked them to provide the necessary explanations in order to establish their nationality. The Chechen prisoners refused, after which Mr Darbaydze drew up a report and submitted it to

them for signature. The prisoners refused to sign this document. The prosecutor and the prisoners communicated through me."

197. Mr Saydayev explained to the Court that Mr Darbaydze had dictated this text to him in the notary's presence. He had been wrong not to pay attention to the sentence about extradition, which had been slipped into the text. Mr Darbaydze had told him that he was merely required to confirm his presence in the prison on 13 September 2002, together with the applicants' refusal to provide information; Mr Saydayev had concentrated on those two points and had neglected the rest of the text, unaware that this would be of importance.

198. In conclusion, Mr Saydayev stressed that Mr Darbaydze had not, with his assistance, informed the applicants of the extradition proceedings on 13 September 2002.

(d) Facts submitted by the medical expert

199. Mr K. Akhalkatsishvili went through the reports which he had submitted on 4 October 2002 after examining Mr Khanchukayev, Mr Gelogayev, Mr Khashiev, Mr Issayev and Mr Baymurzayev, applicants, Mr Sheshberidze, a member of the special troops, and Mr Kerdikoshvili, Mr Dalakishvili, Mr Buchukuri, Mr Samadashvili and Mr Kovziridze, prison wardens. He explained that, on the instruction of the Ministry of Justice's Prisons Department, he had also taken into account the observations of the doctor in Prison no. 5 when preparing these reports.

200. It appeared from the reports in question that Mr Khanchukayev was injured on the right side of his body, had numerous bruises on his back and shoulders, measuring 9 x 1 cm, 9 x 4 cm, 6 x 3 cm, 3.5 x 3 cm, 5 x 1 cm, 4.5 x 1 cm, 12 x 1 cm, 12.2 x 1 cm, 10 x 1 cm and 10 x 0.8 cm respectively, five bruises on the face (around the nose and lips) and a bruise on the right knee. Mr Gelogayev had five bruises on his forehead, measuring 2 x 0.5 cm, 1 x 0.1 cm, 0.5 x 0.1 cm, 2.5 x 0.2 cm and 3 x 0.8 cm respectively, a bruise of 3 x 2 cm on the cheek, a bruise measuring 4 x 1.5 cm around the jaw and a bruise of 4 x 3 cm on the right shoulder. Mr Magomadov had a bruise of 3 x 1 cm on the forehead, another measuring 4 x 3 cm on the cheek, a bruise that covered all of one ear, a bruise of 4 x 4 cm on the right temple, bruising around the wrist joints, a bruise of 22 x 2 cm on the left side and a bruise of 5 x 2 cm on the left knee (see the applicants' statements in paragraph 125 above).

201. The injuries sustained by Mr Khanchukayev, Mr Gelogayev and Mr Magomadov resulted from blows inflicted by hard blunt objects and dated from 4 October 2002. They were classified as light injuries which were not damaging to their health.

202. Mr Khashiev and Mr Baymurzayev had not made any complaints and had presented no signs of blows or violence.

203. Mr Issayev had a broad haematoma around the right eye and two bruises to the forehead, each of which measured 1 x 1 cm (see paragraph 125 above). These injuries resulted from blows inflicted by hard blunt objects and were classified as light injuries which were not damaging to his health.

204. Mr Kerdikoshvili had a wound of 6 x 0.1 cm on the right shoulder and two wounds, measuring 0.5 x 1 cm and 0.3 x 0.1 cm, around the left wrist. Those injuries resulted from blows inflicted by a sharp object, dated from 4 October 2002 and were classified as light injuries which were not damaging to his health. Mr Sheshberidze apparently suffered pain when walking. He had two bruises, measuring 3 x 2.5 cm and 0.8 x 0.5 cm, on the left ankle, which was also swollen. The joint on Mr Dalakishvili's left knee was swollen and he had a bruise measuring 3 x 2.5 cm. Mr Buchukuri had a bruise measuring 3 x 2 cm on the left ankle and a bruise of 1 x 1 cm on the left testicle. Mr Samadashvili had a bruise measuring 5 x 3 cm on the right side of the chest and another, measuring 1.5 x 1 cm, on the right ankle. Mr Kovziridze had a bruise of 2 x 1.5 cm on the right hand and another measuring 3.5 x 3 cm on the left foot. Those injuries resulted from blows inflicted using hard blunt objects and dated from 4 October 2002. They were classified as light injuries which were not damaging to their health.

205. Mr Dalakishvili submitted to the Court a medical certificate and a statement that he had undergone an operation on the left knee in December 2003 on account of rupture of the anterior cruciate ligament.

(e) Extracts from the applicants' "prisoner files"

206. At the Court's request, the Georgian Government made available to it in Tbilisi the applicants' prisoner files. The medical information set out below was obtained from this source.

207. It appears from the medical certificate of 6 August 2002, drawn up by the doctor in the Ministry of Security's investigation prison that Mr Khanchukayev was in good health but was suffering from swollen legs. The entry in his medical records on 4 October 2002 mentions numerous bruises, the size of which varied between 1 x 1 cm and 20 x 5 cm, as well as a fracture to the left shoulder. No mention is made of any medical treatment administered to the applicant on that date. The next entry, on 8 October 2002, states that the prison doctor treated Mr Khanchukayev for pain in the pelvis area. According to the entry for 12 October 2002, the applicant was treated by a surgeon.

208. According to medical certificates dated 6 August 2002, Mr Issayev had dressings on the left shoulder and right tibia, injured areas which had required surgical intervention on the previous day. Mr Khashiev showed a deformation of the left side of the lower jaw, together with a scar from an operation dating from a year previously. His legs were also swollen and

painful. Mr Baymurzayev also had a deformation of the lower jaw and swelling of the tibias, which was making it difficult for him to walk. It appears from Mr Baymurzayev's file that he received medical treatment from December 2002 onwards for the injury to his jaw and that on 10 October 2003 he was placed in the prison infirmary, as the diagnosis showed a total deformation of the chin bone.

209. It appears that on 7 August 2002, at the Ministry of Security's request, Mr Margoshvili was transferred from a civilian hospital to the prison infirmary.

210. According to a diagnosis drawn up for the Ministry of Security on 7 August 2002 by the civilian hospital in connection with Mr Magomadov's transfer to the prison infirmary, he had an infected wound on the right side of the neck (see paragraph 138 above) and presented numerous grazes on his body. It was recommended that the wound be disinfected and the dressing changed daily or every second day. According to the entry in his medical records on 5 October 2002, treatment had been given for the swelling.

211. The entry in Mr Gelogayev's medical records on 4 October 2002 confirmed the presence of the injuries observed by the medical expert (see paragraph 200 above). No mention is made of any treatment administered to the applicant on that date. On the other hand, according to the entry on 10 October 2002, he had received "symptomatic treatment" and been issued with analgesics.

(f) Facts submitted in writing by the applicants' lawyers before the domestic courts

212. As they were unable to appear before the Court in Tbilisi (see paragraph 44 above), on 17 April 2004 Mr Arabidze, Mr Khidjakadze and Mr Gabaydze informed the Court in writing that they had never received a letter from Mr Mskhiladze (see paragraph 178 above). They claimed to have learned of it for the first time in April 2004, once the Court had sent it to the applicants' representatives.

213. As director of the law firm to which the letter in question had allegedly been delivered, Mr Khidjakadze stated that the signature on the document did not belong to any of his colleagues. He noted that the letter bore no registration number, although his firm's practice was to assign a number to each package as soon as it arrived. In his opinion, the document had been fabricated, and was being used by the Government to blame the lawyers for not lodging an appeal against their clients' extradition. The two other lawyers also failed to recognise the signature confirming receipt of the letter.

214. Mr Gabaydze explained that, on the evening of 3 October 2002, a friend who worked at the Ministry of Security (whose name is not disclosed, at the lawyer's request) informed him confidentially that the extradition of

"certain Chechens" was being prepared. He then contacted the Chechen representative in Georgia and went with him to the Procurator-General's Office. They attempted unsuccessfully to obtain information. Mr V.M., a prosecutor, informed them by telephone that he was unaware of any such developments and asked them not to call again. Ms L.G., also a prosecutor, told them that she could say nothing over the telephone.

215. Those attempts having been unsuccessful, Mr Gabaydze went to the Rustavi-2 television channel, in order to state publicly that the secret extradition of Chechen prisoners was being planned (see paragraph 124 above). At 9 a.m. the following day, he went to the prison to try to meet his clients, but the prison doors were closed and the telephones had been disconnected. At that stage he did not know which of his clients were affected or whether the extradition had already taken place.

216. The video recording of the 11 p.m. news bulletin broadcast on Rustavi-2 on 3 October 2002 and made available to the Court by the Georgian Government did indeed contain an interview with Mr Gabaydze. The lawyer stated that, according to a reliable source, the extradition of several Chechen prisoners, arrested between 3 and 5 August on the Russo-Georgian border, was planned for the following day. He claimed that he did not know those prisoners' names, that the telephones at the Procurator-General's Office had been disconnected and that the entire proceedings were taking place in secret. However, he did not believe that the individuals with Georgian nationality would be extradited.

D. The extradited applicants

1. Their identity

217. On 15 November 2002 the investigator responsible for "particularly important" cases issued an order in respect of each of the applicants concerning the "establishment of the defendant's identity". The orders in question, which were all identically worded, noted that "documents, particularly passports, were received during the investigation" which proved that the defendants in question were Aslan Lechievich Adayev, born on 22 July 1968 in the village of Orekhovo (Achkhoy-Martan district); Khusein Mukhidovich Aziev, born on 28 September 1973 in the village of Roshni-Chu (Urus-Martan district); Rizvan Vakhidovich Vissitov, born on 1 October 1977 in the village of Goiti (Urus-Martan district); Khusein Khamitovich Khadjiev, born on 8 November 1975 in the village of Samashki (Achkhoy-Martan district) (see paragraph 72 above). "This information was also confirmed by the defendants themselves, and by other material from the case file." The Russian Government did not submit the equivalent document concerning Mr Shamayev, one of the five extradited

applicants. He was referred to in all the documents as Abdul-Vakhab Akhmedovich Shamayev.

2. Representation before the Russian courts

218. On 11 November 2002 the Russian Government submitted to the Court the names of the lawyers who were representing the extradited applicants before the Russian courts. Following repeated requests from the Court, they also sent their addresses on 19 November 2002. On 22 January 2003, claiming that the lawyers enjoyed unlimited access to their clients, the Government provided details of the dates and number of meetings between them.

219. The case file shows that, on 15 November 2002, Mr Shamayev refused the assistance of Mr Zalugin, who had been assigned to him on 5 October 2002, and asked that "any other lawyer" be appointed. This handwritten request by Mr Shamayev is included in the case file. On the same date Ms Kuchinskaya was assigned to his case by virtue of a mission order issued by the head of the Minvody legal consultancy office. From 21 February 2003 Mr Shamayev was assisted by another lawyer, Mr Timirgayev, a member of the Bar of the Chechen Republic.

220. On 5 October 2002 the heads of the legal consultancy offices in Minvody and Essentuki assigned Ms Melnikova and Mr Molochkov to represent Mr Khadjiev and Mr Vissitov respectively during the preliminary investigation. On 15 November 2002 Mr Khadjiev asked that, in view of Ms Melnikova's long absence, "any other lawyer be assigned to him". On the same date the head of the Minvody legal consultancy office assigned Ms Kuchinskaya to represent him.

221. On 5 October 2002 Mr Zalugin was assigned to represent Mr Adayev during the investigation. On 22 October 2002 Mr Adayev refused his assistance and asked that "any other lawyer" be appointed. On 16 and 21 October 2002 Mr Adayev's relatives chose Mr Lebedev (a member of the Moscow Bar from the Novatsia law firm) and Mr Khorochev (from Isk, an association of lawyers in the Odintsovo district, Moscow region) to defend his interests. Only Mr Lebedev's authority to act, approved by the director of Novatsia, is included in the case file.

222. On 5 October 2002 the head of the legal consultancy office in Essentuki assigned Mr Molochkov to represent Mr Aziev before the Procurator-General's Office. Another authority to act was drawn up on 21 October 2002 in the name of Mr Khorochev. Since 31 January 2003 Mr Aziev has been assisted by Mr Timichev, a member of the Bar of the Republic of Kabardino-Balkaria (see paragraph 238 below).

3. Representation before the Court

223. Until 4 October 2002 Mr Khadjiev, Mr Adayev and Mr Aziev were represented before the Georgian courts by Mr Gabaydze; Mr Vissitov was represented by Mr Khidjakadze; and Mr Shamayev by Mr Chkhatarashvili. Those lawyers were remunerated by the leadership of the Chechen-Kist community in Georgia (under contracts for legal assistance dated 5 and 6 August 2002).

224. The lawyers stated that, at 9 a.m. on 4 October 2002, they rushed to the prison to see their clients, but were refused entry. "Not knowing how to apply to the Court", they asked their colleagues, Ms Mukhashavria and Ms Dzamukashvili, to lodge an application on behalf of their clients. Those lawyers were also denied access to the prisoners and could not therefore arrange to have authorities to act drawn up in their names. In extremely urgent circumstances, and in agreement with the leadership of the Chechen-Kist community, Mr Gabaydze, Mr Khidjakadze and Mr Chkhatarashvili prepared documents (included in the case file) delegating authority to their two colleagues, who immediately applied to the Court.

225. On 22 November 2002 Ms Mukhashavria and Ms Dzamukashvili faxed the powers of attorney authorising them to represent the extradited applicants before the Court. Those documents, which referred to Georgia as the respondent State, had been signed by the applicants' family members and friends living in Russia.

226. The lawyers explained that on 28 October 2002 they had contacted the Russian consulate in Tbilisi in order to obtain visas so that they could visit their extradited clients. They were informed orally that, in order to obtain a visa, they would have to produce a written invitation from the prison establishment in question. On 29 October 2002 they asked the Representative of the Russian Federation at the Court for assistance. He explained that he would not reply without some indication from the Court. The lawyers then asked the Court to intervene on their behalf with the Russian authorities so that visas would be issued.

227. On 5 December 2002 the Russian Government alleged that Ms Mukhashavria and Ms Dzamukashvili could not claim to be the representatives of the extradited applicants with regard to the part of the application against Russia, as the authorities to act referred only to Georgia as the respondent State. In addition, under Russian legislation a foreign lawyer could not defend an individual in Russia, either during the preparatory investigation or before the courts. However, "if they were to contact the Russian Procurator-General's Office", the lawyers "[could] in principle visit the extradited applicants". "Those alleged representatives ... who [supported] international terrorists in Russia [were] not considered by the Russian authorities as the applicants' representatives before the Court and [would] not be contacted by them in that capacity."

228. On 17 June 2003 the Court decided to ask the Russian Government, in application of Rule 39 (of the Rules of Court), to allow Ms Mukhashavria

and Ms Dzamukashvili unhindered access to the extradited applicants with a view to preparing the hearing on admissibility (see paragraph 24 above). On 4 August 2003 Ms Mukhashavria asked the Representative of the Russian Federation, by virtue of this decision by the Court, to help her obtain a visa for Russia and authorisation to visit the applicants in prison. In a reply dated 21 August 2003, the Representative of the Russian Federation reminded her, through the Court, that the Russian Government did not consider her as the extradited applicants' representative. He stated that the Georgian lawyers could ask the trial court before which the applicants would be brought to authorise their admission as defence counsel, but that the Government themselves could take no action in this regard.

229. On 22 August 2003 the Court again invited the Russian Government to comply with the interim measure indicated on 17 June 2003. On 1 September 2003 the Government repeated the grounds for their refusal as set out in the above-mentioned letter of 21 August.

230. At the hearing on admissibility the Russian Government submitted a graphology report of 29 August 2003 by the forensic analysis centre at the Russian Ministry of Justice. The expert who had prepared the report claimed that the authorities to act in respect of Mr Shamayev, Mr Adayev and Mr Aziev, submitted to the Court by Ms Mukhashavria and Ms Dzamukashvili, had not been signed by those applicants (see paragraph 225 above). In the case of Mr Vissitov, it had not been possible to ascertain whether the signature was indeed his, and it had been impossible to decide the question with regard to Mr Khadjiev, since the analysed specimen had been very short and incomplete.

231. In reply, Ms Mukhashavria pointed out that those applicants had been extradited before their lawyers could obtain authorisation to visit them. After their arrival in Russia, she had attempted unsuccessfully to make contact with them. She had then appealed to their relatives and friends, and it was the latter's signatures which appeared on the authorities to act.

4. Attempts by the Court, in the context of the written proceedings, to establish contact with the extradited applicants

232. On 20 November 2002 the Registry of the Court informed Mr Molochkov, Ms Kuchinskaya, Mr Khorochev and Mr Lebedev (see paragraphs 218-22 above) that their clients had attempted to lodge an application with the Court on 4 October 2002. They were asked to make contact with the applicants so that they could confirm or deny their intention to apply to the Court. On 9 December 2002 the Representative of the Russian Federation replied to the Court, stating that the lawyers “objected to the Court's attempts to contact them”. Indeed, Mr Khorochev and Mr Lebedev never sent a reply. Mr Molochkov and Ms Kuchinskaya replied only in August 2003 (see paragraph 241 below).

233. Consequently, and in accordance with the authorisation granted by the President of the Section (see paragraph 16 above), on 10 December 2002 the Registry sent identical letters (by registered mail requiring acknowledgment of receipt), accompanied by application forms, directly to the extradited applicants at the address of the pre-trial detention centre in town A. On 16 January 2003 the Court received the five acknowledgments of receipt, signed on 24 December 2002 by the head of the prison secretariat. In September 2003 the Russian Government produced a statement, delivered on an undetermined date by the head of the prison administration of the pre-trial detention centre in question, stating that no letters from the Court to the extradited applicants had arrived at that establishment. Following the Court's communication of the above-mentioned acknowledgments of receipt, the Russian Government provided other explanations (see paragraph 239 below).

234. Mr Shamayev, Mr Vissitov and Mr Adayev never replied to the Court to confirm or deny their intention of applying to the Court as expressed on 4 October 2002.

235. On 27 October 2003 the Court received an application form from Mr Khusein Khamitovich Khadjiev, duly completed and dated 8 October 2003, which named both Georgia and Russia as the respondent States. It had been posted on 9 October 2003 by the administration of the pre-trial detention centre in town B (see paragraph 53 above). Mr Khadjiev provided an authority to act made out in the name of Mr S. Kotov, a lawyer. Although the relevant box on this document referred only to Georgia as the respondent State, the form contained complaints against both Georgia and Russia (see paragraphs 388, 439 and 484 below).

236. On 19 December 2003 those documents were sent to the Governments and to Ms Mukhashavria and Ms Dzamukashvili. Mr Kotov was asked to provide certain additional information, particularly with regard to his client's application to the Court on the evening of his extradition and his representation before the Court by the Georgian lawyers. He was also asked to specify who would represent his client before the Court with regard to the part of the application concerning Russia.

237. To date, no reply has been received by the Court from Mr Kotov.

238. Mr Khusein Mukhidovich Aziev, one of the five extradited applicants, did not return the application form sent to him by the Court on 10 December 2002. On the other hand, on 19 August 2003 he lodged a separate application with the Court, referring only to Russia (*Aziev v. Russia*, no. 28861/03). Represented by Mr Timichev (see paragraph 222 above), he complained of the impossibility of being tried by a competent court in Russia and about the conduct of the Russian lawyer who had been assigned to him after his illegal extradition to that country. Having initially made no reference to any application in connection with his extradition, it was not until 9 October 2003 that Mr Aziev confirmed that he had

submitted such a complaint to the Court and asked that case no. 28861/03 be joined to the present application. In a letter of 30 October 2003, sent to the Court in connection with application no. 28861/03, he confirmed that he had learned from his lawyer and the media that the Russian Government were denying that he had applied to the Court from Georgia, with Ms Mukhashavria's assistance, in order to complain about his illegal extradition. He stated that he endorsed all the steps taken by that lawyer, even if it had not always been possible to take his instructions.

239. On 3 December 2003 the Russian Government explained the misunderstanding over the receipt by the extradited applicants of letters from the Court. They alleged that the letters had been delivered to the applicants in person, and had been left with them rather than being included in their prisoner files. The absence of any record in those files lay behind the statement made by the head of the prison administration to the effect that the prison had never received the correspondence in question (see paragraph 233 above). The Government submitted reports on the administrative inquires subsequently conducted into this matter in the pre-trial detention centre and handwritten letters from Mr Shamayev, Mr Adayev, Mr Khadjiev and Mr Vissitov, dated 3 November 2003.

240. In those letters Mr Shamayev stated that he had received the Court's correspondence but had not replied in person. However, he did not rule out the possibility that his lawyer had sent a complaint to the Court on his behalf. Mr Adayev confirmed that he had received the Court's correspondence at the end of 2002 and that he had handed it over to his lawyers for them to reply. He also stated that he had sent a complaint to the Court from Georgia with the help of a lawyer. Mr Khadjiev stated that, while in Georgia, he had sent a complaint to the Court with the assistance of a lawyer. On 24 December 2002 he had received the Court's letter in the pre-trial detention centre in Russia. Mr Vissitov alleged that he had sent a complaint to the Court from Georgia, with the help of a lawyer. He had subsequently received a letter from the Court in Russia, but had lost it during a change of cell. No letter was submitted from Mr Aziev. However, the Government submitted an explanation from an employee in the SIZO administration for the Stavropol region, stating that Mr Aziev, who had been questioned on 3 November 2003, had confirmed that he had received a letter from the Court at the end of 2002. Unlike the other applicants, Mr Aziev had not written an explanatory letter since he did not speak Russian well and did not write in that language.

241. On 26 August 2003 Mr Molochkov and Ms Kuchinskaya replied to the Court's letter of 20 November 2002 (see paragraph 232 above). They alleged that Mr Shamayev, Mr Khadjiev, Mr Vissitov and Mr Aziev, their former clients, had never complained of a violation of their rights and had never expressed a wish to apply to the Court. Having received no instructions from them, they had been unable to contact the Court on their

own initiative. They had always had adequate time and facilities to prepare their clients' defence and opportunities to meet them without prison wardens being present.

242. On 15 September 2003 the Russian Government produced photographs of four of the extradited applicants, taken in their respective cells in the pre-trial detention centre in town B, and a photograph of Mr Aziev, dated 23 August 2003, who was then detained in a pre-trial detention centre in town A (see paragraph 53 above). Unlike the other applicants, Mr Aziev appears in only one photograph and is shown from a distance in a general shot of his cell. Apart from the observation that the conditions of detention seemed to be better in the first SIZO mentioned above, the photographs of the cells included with this submission gave rise to no particular comments from the Court.

243. On 8 January 2004 the Russian Government alleged that Mr Khadjiev's submission of a complaint to the Court (see paragraph 235 above) marked a turning point in the instant case and was a breakthrough in the procedural impasse. They had no doubt that Mr Khadjiev had indeed applied to the Court on this occasion and claimed that there was consequently no further point in considering the alleged communications which had previously been sent by him to the Court or those sent on behalf of the four other extradited individuals. The Russian Government stated that they recognised the authority to act given by Mr Khadjiev to Mr Kotov in his application against Georgia. They requested that this application be subject to the "ordinary procedure" and be communicated to them, and that all of the previous proceedings in the instant case be annulled. In their opinion, this would put an end to "non-procedural activities in this case". On 5 and 13 February 2004 the Court reminded the Government that Mr Khadjiev's complaints had been communicated to the respondent Governments prior to consideration of their admissibility and that they did not require any fresh communication measure.

244. With regard to its attempts to question the five extradited applicants and the two applicants who disappeared in Tbilisi and are now detained in Russia, the Court refers to paragraphs 27 et seq. above.

5. State of health of the extradited applicants

245. According to the medical department of the Georgian Ministry of Justice, the applicants presented no injuries on 4 October 2002.

246. On 14 November 2002, in conditions of strict confidentiality, the Russian Government produced medical certificates drawn up on 4 November 2002, a month after their extradition. According to the prison doctor, the applicants had made "no complaints about their state of health and were, in general, in good condition". On 22 January 2003 the Government submitted new medical certificates, dated 15 January 2003 and signed by a cardiologist, a neurologist, a generalist and a surgeon. On 1

September 2003 they submitted further medical certificates, drawn up on 11 August 2003. The most recent medical certificates, submitted on 25 February 2004, were dated 20 February 2004 and were drawn up by doctors from the civilian hospital in town B, in the Stavropol region.

247. According to the medical certificates dated 4 November 2002 and 15 January 2003, Mr Vissitov had complained of a dryness of the throat and a dry cough. His condition was described as "objectively satisfactory". Monitoring by the medical service was recommended. According to the medical certificate of 11 August 2003, Mr Vissitov had made no complaint concerning his state of health and did not present any physical injury. He had a cataract on the left eye and a fracture of the nose bone was noted in July 2003. A psychiatric examination on 13 February 2003 found that he was in good psychological health. X-rays taken on 18 October 2002 and 24 July 2003 showed no chest pathology. At no point during his detention had Mr Vissitov requested medical assistance. According to a medical certificate dated 20 February 2004, the generalist found evidence of dystonia.

248. On 15 January 2003 it was noted that Mr Khadjiev had been ill for two days. He complained of hot flushes, a cough and shivering. The doctor observed increased vesicular murmurs in the lungs, an acute viral respiratory infection complicated by tracheobronchitis, and possible pneumonia of the right side. His state was described as "objectively satisfactory". Treatment in the medical unit was considered necessary.

249. The medical certificate of 11 August 2003 mentions old traces of a fracture of the nose bone, an appendectomy in 1998, and a gunshot wound to the right hip dating from July 2002. A psychiatric examination on 13 February 2003 found that he was in good psychological health. X-rays of 18 October 2002 and 24 July 2003 showed no chest pathology. Mr Khadjiev requested medical treatment on 20 February (for an acute viral respiratory infection) and 3 April 2003 (for acute laryngitis). He had made no other requests for medical assistance. According to the medical certificate of 20 February 2004, the generalist found evidence of dystonia and cephalalgia.

250. According to the medical certificates dated 4 November 2002 and 15 January 2003, Mr Shamayev complained of general weakness, acute pain in the hips, dryness of the throat and mouth, and a dry cough. A week prior to 15 January 2003 he had suffered an acute viral respiratory infection. Normal vesicular murmurs in the lungs and chronic cholecystitis (inflammation of the gall-bladder) in remission were observed. His condition was described as "objectively satisfactory". According to the medical certificate of 11 August 2003, Mr Shamayev made no complaint about his state of health. His medical records revealed bruising to the left shoulder. A psychiatric examination on 13 February 2003 found him to be in good psychological health. X-rays dated 18 October 2002 and 24 July

2003 showed no chest pathology. Mr Shamayev had not asked for medical assistance at any point during his detention. According to the medical certificate of 20 February 2004, the generalist found hypotonic dyskinesia of the digestive tract.

251. According to the medical certificates dated 4 November 2002 and 15 January 2003, Mr Adayev had made no complaint about his state of health. His condition was described as "objectively satisfactory". The medical certificate dated 11 August 2003 mentions pale pink bruising on the chest, a gunshot wound to the left shoulder dating from 1994 and a traumatism on the coccyx dating from 1986. A psychiatric examination on 13 February 2003 found him to be in good psychological health. X-rays taken on 13 March and 24 July 2003 showed no chest pathology. On 9 December 2002 Mr Adayev was examined by a doctor following an episode of hypertension and post-traumatic neuritis of the left shoulder. He received medical treatment on 21 February and 17 March 2003.

252. According to the medical certificates dated 4 November 2002, 15 January and 11 August 2003, Mr Aziev had made no complaints about his health. His condition was described as "objectively satisfactory". Mr Aziev had not asked for medical assistance at any point during his detention. On 20 February 2004 the generalist found no evidence of any pathology.

II. RELEVANT LAW AND PRACTICE

A. Georgian domestic law

253. *The Constitution*

Article 13 § 4

"It is forbidden to extradite a citizen of Georgia to a foreign State except in those cases prescribed by international treaty. An appeal against any extradition decision lies to the courts."

Article 18 §§ 3 and 5

"3. Anyone arrested or otherwise deprived of his or her liberty shall be brought before a competent court within forty-eight hours. If the court fails to rule on the detention or other custodial measure within twenty-four hours following the hearing, the individual concerned must be immediately released.

...

5. An arrested or detained person must be informed at the time of arrest or detention of his or her rights and the grounds for the deprivation of liberty."

Article 42 § 1

"Everyone has the right to apply to a court for protection of his or her rights and freedoms."

254. *The Code of Criminal Procedure ("CCP")*

Article 159 § 1

"No one may be detained without an order of a judge or other judicial decision ..."

Article 162 § 2

"The length of detention during the preparatory investigation shall not exceed three months; this period shall run from the date of the suspect's arrest or the defendant's placement in detention. The date on which the prosecutor refers the case to a court shall be taken as the end of that detention period."

This Article also provides for the possibility of extension of the detention period by the competent court, but such detention may not under any circumstances exceed nine months (which is also the period provided for by the Constitution).

Article 242 § 1

"A judicial remedy is available in respect of an action or decision by an inquiry officer, investigating body, investigator or prosecutor which the individual concerned considers unfounded or unlawful, in the case of (a) an order to discontinue the case, taken by the investigating body, investigator or prosecutor; (b) a finding of no case to answer, reached by the investigating body, investigator or prosecutor."

Article 256 §§ 1, 2, 4, 6 and 7

"1. By virtue of an international agreement on mutual judicial assistance, a foreign State may request the extradition of one of its citizens who is in Georgian territory if that individual is suspected of having committed a crime in his or her own country, or if he or she has been convicted of a crime by a court of that country or if he or she has committed a crime against his or her country in Georgian territory.

2. The extradition request must comply with the requirements laid down in the corresponding international agreement and must emanate from a competent body.

...

4. If the Georgian Procurator-General considers the extradition request to be lawful and well-founded, he or she shall give instructions for its execution and may, where appropriate, request the assistance of the Georgian Ministry of Foreign Affairs.

...

6. ... If the person whose extradition is requested has been placed under investigation on suspicion of having committed a crime in Georgian territory, his or her extradition may be postponed until such time as judgment is delivered, the sentence has been served or he or she is released for another lawful reason.

7. In the cases provided for in paragraph 6 of this Article, the Georgian Supreme Court may, at the request of the competent bodies of the foreign State, decide to hand

over the latter's citizen on a temporary basis. If an individual extradited in such a way is given a sentence heavier than or equivalent to that which remained to be served in Georgia, he or she shall serve the sentence in his or her own country and shall not be returned to Georgia."

Article 257 § 1

"An alien shall not be extradited if he or she has been granted political asylum in Georgia."

Article 259

"1. The arrest [and] detention ... of an individual whose extradition is requested shall only be possible if the request is accompanied by a warrant (order, instruction) duly certified by a competent public body and refers to procedural measures restricting his or her rights and freedoms ... guaranteed under the Constitution.

2. The entity from which the extradition request emanated shall be immediately informed of the execution of the measures mentioned in the preceding paragraph.

3. A foreign national who has been detained in accordance with an extradition request may be detained for a maximum duration of three months, unless a fresh judicial warrant (order) for extension of the detention is produced.

4. An individual against whom extradition proceedings have been brought shall be entitled to apply to a court for protection of his or her rights."

255. The CCP contains no provisions concerning the right of an individual who is subject to extradition proceedings to have access to material from the extradition file.

256. *The Criminal Code*

Under Article 6 of the Criminal Code, it is prohibited, unless otherwise provided in an international treaty, to extradite a Georgian national or a stateless person who is permanently resident in Georgia with a view to subjecting him or her to criminal proceedings or the enforcement of a sentence in another country. Equally, it is forbidden to extradite an individual to a country in which the crime with which he or she is charged is subject to the death penalty.

257. *The Refugee Act*

A refugee is a person who is not of Georgian nationality or origin and who has been obliged to leave the country of which he or she is a national on account of persecution based on race, religion, ethnic origin, membership of a social group or political opinions, and who cannot or does not wish to receive the protection of that country (section 1(1)). Individuals who have been granted refugee status must register annually with the Ministry for Refugees (section 4(3)). A refugee may not be returned to his or her country of origin so long as the circumstances described in section 1 persist

(section 8(2)). The individual will lose his or her refugee status should those circumstances cease to exist. The decision to suspend or withdraw refugee status is taken by the Ministry for Refugees (section 10).

B. The Georgian Supreme Court's precedent in the *Aliev* case

258. In its judgment of 28 October 2002 in the *Aliev* case, the Criminal Bench of the Supreme Court held:

> "...in accordance with Article 42 § 1 of the Constitution, everyone has the right to apply to a court for protection of his or her rights and freedoms. Article 259 § 4 of the Code of Criminal Procedure states that a person against whom extradition proceedings have been brought is entitled to defend his or her rights through the courts. Yet the Code of Criminal Procedure does not prescribe the procedure to be followed when examining such a request ... Nonetheless, this shortcoming in the legislation cannot prevent the individual from exercising his or her rights as enshrined in the Constitution and the Code of Criminal Procedure ... The Bench considers that Mr Aliev's request must be examined on the basis of an interpretation by analogy with Article 242 of the Code of Criminal Procedure, which states that an action or decision of the inquiry officer, investigator or prosecutor may be challenged before the courts if the individual concerned considers it to be unfounded or unlawful. Given that the decision to extradite Mr Aliev was taken by the Procurator-General's Office, his application must be examined by the Krtsanissi-Mtatsminda Court of First Instance in Tbilisi, which has territorial jurisdiction."

C. Russian domestic law

259. *The Constitution*

Article 15 § 4

> "The internationally recognised principles and rules of international law and the international treaties to which the Russian Federation is a party are an integral part of its legal system. Where such international treaties provide for rules different from those in the domestic legislation, the rules of the international treaty shall prevail."

Article 20 § 2

> "Until such time as it is abolished, capital punishment may be provided for by federal law as an exceptional sentence imposed in the event of particularly serious crimes against human life, and the defendant must have the right to have his or her case examined in a court by a jury."

260. *The Criminal Code (Chapter 32 – Crimes against the administrative order)*

Article 317

> "An attack on the lives of employees of the police or security forces and their close relatives, either for the purpose of obstructing their lawful activities to ensure public order and security or in order to exact revenge for such activities, shall be punishable

by a prison term ranging from twelve to twenty years, the death penalty or life imprisonment."

In accordance with an amendment of 21 July 2004, the last sentence of this Article now reads:

"... shall be punishable by a prison term ranging from twelve to twenty years, life imprisonment or the death penalty."

261. *The Presidential Decree of 16 May 1996 on the gradual elimination of the death penalty as a result of Russia's membership of the Council of Europe*

"In accordance with the Recommendation of the Parliamentary Assembly of the Council of Europe and in the light of Article 20 of the Constitution of the Russian Federation concerning the provisional nature of the imposition of the death penalty as an exceptional punishment in the event of particularly serious crimes against human life, I hereby order:

(1) the Government of the Russian Federation to prepare within one month a draft federal law on the Russian Federation's accession to Protocol No. 6 of 22 November 1984 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, with a view to its submission to the State Duma (Federal Assembly);

(2) the Chambers of the Federal Assembly of the Russian Federation to expedite the enactment of the Criminal Code of the Russian Federation, the Code of Criminal Procedure of the Russian Federation and the Code on the Execution of Criminal Sentences; ... to consider, when examining the draft Criminal Code, the question of reducing the number of offences for which the death penalty may be imposed."

262. *The relevant provisions of the Constitutional Court's judgment of 2 February 1999*

"5. From the entry into force of this judgment and until such time as assize courts are introduced throughout the territory of the Federation, the death penalty may not be imposed either by an assize court or by a bench composed of three professional judges or of a single judge and two lay assessors."

263. *The Federal Law on the Prosecution Service, dated 17 January 1992*

Section 13(1)

"... The prosecutors of the federal subjects of the Russian Federation shall be subordinate to and report to the Procurator-General of the Russian Federation, who shall be entitled to remove them from their posts."

Section 17(1)

"The Procurator-General shall manage the prosecution service of the Russian Federation and shall issue orders, indications, instructions and provisions concerning the organisation of the prosecution service's activities which shall be binding on all employees of the prosecution service's bodies and establishments."

Section 32

(Chapter 4 – Supervision by the prosecution service of compliance with the law by the administrative authorities of the entities and establishments responsible for the application of sentences ... and by the authorities responsible for premises used for police custody and detention)

"The supervision shall concern

(a) the lawfulness of the incarceration of detainees in places of police custody and pre-trial detention, in corrective labour establishments and other bodies and establishments responsible for the application of sentences and of compulsory measures that have been decided by the courts;

(b) observance of the rights and obligations of persons held in police custody, detainees, convicted prisoners and persons subject to compulsory measures, and compliance with the rules and conditions of their detention as set out in the legislation of the Russian Federation ..."

Section 33

"In the context of his or her duty to supervise compliance with the law, the prosecutor may

(i) visit the entities and establishments referred to in section 32 above at any time;

(ii) question those detained in police custody, detainees, convicted prisoners and persons subject to compulsory measures; ...

(iii) require that the authorities create conditions such as to guarantee the rights of individuals in police custody, detainees, convicted prisoners and persons subject to compulsory measures; supervise the conformity with the law of measures ... taken by the establishments referred to in section 32 above; demand explanations from public employees; prepare objections [*protests*] and opinions; commence a prosecution or initiate proceedings for administrative offences ..."

Section 34

"The prosecutor's orders or requests with regard to the rules and conditions of detention of persons held in police custody, detainees, convicted prisoners and persons subject to compulsory measures ..., prescribed by law, shall be binding on the authorities ..."

Section 35(2)

"When conducting a criminal prosecution before a court, individual prosecutors take part in the proceedings on behalf of the public prosecution service."

264. *The Code of Criminal Procedure ("CCP"), in force since 1 July 2002*

Article 1 § 3

"The internationally recognised principles and rules of international law and the international treaties to which the Russian Federation is a party are an integral part of the Russian Federation's legislation governing criminal procedure. Where such international treaties provide for rules different from those set out in the present Code, the rules contained in the international treaty shall prevail."

Article 2 § 3

"Irrespective of the locality in which an offence was committed, proceedings with regard to a criminal case shall be conducted in the territory of the Russian Federation in accordance with the present Code, unless otherwise provided by an international treaty to which the Russian Federation is a party."

Article 30

"1. Criminal cases shall be examined by a court composed of a bench or of a single judge.

2. In courts of first instance, criminal cases shall be examined by the following compositions:

...

(b) At the defendant's request, the judge of a federal court and a jury of twelve persons shall examine cases concerning the crimes set out in Article 31 § 3 of this Code. ..."

The crimes set out in Article 31 § 3 of the CCP are, *inter alia*, those punishable under Articles 205, 209, 317 and 322 § 2 of the Criminal Code (see paragraphs 66 and 71 above).

Article 108 §§ 1 and 5

"1. Pre-trial detention shall be imposed by a judicial decision on an individual who has been placed under investigation or a defendant accused of committing a crime punishable by more than two years' imprisonment, where another less severe preventive measure cannot be applied.

...

5. Pre-trial detention may be imposed in the absence of a defendant only if an international search warrant has been issued against him or her."

Article 109 § 1

"Detention pending the investigation shall not exceed two months."

This initial period may subsequently be extended in certain circumstances by a court or judicial officer, in particular on account of the complexity of the case; however, the overall length of detention may not in any circumstances exceed eighteen months.

Article 312

"Copies of the judgment shall be issued to the convicted or acquitted individual, his or her counsel and the public prosecution service within five days of its delivery. Within the same time-limit, the civil party, the plaintiff or the defendant in civil proceedings, together with their counsel, may also obtain copies of the judgment, subject to the submission to the court of a written request to that effect."

265. *The Federal Law of 27 December 2002 amending the Law on the entry into force of the new CCP*

> "... Article 30 § 2 (b) of the Code of Criminal Procedure shall come into force on 1 July 2002 in the regions of ... Krasnodar and Stavropol ...; ... on 1 January 2007 in the Chechen Republic."

The second date will mark the completion of the introduction of assize courts in the Russian Federation.

D. International instruments

266. Georgia and the Russian Federation are parties to the Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters ("the Minsk Convention") and to the European Convention on Extradition.

(a) The Minsk Convention

Article 56 – Obligation to extradite

> "The Contracting Parties undertake, subject to the conditions set out in the present Convention and at the request of one of the Parties, to hand over to each other persons found in their territory for the purpose of criminal prosecution or the enforcement of a judgment delivered against them.
>
> Extradition for the purpose of criminal prosecution shall take place if the act or omission in question is an offence under the law of the requesting Party and that of the requested Party, and if it is punishable by a sentence of imprisonment superior to one year or by a more severe punishment.
>
> Extradition for the purpose of the enforcement of a judgment shall take place if the individual whose extradition is requested has been sentenced to a prison term of more than six months or to a more severe punishment for having committed an act or omission that is an offence under the law of the requesting Party and the requested Party."

Article 80 – Special arrangements

> "Relations concerning questions of extradition and criminal prosecution shall be carried out through the intermediary of the General Procurators (prosecutors) of the Contracting Parties.
>
> Relations concerning the completion of different proceedings or other acts requiring the approval ('sanction') of a prosecutor or a court shall be carried out through the intermediary of the prosecution services' bodies, in accordance with the arrangements decided by the General Procurators (prosecutors) of the Contracting Parties."

(b) European Convention on Extradition, which came into force in respect of Georgia on 13 September 2001 and in respect of Russia on 9 March 2000

Article 11 – Capital punishment

"If the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death-penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death-penalty will not be carried out."

Article 28 §§ 1 and 2 – Relations between this Convention and bilateral agreements

"1. This Convention shall, in respect of those countries to which it applies, supersede the provisions of any bilateral treaties, conventions or agreements governing extradition between any two Contracting Parties.

2. The Contracting Parties may conclude between themselves bilateral or multilateral agreements only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein."

When depositing the instrument of ratification on 15 June 2001, Georgia made the following reservation:

"Georgia declares that it will not allow the extradition of any person in connection with offences punishable by the death penalty under the requesting Party's legislation."

E. International texts and reports

267. *Council of Europe*

(a) Opinion no. 193 (1996) of the Parliamentary Assembly on Russia's request for membership of the Council of Europe

"...

The Parliamentary Assembly notes that the Russian Federation shares fully its understanding and interpretation of commitments entered into ... and intends:

...

(ii) to sign within one year and ratify within three years from the time of accession Protocol No. 6 to the European Convention on Human Rights on the abolition of the death penalty in time of peace, and to put into place a moratorium on executions with effect from the day of accession;

..."

(b) Resolution 1315 (2003) of the Parliamentary Assembly on evaluation of the prospects of a political solution to the conflict in the Chechen Republic

"...

4. With regard to the human rights situation in the Chechen Republic, the Assembly remains distressed by the number of killings of politically active individuals, by repeated disappearances and the ineffectiveness of the authorities in investigating them, as well as by the widespread allegations and indications of brutality and violence against the civilian population in the republic.

5. The Russian authorities seem unable to stop grave human rights violations in Chechnya. ... [T]he Assembly can only conclude that the prosecuting bodies are either

unwilling or unable to find and bring to justice the guilty parties. The Assembly deplores the climate of impunity which consequently reigns in the Chechen Republic and which makes normal life in the republic impossible.

...”

(c) Resolution 1323 (2003) of the Parliamentary Assembly on the human rights situation in the Chechen Republic

“...

7. The mandate of the Organisation for Security and Co-operation in Europe's Assistance Group to Chechnya has not been renewed by the Russian Government. The Council of Europe's European Committee for the Prevention of Torture (CPT) has complained about the Russian Federation's lack of co-operation with it. The Russian Federation has yet to authorise the publication of its reports and the recommendations of the Council of Europe Commissioner for Human Rights are implemented with long delays, if at all. The European Court of Human Rights, set up to deal with individual violations of human rights, cannot hope to cope effectively with systematic human rights abuses on the Chechen scale via individual complaints. Lamentably, no member State or group of member States has yet found the courage to lodge an interstate complaint with the Court.

...”

(d) Resolution 1403 (2004) of the Parliamentary Assembly on the human rights situation in the Chechen Republic

“...

6. The dramatic human rights situation in the Chechen Republic described in the texts adopted by the Assembly in April 2003 has unfortunately not improved significantly since then. The number of 'special operations' or 'sweeps' by security forces has in fact significantly decreased, in particular since the end of 2003. However, arbitrary detentions, often followed by the 'disappearance', torture or severe beatings of detainees and the theft or destruction of property at the hands of security forces (Chechen and federal) but also of certain rebel groups, are still occurring on a massive scale, especially as seen against the background of the small population of the Chechen Republic and the losses already suffered in previous years. ...

...

11. The Assembly is outraged that serious crimes have been committed against applicants to the European Court of Human Rights and their family members, which have not yet been elucidated. Such acts are totally unacceptable as they may deter applications to the Court, which is the centrepiece of the human rights protection mechanism established by the European Convention on Human Rights.

...”

(e) Public statement of 10 July 2001 concerning the Chechen Republic of the Russian Federation (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT))

“... [T]he information gathered by the CPT's delegation in the course of its February/March and April 2000 visits indicated that a considerable number of persons deprived of their liberty in the Chechen Republic since the outset of the conflict had

been physically ill-treated by members of the Russian armed forces or law enforcement agencies. ...

...

... [I]n the course of the Committee's most recent visit to the Chechen Republic, in March 2001, numerous credible and consistent allegations were once again received of severe ill-treatment by federal forces; in a number of cases, those allegations were supported by medical evidence. The CPT's delegation found a palpable climate of fear; many people who had been ill-treated and others who knew about such offences were reluctant to file complaints to the authorities. There was the fear of reprisals at local level and a general sentiment that, in any event, justice would not be done. ...

... According to the information gathered during the March 2001 visit, there were clear indications on some of the bodies that the deaths were the result of summary executions; further, certain of the bodies had been identified by relatives as those of persons who had disappeared following their detention by Russian forces. ...

In their reply forwarded on 28 June 2001, the Russian authorities indicate that they are not willing to provide the information requested or to engage in a discussion with the CPT on the matters indicated above; they assert that such matters do not fall within the Committee's purview under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Such an approach is inconsistent with the object and purpose of the international treaty establishing the CPT and can only be qualified as a failure to cooperate with the Committee."

(f) Public statement by the CPT on 10 July 2003 concerning the Chechen Republic of the Russian Federation

"...

2. On 10 July 2001, the CPT issued a public statement concerning the Chechen Republic. ...

Subsequently, some steps forward have been made. ...

...

4. [However,] in the course of the CPT's visits to the Chechen Republic in 2002 and, most recently, from 23 to 29 May 2003, a considerable number of persons interviewed independently at different places alleged that they had been severely ill-treated whilst detained by law enforcement agencies. The allegations were detailed and consistent, and concerned methods such as very severe beating, the infliction of electric shocks, and asphyxiation using a plastic bag or gas mask. In many cases, these allegations were supported by medical evidence. Some persons examined by the delegation's doctors displayed physical marks or conditions which were fully consistent with their allegations. ...

..."

268. *Human Rights Watch*

The reports entitled "Russia/Chechnya – Swept under: Torture, forced disappearances, and extrajudicial killings during sweep operations in Chechnya" (vol. 14, no. 2 (D), February 2002), "Confessions at any cost: Police torture in Russia" (November 1999) and "Welcome to Hell – Arbitrary detention, torture, and extortion in Chechnya" (October 2000)

describe acts of torture, especially medical torture, against Chechen prisoners and arbitrary executions. Other prisoners have disappeared without trace. Thus, an entire people was allegedly exposed to a serious threat of extermination. In addition to those observations, the reports contain about sixty interviews with Chechens who had been held in about a dozen "detention centres" across Chechnya and the neighbouring Caucasus regions and had survived torture, rape and ill-treatment. They had been released as a result of bribes paid to Russian soldiers. The reports describe different forms of torture carried out in those centres. The report "Welcome to Hell" presents evidence of the acts of torture and ill-treatment experienced by Chechen prisoners in pre-trial detention centres in the Stavropol region. The methods regularly used in those premises include the "live corridor" (the prisoners are beaten as they go through a corridor), the "beating of kneeling and bent-over prisoners" and "beating of naked prisoners with clubs, carried out in shower rooms". All the Chechen former prisoners who gave evidence to Human Rights Watch used false names and were described using pseudonyms, which were cited in quotation marks.

269. *Amnesty International and the Russian Human Rights Commissioner Group*

According to an Amnesty International document published in 2000[1], the two prisons in which the extradited applicants were initially placed and in which they are currently detained are "filtration camps". Amnesty International has listed various forms of torture practised in those camps in the context of the conflict which is raging throughout Chechnya. "Testimonies ... confirm that detainees (both men and women) are raped, tortured with electric shocks and tear gas and beaten with hammers and clubs. Other forms of torture consist in sawing the victim's teeth or striking him or her until the eardrums burst."

The Russian Human Rights Commissioner Group confirmed this information and submitted extracts from the administrative order under which filtration centres had been temporarily opened in the two establishments in which the applicants were and are detained, the purpose being to check the prisoners' identities and to establish their role in the

1. The exact reference for this document is not given, in compliance with the Court's undertaking (see paragraph 16 of the judgment) not to disclose the names of the pre-trial detention centres in Russia in which the applicants are held.

armed conflict against the army and the armed forces of the Ministry of the Interior (information published by the Russian association Memorial).

270. *The United Nations Special Rapporteur on Torture (E/CN.4/2002/76, 14 March 2002, §§ 6 and 10; E/CN.4/2002/76/Add.1, §§ 1268-310)*

The majority of cases brought to the Russian Government's attention concerned individuals detained by the Russian forces in Chechnya. The acts of torture and ill-treatment reported were, *inter alia*, the following: imprisonment in a dark cell; blows to the entire body from a hammer or rifle butt; a deep knife wound to the leg; setting of dogs on detainees; forcing the victim to remain in a kneeling position for eight hours; electric shocks; punching; torture consisting of flaying and scalping; broken limbs; severed fingertips or nose; firing at the victim at point-blank range; packing prisoners for several days in unheated parked vehicles; deprivation of nourishment; access to toilets denied; rape or threat of rape against female prisoners; stab wounds to the entire body; eyes torn out; burns to the legs and arms.

271. *Report of 15 September 2004 by the International Helsinki Federation for Human Rights*

"...

E. Persecution of Applicants to the European Court of Human Rights

... As the Russian judicial system fails to address the crimes committed in Chechnya, there remains the possibility of applying to the European Court of Human Rights (ECtHR) ... At the same time, many applicants have been threatened, harassed, detained, or even forcibly disappeared and killed. Some of the cases, notably that of Lipkhan Bazaeva who is both an activist and an applicant, have already been mentioned. There was a sharp rise in cases of persecution of applicants in 2003 and 2004. This pattern can be explained partly by the fact that there is a growing number of applicants. But even when this is taken into account, the number of attacks appears to have grown disproportionately to the number of applicants – a fact which suggests that persecution of applicants is an emerging trend.

...

Some of the organisations that represent applicants from Chechnya before the ECtHR, namely Memorial, European Human Rights Advocacy Centre, and Chechnya Justice Initiative, have reported other incidents aimed at some of their clients. In letters to the ECtHR they mention 13 cases, with a total of 29 counts of abuse, in which different applicants have been persecuted in connection with their search for justice.

...

All in all, the cases of persecution of ECtHR applicants include both verbal and written threats, sometimes against other family members. In one case an applicant lost his job. In two cases soldiers illegally searched an applicant's house. At least one of the applicants was robbed. In four cases, applicants were beaten. In one case, the applicant went into hiding. In at least two cases the applicants are considering withdrawing their applications to the courts. Two formally withdrew their applications. Most of the threats and beatings were reported in 2003 and 2004. Federal forces are believed to be involved in all of these cases. The organisations representing the applicants claim that notifications about incidents from the ECtHR to the Russian authorities have had a positive effect in some cases, easing the pressure on individual applicants and their families.

..."

The report describes the circumstances in which several applicants, including Zura Bitieva (killed, application no. 57953/00), Marzet Imakaeva (persecuted, application no. 7615/02) and Sharfudin Sambiev (persecuted, application no. 38693/04), were subjected to violence.

"...

F. Persecution of Foreign Human Rights Defenders

...

The Organisation for Security and Cooperation in Europe (OSCE) established an office in Znamenskoe, Chechnya in June 2001, but the Russian Federation refused to extend the mandate of the OSCE Advisory Group when it expired at the end of 2002. While there have been few foreigners inside Chechnya, some international and humanitarian organisations have maintained offices in Ingushetia. However, a number of the foreign representatives left Ingushetia after the June 2004 attacks. The international presence in Northern Caucasus is becoming increasingly diluted, resulting in the near-absence of witnesses and help from the outside.

..."

THE LAW

I. OBJECTIONS RAISED BY THE RUSSIAN GOVERNMENT

A. Objection based on the impossibility of examining the case on the merits and request to have the proceedings cancelled

1. The Government's submissions

272. In their final submissions of 20 July 2004 (see paragraph 50 above), the Russian Government argued that it was procedurally impossible for the Court to adopt a judgment in the present case. They gave the following reasons. Firstly, the criminal case against Mr Shamayev, Mr Khadjiev, Mr Adayev and Mr Vissitov was still pending before the domestic courts (see paragraph 108 above) and the court to which the case had been remitted should correct the violations found by the Court of Cassation before the Court ruled on the application. Secondly, given that their signatures had been forged by Ms Mukhashavria and Ms Dzamukashvili, the above-named applicants had never applied to the Court (see paragraph 230 above). In addition, the Court had disregarded Mr Khadjiev's rights by failing to "officially communicate" his case, as submitted by Mr Kotov, to the respondent Governments (see paragraph 235 above). Since the lawyer of Mr Khadjiev's choice had accordingly not been permitted to take part in the proceedings, even though he had not resorted to forgery, the Court had no procedural basis for ruling on the merits of the disputed matters.

273. In conclusion, the Russian Government requested that the Court set aside all the proceedings that had taken place in the instant case. They alleged that, if a judgment were to be delivered prior to completion of the domestic proceedings with regard to the four applicants mentioned above, there would be a breach of the Convention's principles, including that of subsidiarity, and such an approach would encourage terrorist activity in Europe.

274. In any event, the Russian Government found it impossible to conceive how Russia could have violated the Convention provisions in this case. They considered that the present application amounted to a complaint *in abstracto* brought by the applicants' purported representatives, who had abused the right of application to the Court.

2. The Court's assessment

275. The Court notes at the outset that it has already dismissed the Russian Government's preliminary objections that the application was anonymous and amounted to an abuse of process (see *Shamayev and Others v. Georgia and Russia* (dec.), no. 36378/02, 16 September 2003). In particular, it found that the present application concerned real, specific and identifiable individuals and that their complaints, relating to alleged violations of the rights guaranteed to them under the Convention, were based on actual events, including some that were not contested by either of the two respondent Governments. The Court does not perceive any "special circumstance" at this stage which would entail a fresh examination of the arguments that the present case was abstract in nature and amounted to an abuse of process (see *Stankov and United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, §§ 55 and 57, ECHR 2001-IX).

276. As to the impossibility for the Court to examine the applicants' complaints on the merits on account of the alleged incompletion of the criminal proceedings before the Russian courts, it should be noted that the Russian Government have produced no evidence in support of their argument. They have merely asserted that the proceedings are still pending (see paragraphs 48, 107, 108 and 272 above), but have not submitted a copy either of the judgment of 18 February 2004 or of the Court of Cassation judgment which quashed that ruling and referred the case back to the first-instance court. Without indicating the relevant domestic-law provision which, they claim, prohibited anyone apart from the convicted person in question from receiving copies of a judgment, the Government have transferred the responsibility for this "impossibility to cooperate" to the Council of Europe (see paragraph 108 above). Whatever the legal provision in question (see, for example, Article 312 of the Code of Criminal Procedure – paragraph 264 above), the Court does not accept the Russian Government's argument and points out that it is for each Contracting Party to submit to the Court, through its representative, any relevant domestic document.

277. Even supposing that criminal proceedings were indeed still pending before the Russian courts, the Court points out that those proceedings are not, as such, disputed in the context of the present application. The issue here is the extradition proceedings brought against the applicants by the Georgian authorities, the extradition of five of their number and the failure to assign those applicants lawyers of their choice on arrival in Russia. Admittedly, the extradited applicants' situation may enable the reliability of the assurances provided by the Russian authorities to their Georgian counterparts to be assessed (see paragraph 20 above), but the alleged incompletion of the criminal proceedings brought against them in Russia is not, in this case, such as to prevent the Court from ruling on the complaints against Russia (see paragraphs 480 et seq. below). The same applies to the complaints brought against Georgia under Articles 2, 3, 5 and 13 of the Convention.

278. In any event, if examination on the merits of the admissible complaints against Russia has been rendered impossible, this is essentially for other reasons (see paragraph 491 below) and the Court does not consider it necessary to examine further the question of non-exhaustion of domestic remedies raised by the Russian Government.

279. As to the extradited applicants' alleged failure to apply to the Court and their contested representation, the Court points out that those two objections were joined to the examination of the merits of the case on 16 September 2003 (in the admissibility decision cited above). The Court will examine them separately below (see paragraphs 290 et seq.).

280. As to the absence of "official communication" of Mr Khadjiev's case and the refusal to grant Mr Kotov access to the proceedings, the Court

points out, firstly, that, since the present application was lodged, it has attempted on numerous occasions to establish contact with the extradited applicants and with their Russian lawyers (see paragraphs 29 et seq., and 232 et seq. above). It was the Russian Government which replied to the Court's letter of 20 November 2002 to Mr Molochkov and Ms Kuchinskaya, Mr Khadjiev's first lawyers, alleging that those lawyers "objected to the Court's attempts to contact them". The Court then sent letters and application forms directly to the extradited applicants, including Mr Khadjiev, at their place of detention. They were asked to confirm or deny their intention to apply to the Court, as expressed on 4 October 2002. Although those letters arrived at the SIZO in town A on 24 December 2002, the Russian Government argued until 3 December 2003 that the applicants had not received them (see paragraphs 233 and 239 above).

281. Mr Khadjev did not reply to the Court's letter until 8 October 2003, through the prison administration, when he returned the completed application form (which reached the Court on 27 October 2003). By that date, his complaints, as submitted by Ms Mukhashavria and Ms Dzamukashvili on 22 October 2002 (see paragraph 14 above), had already been declared admissible following their communication to the respondent Governments (see paragraphs 6 and 16 above) and a hearing on admissibility (see paragraph 25 above).

282. In view of the content of the application form submitted by Mr Khadjiev, who, represented by Mr Kotov, complained primarily of the way in which his extradition had been carried out in Georgia and complained further of other violations of his rights in Georgia and in Russia (see paragraph 235 above and paragraphs 388, 439 and 484 below), this document and its appendices were included in the case file as an integral part of the instant application. In replying to the Court, albeit tardily, Mr Khadjiev confirmed his intention of challenging the extradition proceedings against him before the Court.

283. On 19 December 2003 Mr Khadjiev's application form, dated 8 October 2003, was sent with its attachments to the respondent Governments and to Ms Mukhashavria and Ms Dzamukashvili. The Georgian Government and the lawyers did not comment. On the same date Mr Kotov was invited to provide certain additional information, including information on Mr Khadjiev's application to the Court on the evening of his extradition and his representation before the Court by the Georgian lawyers. No reply was ever received from Mr Kotov. The Court itself was deprived of the possibility of questioning Mr Khadjiev during the fact-finding visit that it was scheduled to conduct in Russia (see paragraphs 28 et seq. above). Accordingly, it decided to rule on the complaints as they stood on the date on which the merits of the case were examined (see paragraph 49 above).

284. In reply to the Court's letter of 19 December 2003, on 8 January 2004 the Russian Government welcomed the receipt of Mr Khadjiev's

application form and urged that, in order to end "non-procedural activities in this case", his application be dealt with under the "ordinary procedure", that it be communicated to them and that all the proceedings which had been conducted in connection with this application prior to 27 October 2003 be set aside (see paragraph 243 above). In its letters of 5 and 13 February 2004, the Court reminded the Government that Mr Khadjiev's complaints had already been communicated to them before being declared admissible and that the application form which had reached the Court on 27 October 2003 required no additional procedural measure.

285. The Russian Government, which had been invited to submit their final submissions on the merits of the applicant's complaints (see paragraph 50 above), made no comment with regard to Mr Khadjiev's complaints as set out in the application form in question, and merely urged that the entire proceedings with regard to the instant application be set aside.

286. In the light of the circumstances described above, the Court concludes that Mr Khadjiev's complaints, as submitted by Ms Mukhashavria and Ms Dzamukashvili, were communicated to the respondent Governments in due time and that the latter have had an opportunity to reply, initially in writing and subsequently orally during a hearing on admissibility. Mr Khadjiev, with whom it is difficult to sustain contact in Russia, confirmed one year after his application had been lodged, in a form dated 8 October 2003, that he was contesting his extradition to Russia and that he accused both Georgia and Russia in that respect. Mr Kotov, his Russian lawyer, was invited to take part in the proceedings before the Court, but never replied to that invitation. The Russian Government have made no comments on Mr Khadjiev's complaints as submitted by Mr Kotov, or subsequently in reply to the Court's letters of 19 December 2003 (see paragraph 236 above) or 4 May 2004 (see paragraph 50 above).

287. In those circumstances the Russian Government does not have grounds to contend that Mr Khadjiev's complaints have not been communicated and that Mr Kotov has been denied access to the proceedings before the Court.

288. Finally and most importantly, the Court points out that there is no provision in the Convention or the Rules of Court allowing for all or part of the proceedings conducted in a case to be set aside. Accordingly, no procedure may be followed in respect of the present application other than that prescribed in those texts. In any event, since the conditions set out in Articles 37 and 39 of the Convention (under which the Court may, in certain circumstances, strike an application out of its list of cases) have not been met, the Court sees no reason not to pursue the examination of the merits of the case.

289. For the above reasons, the Russian Government's objection alleging the impossibility of examining the merits of this application, and their

request for the proceedings conducted in this case to be set aside must be dismissed.

B. Objection alleging a failure by the extradited applicants to apply to the Court

1. The parties' submissions

290. The Russian Government alleged that the extradited applicants had never applied to the Court. They based their argument primarily on the letters which the Court received on 26 August 2003 from Ms Kuchinskaya and Mr Molochkov – the first lawyers acting for Mr Shamayev, Mr Vissitov, Mr Khadjiev and Mr Aziev before the Russian courts – in which the lawyers claimed that their clients had never complained of a violation of their rights under the Convention and had never expressed a wish to apply to the Court (see paragraph 241 above). Secondly, the Government pointed out that the authorities to act, on which Ms Mukhashavria and Ms Dzamukashvili had allegedly falsified the extradited applicants' signatures, referred only to Georgia as the respondent State. In those circumstances, the extradited individuals could not, in the Government's opinion, be described as applicants within the meaning of the Convention, at least with regard to the complaints against the Russian Federation.

291. Ms Mukhashavria argued that she had been denied access by the Georgian authorities to those applicants on the evening of their extradition and that the Russian Government had subsequently refused to allow her any contact with them. She considered that those individuals, imprisoned in Russia in conditions of secrecy, should not be allowed to suffer the adverse consequences of the violation, by the respondent Governments, of their right to apply to the Court.

2. The Court's assessment

292. The Court points out that, in its rulings of 14 October 2003 and 21 April 2004, the Stavropol Regional Court, like the Russian Government, asserted that Mr Shamayev, Mr Vissitov, Mr Adayev and Mr Aziev had never lodged an application with the Court. As to Mr Khadjiev, he had allegedly lodged an application directed solely against Georgia (see paragraph 29 above).

293. The Court would reiterate, as clearly as possible, that it alone is competent to decide on its jurisdiction to interpret and apply the Convention and its Protocols (Article 32 of the Convention), in particular with regard to the issue of whether the person in question is an applicant within the meaning of Article 34 of the Convention and whether the application fulfils the requirements of that provision. Unless they wish their conduct to be

declared contrary to Article 34 of the Convention, a Government which has doubts as to the authenticity of an application must inform the Court of its misgivings, rather than deciding itself to resolve the matter (see, *mutatis mutandis*, *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 129, ECHR 1999-IV, and *Orhan v. Turkey*, no. 25656/94, § 409, 18 June 2002).

294. In the instant case the Court is not persuaded by the Russian Government's argument, as it considers that the evidence at its disposal proves the opposite.

295. When heard in Tbilisi, the extradited applicants' fellow prisoners confirmed that they had applied to the Court to complain about the extradition proceedings against them (see paragraph 121 above). It cannot reasonably be concluded that, subjected to the same conditions of isolation, uncertainty and apprehension during the night of 3 to 4 October 2002, six individuals had wished to apply to the Court and that the others, who were subsequently extradited, had not considered this necessary, especially as the television news bulletin – the applicants' only source of information about the imminence of the extradition – had announced in very general terms that "several Chechens" would be handed over to the Russian authorities. Mr Gabaydze, who appeared on television, had merely dismissed, without conviction, the possibility that Georgian citizens would be extradited. As Russian nationals, the applicants who were subsequently extradited therefore had no reason to believe that the measure did not concern them (see paragraphs 124, 215 and 216 above).

296. In addition, in their letters of 3 November 2003 (see paragraph 240 above), submitted to the Court by the Russian Government themselves, Mr Shamayev did not rule out the possibility that his lawyer had submitted an application in his name, and Mr Adayev, Mr Khadjiev and Mr Vissitov confirmed that they had applied to the Court from Georgia with the help of a lawyer. Mr Aziev did not write the same type of letter because he was unable to write in Russian. On the other hand, in the correspondence regarding his application (no. 28861/03 – see paragraph 238 above), he claimed on two occasions that he had applied to the Court from Georgia to complain about his extradition; further, in his letter of 30 October 2003, he disputed the Russian Government's argument that he had never lodged this application. On 27 October 2003 Mr Khadjiev also confirmed that he complained to the Court about the fact that he had been extradited to Russia without any form of judicial review (see paragraph 235 above and paragraph 439 below).

297. Given those circumstances, and bearing in mind the particular conditions of detention endured by the applicants on 3 and 4 October 2002 in Georgia and subsequently in Russia, the Court does not doubt that they attempted, through the lawyers who had represented them before the Georgian courts (see paragraphs 306-08 below), to contest before it the fact of being handed over to the Russian authorities. Accordingly, the Russian

Government's objection that the applicants had failed to apply to the Court must be dismissed.

C. Objection alleging the applicants' lack of proper representation before the Court

1. The parties' submissions

298. The Russian Government accepted that Ms Mukhashavria and Ms Dzamukashvili might, possibly, represent the non-extradited applicants with regard to the part of the application directed against Georgia, as the authorities to act submitted by them on 9 October 2002 made no reference to Russia as a respondent State (see paragraph 120 above). On the other hand, they did not accept that those lawyers had standing to represent the five extradited applicants, on account of the false signatures that appeared on the authorities to act dated 22 November 2002. They based their argument on the results of the handwriting analysis (see paragraph 230 above). In addition, as the authorities had not been certified by the prison establishment concerned, they were purely and simply invalid.

299. The Georgian Government have never contested the validity of the authorities in issue.

300. Ms Mukhashavria and Ms Dzamukashvili considered that the Russian Government's arguments were unfounded and that they had been duly authorised to represent the non-extradited applicants before the Court. They pointed out that the extradited applicants had been handed over hastily to the Russian authorities and that, denied contact with their lawyers, they had been unable to draw up authorities to act with a view to being represented before the Court. Ms Mukhashavria and Ms Dzamukashvili emphasised that, since the applicants' lawyers before the Georgian courts had decided to apply to the Court on their clients' behalf but were unfamiliar with the procedure, they had delegated their authority to them, in their clients' best interests (see paragraph 224 above). According to Ms Mukhashavria, given that the Russian authorities had subsequently done everything possible to prevent her making contact with the extradited applicants, the Russian Government did not have grounds to reproach her for failing to provide authorities to act in proper form.

2. The Court's assessment

301. The Court first observes that the fact that a power of attorney authorising a given individual to represent an applicant before the Court was not drawn up in accordance with the requirements of domestic legislation and certified by the prison authorities is not such as to cast doubt on the validity of that document (see *Khashiev and Akayeva v. Russia* (dec.), nos. 57942/00 and 57945/00, 19 December 2002).

302. The Court has previously ruled in the context of Article 35 § 1 of the Convention that the rules on admissibility must be applied with some degree of flexibility and without excessive formalism (see *Cardot v. France*, judgment of 19 March 1991, Series A no. 200, p. 18, § 34). It is also appropriate to take account of their object and purpose (see, for example, *Worm v. Austria*, judgment of 29 August 1997, *Reports of Judgments and Decisions* 1997-V, p. 1547, § 33), as well as the object and purpose of the Convention in general, which, as a treaty for the collective enforcement of human rights and fundamental freedoms, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, for example, *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2429, § 64).

303. In the instant case the Court notes that Ms Mukhashavria, in her final submissions, did not deny the findings of the Russian handwriting analysis (see paragraphs 230-31 above) but pointed out that she and her colleague had had no opportunity to make contact with the extradited applicants, either before their extradition or following their arrival in Russia. She explains that she appealed to their family members and friends in order to have the contested authorities signed.

304. The Court notes that, pursuant to the decisions of 2 October 2002, five applicants were extradited to Russia on the evening of 4 October 2002 (see paragraphs 72-74 above) and that four of them had been held in solitary confinement in Tbilisi Prison no. 5 since the previous day (see paragraph 124 above). Their request for permission to consult their lawyers was dismissed by the representatives of the prison administration who came to remove them from their cell at about 4 a.m. on 4 October (see paragraph 124 above). Mr Adayev, the fifth applicant, was removed from the prison infirmary in order to be extradited, and he was apparently even less well informed than the other applicants (see paragraph 142 above).

305. Mr Gabaydze, Mr Khidjakadze and Mr Chkhatarashvili, the applicants' lawyers before the Georgian courts, were not informed of their clients' extradition and were unable to react in time (see paragraph 457 below). In addition, they were refused access to the prison on 4 October 2002 (see paragraph 224 above). Mr Gabaydze learned a few hours prior to the applicants' transfer from Prison no. 5 that they were to be handed over to the Russian authorities. Having been unable to obtain any definite information (see paragraph 214 above), he had no other choice but to appear on a television programme in order to announce that “some” of his clients were likely to be extradited imminently. This was how the applicants, who had a television set in their cell, had learned the news (see paragraph 455 below).

306. Having decided to apply to the Court on behalf of their clients on the evening of 4 October 2002, Mr Gabaydze, Mr Khidjakadze and Mr Chkhatarashvili delegated their powers to Ms Mukhashavria and

Ms Dzamukashvili to that end. The documents delegating the authority to act are included in the case file and their validity has not been contested by either of the respondent Governments. Ms Mukhashavria and Ms Dzamukashvili were no more successful than their colleagues in obtaining access to the applicants (see paragraph 224 above). Their subsequent attempts to meet the extradited applicants in Russia were also unsuccessful (see paragraphs 226-29 above).

307. Thus, the impossibility for Mr Shamayev, Mr Aziev, Mr Khadjiev and Mr Vissitov to sign the disputed authorities between the time when they learned – without additional details – of their imminent extradition and the time that they were extradited, a few hours later, arose from the hasty nature of the operation and the Georgian prison authorities' refusal to wait until morning and to summon their lawyers. As to Mr Adayev, who was removed from the prison infirmary in order to be extradited, it is clear from the case file that the efforts of the lawyers, who did not know the names of the prisoners to whom the extradition order applied (see paragraphs 214-16 above), were primarily focused on Prison no. 5, where the vast majority of the applicants were being held (see paragraph 123 above). Unlike the other extradited applicants, Mr Adayev, who had not been informed that he was to be extradited, did not request that his lawyers be summoned.

308. In those circumstances, blaming the extradited applicants for their failure to sign the disputed authorities to act would amount, in the Court's opinion, to holding them responsible for the obstacles raised by the Georgian authorities prior to their extradition, against which they had no remedy (see paragraphs 449 et seq. below).

309. After the extradition Mr Aziev confirmed unambiguously that he endorsed any measure carried out on his behalf by Ms Mukhashavria in connection with his application to challenge the extradition (see paragraph 238 above). As to the other extradited applicants, there is no evidence to suggest that they objected to being represented before the Court by Ms Mukhashavria and Ms Dzamukashvili or that they wished to contest the effect and/or the substance of the allegations and observations submitted by them (see *Öcalan v. Turkey* (dec.), no. 46221/99, 14 December 2000, and, *mutatis mutandis*, *Ergi v. Turkey*, judgment of 28 July 1998, *Reports* 1998-IV, pp. 1769-71, §§ 60-64).

310. Nonetheless, to exclude any doubt in this respect, the Court decided on 17 June 2003, in pursuance of Rule 39, to request the Russian Government to allow Ms Mukhashavria and Ms Dzamukashvili access to the applicants in question (see paragraph 228 above). This would not only have enabled the applicants to corroborate their complaints to the Court, but would also have provided an opportunity for them to confirm or deny their wish to be represented before the Court by the Georgian lawyers. The Russian Government did not comply with the interim measure and continued to cast doubt on the authenticity of their representation (see

paragraphs 228-30 above). In addition, the Court itself was deprived of an opportunity to hear the extradited applicants with a view to elucidating this point and the other circumstances of the case (see paragraphs 28 et seq. above).

311. Thus, in criticising the extradited applicants' representation by the lawyers in question, the Russian Government provided no opportunity to conduct an objective assessment of the merits of their argument, which is based only on their own considerations. Aside from the fact that such an attitude on the part of a Government may disclose a problem under Article 34 of the Convention (see, *mutatis mutandis, Tanrıkulu*, cited above, § 132; see also Section VIII below), a breach by a State of its obligations under this provision cannot be interpreted as depriving an applicant of the right to pursue his or her case before the Court. In this respect also the Convention must be interpreted as guaranteeing rights which are practical and effective as opposed to theoretical and illusory (see, *inter alia*, *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201, pp. 35-36, § 99).

312. Accordingly, in the light of the specific circumstances of the case, the Court concludes that the extradited applicants found themselves in a particularly vulnerable situation in both Georgia and Russia and that they may be considered to be validly represented in the context of the instant application by Ms Mukhashavria and Ms Dzamukashvili, appointed to that end by the applicants' lawyers before the domestic courts, in extremely urgent circumstances which were not attributable to the applicants.

313. As to the fact that Russia was not mentioned as a respondent State on the authorities to act submitted by the non-extradited applicants, naming Ms Mukhashavria and Ms Dzamukashvili, the Court notes that the application forms dated 22 October 2002, submitted by those lawyers on behalf of the applicants in question, refer to both Russia and Georgia as respondent States (see paragraph 14 above). In support of their application as a whole, the non-extradited applicants submitted, throughout the proceedings and through their lawyers, handwritten letters, observations and other documents. In addition, six of the applicants, heard in Tbilisi by the Court's delegates, confirmed that they had submitted complaints against Georgia and Russia with the help of Ms Mukhashavria and Ms Dzamukashvili (and/or Mr Kintsurashvili; see paragraph 121 above). The non-extradited applicants had never appointed other lawyers to represent them in the part of the application directed against Russia.

314. In those circumstances, the Court does not doubt that, both at the stage of lodging their application and subsequently, the non-extradited applicants wished to be represented before it by Ms Mukhashavria and Ms Dzamukashvili in both parts of their application, that is, against both respondent States.

315. Accordingly, the Russian Government's objection alleging the applicants' lack of proper representation must be dismissed.

II. ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION BY GEORGIA

316. The applicants' representatives alleged that there had been a violation of the right to life in respect of Mr Aziev. They considered that the Georgian authorities had exposed the extradited applicants to the risks of imposition of the death penalty, extra-judicial execution and ill-treatment in Russia in breach of the requirements resulting from Articles 2 and 3 of the Convention. They also alleged that, were the other applicants to be handed over to the Russian authorities, they would be exposed to the same fate. In addition, they claimed that, during the night of 3 to 4 October 2002, the applicants had been subjected to treatment that was contrary to Article 3 of the Convention.

317. Articles 2 and 3 of the Convention provide:

Article 2

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

Article 3

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

A. The alleged death of Mr Aziev

318. According to the applicants' representatives, Mr Aziev died in Georgia or Russia during his extradition. Their allegation was mainly based on statements by those applicants who were heard by the Court in Tbilisi (see paragraphs 125 and 135 above) and on the declaration by the Ministry of Foreign Affairs of the "Chechen Republic of Ichkeria" (see paragraph 81 above). In addition, they considered it suspicious that Mr Aziev did not appear in the footage shot at Tbilisi Airport, showing the applicants being handed over to the Russian authorities. In their opinion, the photograph of

this applicant submitted by the Russian Government on 15 September 2003 also raised doubts (see paragraph 125 above).

319. The Russian Government contested this allegation and stated that Mr Aziev was safe and in good health. They supported their claim with photographs taken after his extradition and medical certificates. The applicants' representatives considered this evidence insufficient, while the Georgian Government shared the Russian Government's position.

320. The Court observes that Mr Aziev was indeed not filmed by Georgian journalists at Tbilisi Airport on the evening of 4 October 2002 (see paragraph 74 above). It also notes that, for several months following his extradition, Mr Aziev was detained separately from the other applicants in the pre-trial detention centre in town A. He must have been placed in the same SIZO in town B after August 2003 (see paragraphs 53 and 242 above). However, the recording submitted by the Russian Government on 25 February 2004 does not show Mr Aziev in his cell: unlike the other extradited applicants, he had allegedly refused to be filmed (see paragraph 109 above). The Court also notes that, unlike the other applicants, Mr Aziev appears in only one of the photographs submitted by the Russian Government on 15 September 2003, and that he appears in the background of this photograph. Having regard to those circumstances and the impossibility for the applicants' representatives and for the Court to meet the extradited applicants in Russia (see paragraphs 49 and 227-29 above), the Court considers the lawyers' doubts and fears concerning Mr Aziev's fate after 4 October 2002 to be legitimate.

321. However, the evidence available to it does not enable the Court to conclude that Mr Aziev died before, during or after his extradition to Russia. The applicants heard in Tbilisi all identified their fellow prisoner Khusein Aziev in the photograph submitted by the Russian Government on 23 November 2002 and alleged to be of Mr Aziev, taken in the SIZO in town A after his extradition (see paragraph 119 above). Mr Gelogayev's suspicion that this photograph of Mr Aziev was not taken subsequent to his extradition (see paragraph 125 above) is not supported by any other evidence. According to the various medical certificates submitted by the Russian Government (see paragraphs 246 and 252 above), Mr Aziev, unlike the other extradited applicants, had made no complaint about his health and had never requested medical assistance after his extradition. The doctors, including those at the civilian hospital, had considered his state satisfactory.

322. In addition, on 19 August 2003 Mr Aziev, assisted by Mr Timichev, lodged a new application with the Court, directed solely against Russia (see *Aziev v. Russia*, no. 28861/03). Although Mr Aziev confirmed in his correspondence with the Court regarding that application that he had submitted a complaint to the Court in respect of his extradition to Russia, at no point did he make a complaint about the ill-treatment to which he had allegedly been subjected during his extradition or following

his arrival in Russia (see paragraph 238 above). Equally, there is no reason to believe that Mr Aziev's application was submitted on his behalf when he himself was dead.

323. Having regard to the foregoing, the Court considers that there has been no violation of Mr Aziev's right to life.

B. The risk of being sentenced to death and of ill-treatment following extradition

1. The parties' submissions

324. The Georgian Government contended that the extradition orders of 2 October 2002 had not been issued hastily and that the Georgian authorities had agreed to extradite only five individuals, whose identity had been clearly established. In view of the lack of evidence concerning the eight other applicants, they had resisted the demands made and the pressure exerted by their Russian counterparts. The Georgian authorities had acted in conformity with the Court's well-established case-law, according to which the State from which an individual is extradited has a duty to ensure that the extradited person will not be subjected to treatment contrary to Article 3 of the Convention. Before agreeing to the extradition of the five applicants, the Procurator-General's Office had taken the necessary measures to obtain as many firm assurances as possible from the Russian authorities to the effect that those individuals would not be sentenced to death or subjected to inhuman or degrading treatment or punishment. In support of this claim, the Government referred to the terms of the letters from the Russian Procurator-General's Office dated 26 and 27 August and 27 September 2002 (see paragraphs 68 et seq. above). In addition to those written assurances, the Georgian Procurator-General had also obtained verbal undertakings from his Russian colleagues. When the decision on the extradition request was taken, the fact that Russia was a member of the Council of Europe, the moratorium on the application of the death penalty, in force in Russia since 1996, and the Russian Constitutional Court's judgment of 2 February 1999 had also been taken into account. The Russian authorities had also been asked to facilitate access by representatives of the Red Cross to the prison in which the extradited applicants were held.

325. All of those assurances had subsequently proved reliable and sufficient to protect the applicants against any treatment contrary to Article 3. Thus, none of them had been sentenced to the death penalty or subjected to inhuman or degrading treatment, and they had received a visit from representatives of the Red Cross.

326. In their oral observations, the Georgian Government claimed that, in view of their Georgian nationality, Mr Margoshvili and Mr Kushtanashvili would not be extradited to Russia. Identification of

Mr Khashiev and checking of Mr Gelogayev's refugee status were ongoing (see paragraph 88 above), and the question of their extradition would be decided once the results of those procedures were known. As to Mr Issayev, Mr Khanchukayev and Mr Magomadov, their cases would be re-examined once the Russian authorities had provided all the necessary documents in support of their extradition request.

327. The Russian Government asserted that the applicants would not be sentenced to capital punishment since, in line with the Constitutional Court's judgment of 2 February 1999, no one could be sentenced to death by any court within a subject of the Russian Federation (see paragraph 262 above). They pointed out that the Russian authorities had sent their Georgian counterparts identical assurances in support of the extradition request and had provided undertakings that the applicants would not be subjected to treatment contrary to Article 3 of the Convention. The extradited applicants were detained in conditions that complied with the requirements of that provision. This had been observed by journalists from the Russian television channels RTR, ORT and NTV who had visited the applicants in prison and interviewed them. The Government referred to a letter from the Russian Deputy Procurator-General, dated 18 October 2002, stating that the extradited applicants were "alive and in good health, and held in a SIZO in the Stavropol region in conditions which complied with the legislation".

328. The applicants' representatives replied that they could not have been "in good health" when they arrived in Russia and argued that the medical certificates submitted by the Russian Government on 14 November 2002 (see paragraphs 245 et seq. above) made no mention of injuries sustained by them as a result of the action by the Georgian special forces during the night of 3 to 4 October 2002. They argued that, having handed over the applicants to Russia, "Georgia bears a share of the responsibility for the genocide of the Chechen people".

329. The applicants' representatives also contended that the assurances provided by the Russian authorities to their Georgian counterparts had no value and that the undertakings given to the Court by the Russian Government were no more than signed pieces of paper. They pointed out that the CPT itself had stated in one of its statements that Russia was failing to respect the undertakings that it had signed (see paragraph 267 (e) above). In their opinion, the Georgian authorities had not ensured that the assurances provided had any real value. On the contrary, they had actively cooperated with their Russian counterparts to facilitate the extraditions. Thus, they had sent photographs of the applicants which were subsequently used to support the extradition request, and had kept the Russian authorities informed of changes in the applicants' identities. Assisted in this way, the Russian authorities had "updated" their extradition request, altering the applicants' names to reflect the changes in identification. The Georgian authorities had not taken the measure of either the political nature of the

accusations made against the applicants by the Russian authorities or the latter's clear bias in the disputed extradition proceedings. They had not required any prima facie evidence of those accusations. The letters referred to by the Georgian Government (see paragraph 324 above) did not contain a guarantee that the applicants would not be sentenced to death, but simply an assurance that a moratorium was in force in Russia.

330. What the Russian Government described as a moratorium was merely a decree adopted on 16 May 1996 by President Yeltsin on "the gradual elimination of the death penalty" (see paragraph 261 above). The applicants' representatives alleged that this decree did not deal with the issue of a moratorium at all, but merely required the government to prepare "a federal draft law on the Russian Federation's accession to Protocol No. 6 [to the Convention]". They pointed out that the decree by no means ordered the abolition of the death penalty or suspension of its implementation. Thus, it was not a moratorium but an interim measure concerning the administration of capital punishment. As to the Constitutional Court's judgment of 2 February 1999, it too did not prohibit the implementation of the death penalty (see paragraph 262 above) but suspended its use until such time as jury trials had been introduced throughout the territory of the Russian Federation. In view of the Law of 27 December 2002, which provided for completion of the process of introducing jury trials by 1 January 2007 (see paragraph 265 above), the death penalty would again be applicable in Russia from that date.

331. With regard to the allegations of ill-treatment of males of Chechen origin by representatives of the Russian authorities, the lawyers argued that, when it decided to extradite the applicants, the Georgian Procurator-General's Office could not have failed to be aware of the systematic nature of such acts of violence. They referred to the CPT's public statements, the resolutions adopted in 2003 by the Parliamentary Assembly of the Council of Europe, the reports of Human Rights Watch, Amnesty International's Report for 2004 and the reports of the United Nations High Commissioner for Refugees and the United Nations Special Rapporteur on Torture. Passages from some of those documents are cited above (see paragraphs 267, 268 and 270). The lawyers considered that, having regard to the findings of Human Rights Watch, set out in the document "Welcome to Hell" (see paragraph 268 above), the extradited applicants' total isolation in "a SIZO in the Stavropol region" raised serious doubts concerning the treatment that awaited them in that establishment.

2. The Court's assessment

332. The Court notes that the crimes with which the applicants are charged by the Russian authorities under Article 317 of the Russian Criminal Code are punishable by a prison sentence ranging from twelve to twenty years, life imprisonment or the death penalty (see paragraph 260

above). Most of the applicants are aged between twenty-two and thirty-one. Capital punishment has not been abolished in Russia, but the Russian courts would appear to be abstaining from its use at present. The Court observes that Protocol No. 13 to the Convention has not been signed by Russia and that Protocol No. 6, signed on 16 April 1996, has still not been ratified by that State. In so far as it is able to ascertain from information in its possession (see paragraph 107 above), the Court notes that Mr Shamayev, Mr Adayev, Mr Khadjiev and Mr Vissitov, four of the extradited applicants, were not sentenced to the death penalty by the first-instance court. This is also true in respect of Mr Khashiev (Elikhadjiev, Mulkoyev) and Mr Baymurzayev (Alkhanov), who were sentenced on 14 September and 11 October 2004 to thirteen and twelve years' imprisonment by the Chechen Supreme Court (see paragraph 106 above).

(a) General principles

333. A Contracting State which has not ratified Protocol No. 6 and has not acceded to Protocol No. 13 is authorised to apply the death penalty under certain conditions, in accordance with Article 2 § 2 of the Convention. In such cases, the Court seeks to ascertain whether the death penalty itself amounts to ill-treatment as prohibited by Article 3 of the Convention. It has already established that Article 3 cannot be interpreted as generally prohibiting the death penalty (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, pp. 40-41, §§ 103-04), since that would nullify the clear wording of Article 2 § 1. That does not, however, mean that circumstances relating to a death sentence can never give rise to an issue under Article 3. The manner in which it is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention while awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3 (see *Soering*, cited above, p. 41, § 104). Attitudes in the Contracting States to capital punishment are relevant for assessing whether the acceptable threshold of suffering or degradation has been exceeded (see *Poltoratskiy v. Ukraine*, no. 38812/97, § 133, ECHR 2003-V). The Court has also found that, as a general principle, the youth of the person concerned is a circumstance which is liable, with others, to put in question the compatibility with Article 3 of measures connected with a death sentence (see *Soering*, cited above, pp. 40-43, §§ 103-08).

334. The Court reiterates that the Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations, including the Convention, to control the entry, residence and expulsion of aliens. It also notes that the right to political asylum is not contained in either the Convention or its Protocols (see *Jabari v. Turkey*, no. 40035/98, § 38, ECHR 2000-VIII, and *Vilvarajah and Others v. the*

United Kingdom, judgment of 30 October 1991, Series A no. 215, p. 34, § 102).

335. However, the Court has consistently and repeatedly stated that there is an obligation on Contracting States not to extradite or expel an alien, including an asylum-seeker, to another country where substantial grounds had been shown for believing that he or she, if expelled, faced a real risk of being subjected to treatment contrary to Article 3 of the Convention (see *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1853, §§ 73-74; *Soering*, cited above, pp. 34-36, §§ 88-91; and *Cruz Varas and Others*, cited above, p. 28, §§ 69-70). In addition, it has already stated, clearly and forcefully, that it is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence (see *Chahal*, cited above, p. 1855, § 79). However, even taking those factors into account, the Convention prohibits in absolute terms treatment contrary to Article 3, irrespective of the victim's conduct (see *D. v. the United Kingdom*, judgment of 2 May 1997, *Reports* 1997-III, p. 792, § 47-48, and *H.L.R. v. France*, judgment of 29 April 1997, *Reports* 1997-III, p. 757, § 35). In addition, Articles 2 and 3 of the Convention make no provision for exceptions and no derogation from them is permissible under Article 15, even in the event of a public emergency threatening the life of the nation (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, p. 65, § 163, and *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, p. 42, § 115).

336. In determining whether substantial grounds have been shown for believing that the individual concerned faces a real risk of treatment contrary to Article 3, the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu* (see *Vilvarajah and Others*, cited above, p. 36, §§ 107 and 108, and *Ireland v. the United Kingdom*, cited above, p. 64, § 160).

337. In determining whether such a risk exists, the assessment must be made primarily with reference to those circumstances which were known or ought to have been known to the extraditing State at the time of the extradition; the Court is not precluded, however, from having regard to information which comes to light at a subsequent point; this may be of value in confirming or refuting the appreciation that has been made by the Contracting Party or the well-foundedness or otherwise of an applicant's fears (see *Cruz Varas and Others*, cited above, p. 30, § 76). While the establishment of such responsibility inevitably involves an assessment of conditions in the requesting country against the standards of Article 3, there is no question of adjudicating on or establishing the responsibility of that country under general international law, whether under the Convention or otherwise. In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which has as a direct consequence the

exposure of an individual to proscribed ill-treatment (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 67, ECHR 2005-I, and *Soering*, cited above, pp. 35-36, §§ 89-91).

338. It is also appropriate to reiterate that, in order to fall within the scope of Article 3, ill-treatment, including a punishment, must attain a minimum level of gravity. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate punishment (see *Tyrer v. the United Kingdom*, judgment of 25 April 1978, Series A no. 26, pp. 14-15, §§ 29-30). The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration and its physical or mental effects (see *Soering*, cited above, p. 39, § 100). In assessing the evidence, the Court applies the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, cited above, pp. 64-65, § 161, and *Anguelova v. Bulgaria*, no. 38361/97, § 111, ECHR 2002-IV). A "reasonable doubt" is not a doubt based on a merely theoretical possibility or raised in order to avoid a disagreeable conclusion, but a doubt for which reasons can be drawn from the facts presented (see the "*Greek case*", applications nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission's report of 5 November 1969, and, *mutatis mutandis*, *Naumenko v. Ukraine*, no. 42023/98, § 109, 10 February 2004). Proof of ill-treatment may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact.

339. Finally, the Court wishes to emphasise that it is not normally for it to pronounce on the existence or otherwise of potential violations of the Convention (see *Soering*, cited above, p. 35, § 90). To raise an issue under Article 3, it must be established that, in the particular circumstances of the case, there was a real risk that the applicant would suffer treatment contrary to Article 3 in the event of extradition.

(b) Application of the above principles to the present case

(i) The extradition of five applicants on 4 October 2002

340. The Court notes that the applicants heard by it in Tbilisi spoke of the anxiety caused them by the possibility of their extradition to Russia. They confirmed that the same high degree of anxiety had been shared by the seven other applicants who are currently detained in Russia (see paragraphs 129, 132, 136 and 142 above). Having regard to the endemic violence which has held sway in the Chechen Republic since the beginning of the conflict and to the climate of impunity which reigns in that region (see the relevant passages in paragraphs 267 to 270 above), the Court has no doubt that the applicants' fear of being confronted with a threat to their lives

or treatment contrary to Article 3 of the Convention was subjectively well-founded and genuinely perceived as such. The subjective view of events which may arouse feelings of fear or uncertainty in an individual with regard to his or her fate is, without any doubt, an important factor to be taken into account when assessing the facts (see paragraphs 378-81 and 445 below). However, when the Court examines an extradition measure under Article 3 of the Convention, it first assesses the existence of an objective danger which the extraditing State knew or ought to have known about at the time it reached the disputed decision.

341. It appears from the evidence before the Court that the Georgian authorities did not explicitly dispute the likelihood of a genuine threat to the applicants in the event of their extradition. On the contrary, they assumed at the outset that there was a reasonable risk (see paragraphs 62, 63, 173, 182 and 183 above) and, accordingly, requested assurances aimed at securing protection of the applicants.

342. Thus, from the time that Mr Ustinov lodged the request for the applicants' extradition on 6 August 2002, their extradition was conditional on the receipt of relevant documents in support of that request and of assurances concerning their fate in Russia (see paragraphs 62, 63 and 182 above). The documents submitted by the Russian authorities in response to that request included, *inter alia*, the investigation orders for each of the applicants, certified copies of the orders in respect of each applicant's placement in detention, the international search warrant against them and evidence concerning their nationality and identity.

343. As to the assurances, the Court notes that they were submitted in respect of each of the applicants in the letters of 26 August and 27 September 2002 (see paragraphs 68 and 71 above) by the Acting Procurator-General, the highest prosecuting authority in criminal cases in Russia. The parties do not dispute that the Georgian Procurator-General also obtained verbal assurances from his Russian colleagues (see paragraph 184 above). In the above-mentioned letters of guarantee, the Acting Russian Procurator-General formally assured the Georgian authorities that the applicants would not be sentenced to death and pointed out that, in any case, application of the death penalty had been forbidden in Russia since the 1996 moratorium. The letter of 27 September 2002 also included specific assurances, ruling out "torture [and] treatment or punishment that was cruel, inhuman or contrary to human dignity".

344. In assessing the credibility which the Georgian authorities could have attributed to those assurances, the Court considers it important that they were issued by the Procurator-General, who, within the Russian system, supervises the activities of all prosecutors in the Russian Federation, who, in turn, argue the prosecution case before the courts (see paragraph 263 above). It is also appropriate to note that the prosecution authorities fulfil a supervisory role in respect of the rights of prisoners in the

Russian Federation, and that this role includes, *inter alia*, the right to visit and supervise places of detention without hindrance (ibid.).

345. In fact, the Court finds nothing in the evidence submitted by the parties and obtained by its delegation in Tbilisi which could reasonably have given the Georgian authorities grounds to doubt the credibility of the guarantees provided by the Russian Procurator-General during the decision-making process. However, the merits of the Georgian authorities' reasoning and the reliability of the assurances in question must also be assessed in the light of the information and evidence obtained subsequent to the applicants' extradition, to which the Court attaches considerable importance.

346. It notes, firstly, that the Georgian authorities clearly agreed only to the extradition of those applicants whose identity could be substantiated (see paragraphs 72, 79 and 175 above) and who had been in possession of Russian passports at the time of their arrest (see paragraphs 57 and 187 above). The respective identities of Mr Shamayev, Mr Khadjiev, Mr Aziev and Mr Adayev, as established by the Georgian Procurator-General's Office (see paragraph 72 above), were, apart from a few differences in spelling, confirmed by the applicants who appeared before the Court in Tbilisi (see paragraph 119 above). The communications from Mr Aziev and Mr Khadjiev, two extradited applicants (see paragraphs 235 and 238 above), also prove that the Georgian authorities had genuinely determined their identity before agreeing to their extradition. The identity of the extradited applicants, as established by the Georgian Procurator-General's Office, was also confirmed by the orders concerning their identification, issued in Russia on 15 November 2002 (see paragraph 217 above).

347. The Court regrets the Russian Government's assertion that it is impossible to obtain a copy of the first-instance court's judgment convicting the four extradited applicants (see paragraph 108 above) and reiterates that it does not accept the arguments submitted in support of that assertion (see paragraph 276 above). Nonetheless, in the light of the evidence in its possession (see paragraph 107 above), it notes that the prosecution did not call for the death sentence against the applicants and that none of them was sentenced to that penalty. The same is true of Mr Khashiev (Elikhadjiev, Mulkoyev) and Mr Baymurzayev (Alkhanov), who were sentenced at first instance on 14 September and 11 October 2004 to thirteen years and twelve years' imprisonment respectively.

348. The Court also takes into consideration the photographs of the extradited applicants and of their cells, together with the video recording made in the SIZO in town B and various medical certificates submitted by the Russian Government (see paragraphs 20, 109, 242, 246 et seq. above). Even if, in certain respects, especially in so far as they concern Mr Aziev (see paragraph 320 above), those documents are to be treated with caution, it does not appear that the extradited applicants have been detained in conditions which are contrary to Article 3 or that they have been subjected

to treatment prohibited by that provision. In this regard, it is also appropriate to note that Mr Khadjiev and Mr Aziev, the only applicants to have been in correspondence with the Court following their extradition (see paragraphs 235 and 238 above), have not complained at any time that they have been subjected to ill-treatment in Russia. Nor have they submitted any information about previous convictions in that country.

349. However, the Court does not overlook the fact that, following their extradition, with the exception of a few written exchanges with the Court, the applicants were deprived of an opportunity to express their version of the facts of the case freely and to inform the Court about their situation in Russia (see paragraphs 511-18 below). The medical certificates included in the case file were all supplied by the Government, and the applicants themselves have not had an opportunity to complain about their state of health. Their representatives before the Court were not authorised to contact them, despite the Court's decision in this connection (see paragraph 228 above). The impossibility of shedding light on events subsequent to their extradition has been aggravated by the fact that the Court itself has been hindered in exercising its functions by the Russian Government (see paragraph 504 below). In those circumstances, the applicants themselves cannot be entirely blamed for not providing sufficient evidence after their extradition.

350. Nevertheless, it remains the case that the applicants' representatives, in alleging the existence of a risk to the applicants in Russia, have also failed to submit sufficient information as to the objective likelihood of the personal risk run by their clients as a result of extradition. The documents and reports from various international bodies to which they referred provide detailed but general information on acts of violence committed by the Russian Federation's armed forces against civilians in the Chechen Republic (some of those documents and reports are cited in paragraphs 267 and 270 above). However, they do not establish that extradition would have imposed a personal threat on the extradited applicants (see *Čonka and Others v. Belgium* (dec.), no. 51564/99, 13 March 2001, and also, *mutatis mutandis*, *H.L.R. v. France*, cited above, p. 759, § 42).

351. The applicants' representatives never referred to the manner in which the death sentence is executed in Russia, the conditions of detention while awaiting execution or other circumstances capable of bringing this punishment within the scope of Article 3 (see paragraph 333 above). At no point did they indicate whether the applicants had previously been subjected to treatment that was contrary to this provision, nor did they refer to the applicants' personal experiences in connection with their ethnic origin or their previous political or military experience in the Chechen Republic. The lawyers merely referred to the general context of the armed conflict which is raging in this region and the extreme violence from which their clients all

wished to flee. Supposing that the applicants did fight against federal troops within the context of that conflict, the Court has no information about their role and position within their community prior to August 2002, which prevents it from assessing the likelihood of personal risk arising from the applicants' previous history. It notes that the applicants heard by it in Tbilisi had all submitted that neither they nor the extradited applicants had been carrying weapons when they crossed the border (see paragraph 128 above). Some of them even claimed to have been leading a peaceful civilian life in Chechnya or in the border regions of Georgia adjacent to Chechnya (see paragraphs 128, 134, 140 and 141 above). However, it does not appear from the judicial decisions in Georgia that this was really the case (see paragraphs 89 and 91 above). Whatever the truth, there is nothing in the evidence before it which enables the Court to consider the applicants as warlords, political figures or individuals who were well-known for other reasons in their country (contrast *Chahal*, cited above, p. 1861, § 106), all factors which could have served to render tangible or increase the personal risk hanging over the applicants after they had been handed over to the Russian authorities.

352. Thus, in the absence of other specific information, the evidence submitted to the Court by the applicants' representatives concerning the general context of the conflict in the Chechen Republic does not establish that the applicants' personal situation was likely to expose them to the risk of treatment contrary to Article 3 of the Convention. The Court does not rule out the possibility that the applicants ran the risk of ill-treatment, although they submitted no evidence of previous experience in this connection (contrast *Hilal v. the United Kingdom*, no. 45276/99, § 64, ECHR 2001-II, and *Vilvarajah and Others*, cited above, pp. 8, 11 and 13, §§ 10, 22 and 33). A mere possibility of ill-treatment in such circumstances, however, is not in itself sufficient to give rise to a breach of Article 3 (see *Vilvarajah and Others*, cited above, p. 37, § 111), especially as the Georgian authorities had obtained assurances from their Russian counterparts against even that possibility.

353. In consequence, the Court concludes that, in the light of the evidence in its possession, the facts of the case do not support “beyond any reasonable doubt” the assertion that, at the time when the Georgian authorities took the decision, there were real or well-founded grounds to believe that extradition would expose the applicants to a real and personal risk of inhuman or degrading treatment, within the meaning of Article 3 of the Convention. There has accordingly been no violation of that provision by Georgia.

(ii) The extradition of Mr Issayev, Mr Khanchukayev, Mr Magomadov, Mr Kushtanashvili and Mr Margoshvili

354. The Court considers that the situation of these applicants, who were not extradited on 4 October 2002, is to be distinguished from that examined above. As regards, firstly, Mr Issayev, Mr Khanchukayev and Mr Magomadov, there has been no decision to date on the extradition request of 6 August 2002. This is also the case with regard to Mr Kushtanashvili and Mr Margoshvili, with the difference that, according to the Georgian Government, on account of their Georgian nationality, these applicants are not liable to extradition (see paragraph 326 above).

355. The Court points out that, under Article 35 § 4 of the Convention, it may declare an application inadmissible at any stage of the proceedings. As no extradition order has been issued against Mr Issayev, Mr Khanchukayev, Mr Magomadov, Mr Kushtanashvili and Mr Margoshvili, they can, as matters stand, claim only that they would be victims, within the meaning of Article 34 of the Convention, of a breach of Articles 2 and 3 if they were to be handed over to the Russian authorities (see *Vijayanathan and Pusparajah v. France*, judgment of 27 August 1992, Series A no. 241-B, pp. 86-87, §§ 45 and 46). Their complaints under those Articles are thus incompatible *ratione personae* with the Convention's provisions and must be dismissed pursuant to Article 35 § 4 of the Convention.

(iii) The extradition of Mr Baymurzayev, Mr Khashiev and Mr Gelogayev

356. On 28 November 2002 the Georgian Procurator-General's Office agreed to the extradition of Mr Baymurzayev, Mr Khashiev and Mr Gelogayev (see paragraph 83 above). Since an appeal had been lodged against the extradition orders on the basis of the Georgian Supreme Court's case-law in *Aliev* (see paragraph 258 above), it was considered impossible to hand Mr Baymurzayev over to the Russian authorities on account of his refugee status, and the transfer of Mr Khashiev and Mr Gelogayev was suspended (see paragraph 88 above).

357. On 16 or 17 February 2004 Mr Baymurzayev and Mr Khashiev disappeared in Tbilisi; they were allegedly arrested two or three days later by the Russian authorities on the Russo-Georgian border. They are currently detained in Russia (see paragraphs 100-03 above). In those circumstances the Court does not consider it necessary to examine whether there would have been a violation of Articles 2 and 3 of the Convention if the decision to extradite those two applicants, taken on 28 November 2002, had been executed.

358. With regard to Mr Gelogayev, given that the extradition order against him has been suspended, he does not, in principle, run an imminent risk of being handed over to the Russian authorities. However, his situation differs from that of Mr Issayev and the others (see paragraph 354 above) simply because an extradition order against him has already been signed. It

may be enforced once the administrative proceedings concerning his refugee status in Georgia have been completed (see paragraph 88 above). It is therefore appropriate to examine whether, in such an event, his rights as guaranteed under Articles 2 and 3 of the Convention would be violated.

359. The Court has already stated that a State which has not ratified Protocol No. 6 and is not party to Protocol No. 13 is authorised to apply the death penalty under certain circumstances, in accordance with Article 2 § 2 of the Convention. The issue of the risks involved for the applicant in the event of extradition must therefore be determined under Article 3 as construed in the light of Article 2, and also in the light of the treatment prohibited by Article 3 itself (see paragraphs 333 et seq. above). In cases such as the present one, the Court's examination of whether a real risk of ill-treatment exists must necessarily be a rigorous one, in view of the absolute character of Article 3 and the fact that it enshrines one of the fundamental values of the democratic societies making up the Council of Europe (see *Chahal*, cited above, p. 1859, § 96).

360. The Court points out that, in order to assess the risks in the case of an extradition that has not yet taken place, the material point in time must be that of the Court's consideration of the case. Although the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive (see *Chahal*, cited above, p. 1856, § 86; *Ahmed v. Austria*, judgment of 17 December 1996, *Reports* 1996-VI, p. 2207, § 43; and *Jabari*, cited above, § 41).

361. In the instant case, the Court must determine whether, bearing in mind relevant new evidence not available to the Georgian authorities two years ago, enforcement of the extradition order of 28 November 2002 would entail a risk for Mr Gelogayev of consequences contrary to Article 3 of the Convention.

362. It notes, firstly, that, following their extradition on 4 October 2002, the five extradited applicants were held in solitary confinement in the North Caucasus region. Their relatives were allegedly not permitted to know where they were being detained (see paragraph 482 below). The Russian Government made communication to the Court of their detention address conditional on securing guarantees of confidentiality (see paragraph 15 above). The applicants have been unable to maintain contact with their lawyers and the latter have not been permitted by the Russian authorities to visit them, despite the Court's specific indication on this subject (see paragraphs 228 and 310 above).

363. Whilst it is true that the applicants have been placed in SIZOs outside the conflict zone, these establishments in the North Caucasus area are, according to Amnesty International and the Russian Human Rights Commissioner's Group (see paragraph 269 above), “filtration camps”, where detainees are subjected to ill-treatment. In so far as the Court has had no opportunity to test the reasonableness of these allegations in the specific

case of the extradited applicants, it must rely on the evidence contained in those documents that it has obtained of its own motion (see *Vilvarajah and Others*, cited above, p. 36, §§ 107 and 108, and *Ireland v. the United Kingdom*, cited above, p. 64, § 160).

364. Further, the Court notes with concern that the Russian authorities are seriously hampering international "monitoring" of prisoners' rights in the context of the Chechen conflict. Thus, in January 2003 the Russian Government refused to renew the mandate of the OSCE Assistance Group in Chechnya. The Council of Europe's CPT had already complained in 2001 of the Russian Federation's lack of cooperation (see paragraph 267 (e) above). According to the International Helsinki Federation for Human Rights (report of 15 September 2004), the international presence in the North Caucasus is increasingly sporadic and, consequently, external witnesses and assistance are now almost non-existent (see point F in paragraph 271 above).

365. The Court also notes that, in accordance with the Federal Law of 27 December 2002, Article 30 § 2 (b) of the new Code of Criminal Procedure is due to come into force across the territory of the Russian Federation by 1 January 2007 (see paragraph 265 above). This provision provides, *inter alia*, for examination by jury, at the defendant's request, of cases concerning the crimes set out in Articles 205, 209, 317 and 322 § 2 of the Criminal Code (see paragraph 260 above). The offences imputed to the applicants by the Russian authorities fall within these categories (see paragraphs 66, 70 and 71 above). From 1 January 2007 the prohibition on the imposition of the death penalty pending "the introduction of assize courts throughout the territory of the Federation" in the Constitutional Court's judgment of 2 February 1999, will no longer be applicable (see paragraph 262 above). Yet, when examining the request to extradite the applicants in 2002, the Georgian authorities based their assessment on the existence of that judgment (see paragraphs 69, 173, 183 and 324 above).

366. Finally, the Court draws attention to a new and extremely alarming phenomenon: individuals of Chechen origin who have lodged an application with the Court are being subjected to persecution and murder. This fact, which was deplored by the Parliamentary Assembly of the Council of Europe (see paragraph 267 (d) above), has recently been forcefully condemned in the International Helsinki Federation for Human Rights' report of 15 September 2004 (see point E at paragraph 271 above). This report describes a sudden rise in the number of cases of persecution (threats, harassment, imprisonment, forced disappearance, murder) in 2003 and 2004 of persons who have lodged applications with the Court. Organisations which represent applicants before the Court, including Memorial, the European Human Rights Advocacy Centre and Chechnya Justice Initiative, have also complained about the persecution to which their clients have been subjected.

367. In the light of all this evidence subsequent to 28 November 2002, the Court considers that the assessments on which the decision to extradite Mr Gelogayev had been based two years before no longer suffice to exclude all risk of ill-treatment prohibited by the Convention being inflicted on him.

368. Consequently, the Court considers it established that if the decision of 28 November 2002 to extradite Mr Gelogayev were to be enforced on the basis of the assessments made on that date, there would be a violation of Article 3 of the Convention.

C. The risk of extra-judicial execution

369. The applicants' representatives drew the Court's attention to the arbitrary execution of prisoners of Chechen origin which allegedly occurred systematically in Russia. In this connection they referred to reports and statements by various governmental and non-governmental organisations (see paragraphs 267 (e) and (f), 268 and 270 above). Extra-judicial execution would be even more likely in respect of the extradited applicants in that they were accused of terrorism or other crimes committed in the context of the conflict raging in the Chechen Republic.

370. The respondent Governments made no comment on this matter.

371. The Court notes that the reports referred to by the applicants' representatives do indeed denounce numerous cases in the Chechen Republic of killings of persons of Chechen origin, or their arbitrary detention and subsequent disappearance. However, observations concerning the general context of the conflict in that region do not suffice to demonstrate that the applicants' extradition might result in a plausible risk of extra-judicial execution. Even if, in view of the extreme violence which characterises the conflict in the Chechen Republic, the Court cannot rule out that extradition may well have made the applicants entertain the fear of a certain risk to their lives, the mere possibility of such a risk cannot in itself entail a violation of Article 2 of the Convention (see, *mutatis mutandis*, *Vilvarajah and Others*, cited above, p. 37, § 111).

372. The facts of the case do not make it possible to assert that, when the Georgian authorities took their decision, there were serious and well-founded reasons for believing that extradition would expose the applicants to a real risk of extra-judicial execution, contrary to Article 2 of the Convention. Accordingly, there has been no violation of that provision.

D. The events of the night of 3 to 4 October 2002

1. The parties' submissions

373. The applicants' representatives alleged that, during the night of 3 to 4 October 2002, the applicants, who were distressed and ill-informed, were

subjected to acts of violence by the Georgian special forces. In particular, they drew the Court's attention to the case of Mr Aziev, who, when he refused to be extradited, was ruthlessly beaten with truncheons and received electric shocks. Covered in blood and with a serious eye injury, he was allegedly dragged along the corridor "like a corpse" and transferred in this state to the airport (see paragraphs 125 and 135 above). Mr Baymurzayev's jawbone had allegedly been broken by truncheon blows. The lawyers complained that the applicants had subsequently been prosecuted for events in which they themselves had been the victims (see paragraphs 97 et seq. above). Apart from the injuries inflicted on the applicants, the denial of due process in itself entailed a violation of Article 3 of the Convention.

374. The Georgian Government replied that the use of force had been made strictly necessary by the applicants' refusal to comply with the lawful order issued by the prison staff and by their violence. The State employees had been obliged to defend themselves against attack by the applicants, who had been armed with various pieces of metal and projectiles made from bricks wrapped in blankets and clothing. On the basis of the medical certificates and expert medical reports (see paragraphs 200 et seq. above), the Government drew the Court's attention to the injuries which the applicants had inflicted on the State employees, and considered that those wounds were just as serious as those sustained by the prisoners themselves.

2. The Court's assessment

375. The Court points out that Article 3 enshrines one of the fundamental values of democratic societies and makes no provision for exceptions (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3, and the assessment of this minimum depends on all the circumstances of the case (see also paragraph 338 above). Treatment is considered to be "inhuman" if, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering (see, *inter alia*, *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI). The Court wishes to emphasise that a State is liable for all persons in detention, since the latter, in the hands of the State's employees, are in a vulnerable position and the authorities are under a duty to protect them (see *Berktay v. Turkey*, no. 22493/93, § 167, 1 March 2001, and *Algür v. Turkey*, no. 32574/96, § 44, 22 October 2002). However, the Court cannot ignore the potential for violence in a prison setting, nor the threat that disobedience on the part of inmates may well degenerate into bloodshed requiring the prison authorities to enlist the help of the security forces (see *Satık and Others v. Turkey*, no. 31866/96, § 58, 10 October 2000). Nevertheless, in respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the

right set forth in Article 3 (see *Tekin v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, pp. 1517-18, §§ 52 and 53, and *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV).

376. In the instant case it is not disputed by the parties that physical force was used by the Ministry of Justice's special forces during the night of 3 to 4 October 2002 to remove the eleven applicants from their cell, with a view to extraditing four of them (Mr Adayev and Mr Margoshvili were at that point detained in the prison infirmary). The Court considers it established that the use of force occurred between 4 a.m. and 8 a.m. and that it was preceded by peaceful attempts on the part of the prison staff to persuade the prisoners to comply with the order to leave the cell (see paragraphs 124, 147 and 148 above).

377. Having reconstructed the circumstances in which the disputed events took place, the Court has no doubt that the applicants, contrary to their assertions (see paragraphs 125 and 131 above), put up vigorous resistance, first to the prison staff, then to the special forces. Nor, in view of the photographs of the cells in Prison no. 5 (see paragraph 20 above), the assessment report on cell no. 88, the expert report and the statements by various witnesses (see paragraphs 96, 144 et seq. above), does it doubt that the applicants had armed themselves with various objects, including bricks and pieces of metal, with a view to opposing their possible extradition. In those circumstances, the Court accepts the Georgian Government's argument that the intervention of fifteen members of the special forces, armed with truncheons (see paragraphs 124, 151 and 159 above), could reasonably be considered necessary to ensure the safety of the prison staff and prevent disorder spreading throughout the rest of the prison. Nonetheless, it must now consider whether this necessity was not primarily the result of acts or omissions by the authorities themselves.

378. The Court notes firstly that Mr Shamayev, Mr Aziev, Mr Khadjiev, Mr Vissitov, Mr Baymurzayev, Mr Khashiev, Mr Gelogayev, Mr Magomadov, Mr Kushtanashvili, Mr Issayev and Mr Khanchukayev, who were detained in the same cell (no. 88) and had been without information since the start of the extradition proceedings, learned only on 3 October 2002, between 11 p.m. and midnight, that the extradition of some of their number was imminent (see paragraphs 216 above and 455 below), in other words, a few hours before enforcement of the extradition orders of 2 October 2002 began. Towards three or four o'clock in the morning, prison staff, including the prison governor, ordered the applicants to leave their cell, giving fictitious reasons (disinfection or search), even though a vehicle was already waiting in the neighbouring prison courtyard to transport four of them for transfer to the Russian authorities (see paragraphs 124 and 148 above). Having regard to the applicants' particular vulnerability, faced with extradition to a country where they feared they would lose their lives or

suffer ill-treatment, the Court considers that this conduct by the authorities amounted to attempted deception.

379. Indeed, the Court does not understand how a prisoner, provided only with rumours and information gleaned from the media, could be left for weeks on end to guess whether or not he was subject to extradition proceedings (see paragraphs 124, 136, 183 and 194 above) without that person being duly notified of the measures taken by the relevant authorities (see paragraphs 428 and 432 below). It is also inconceivable that prisoners should be confronted with a *fait accompli* in this way and be made aware that transfer to another country is indeed imminent only when they are asked to leave their cell.

380. Another striking feature of the case is the fact that, although the extradition concerned only four of the individuals detained in cell no. 88, the eleven applicants in the cell were in despair and subject to panic, since they were unaware of who was to be extradited (see paragraphs 73, 98, 124, 215 and 216 above). The collective resistance which they offered to the State employees seems to have been linked to the legitimate fears that they experienced at the idea of their extradition (see paragraph 340 above). In the light of the evidence in its possession, the Court considers that the tactic of trickery and speed adopted by the Georgian authorities was intended to trap the applicants and, by presenting them with a *fait accompli*, to avoid complications (see, *mutatis mutandis*, *Čonka v. Belgium*, no. 51564/99, §§ 41 and 42, ECHR 2002-I; *Bozano v. France*, judgment of 18 December 1986, Series A no. 111, pp. 25-26, § 59; and *Nsona v. the Netherlands*, judgment of 28 November 1996, *Reports* 1996-V, p. 2004, § 103). On the contrary, the authorities' attitude, and the manner in which they managed the extradition enforcement procedure, incited the applicants to riot (contrast *Caloc v. France*, no. 33951/96, § 100, ECHR 2000-IX). In the Court's opinion, the recourse to physical force in such circumstances cannot be regarded as having been justified by the prisoners' conduct.

381. Having regard to the lack of procedural guarantees (see paragraphs 428, 432 and 457-61 below), the ignorance in which the applicants were kept as to their fate and the distress (see paragraphs 129, 132, 171, 188 and 194 above) and uncertainty to which they were subjected without valid reason, the Court considers that the manner in which the Georgian authorities enforced the extradition orders of 2 October 2002 in itself raises a problem under Article 3 of the Convention.

382. As to the gravity of the injuries sustained, the Court observes, in the light of the medical reports drawn up on 4 October 2002 (see paragraphs 200-11 above) and the entries made on that date in the applicants' personal files, that Mr Khanchukayev, Mr Magomadov and Mr Gelogayev sustained numerous large bruises (between 1 x 1 cm and 20 x 5 cm) over their entire bodies. Mr Khanchukayev also had a fractured left shoulder. Mr Issayev had bruising to the face, especially around the right

eye. Mr Khashiev and Mr Baymurzayev showed no traces of violence. However, according to their representatives, Mr Baymurzayev, who ordinarily suffered from a serious deformation of the jawbone, was hospitalised on account of a fracture to that area (see paragraphs 106 and 208 above). Mr Kushtanashvili had not been examined by the doctor in question. Apart from the statements by the non-extradited applicants and one prison warden (see paragraphs 125, 135 and 158 above), heard in Tbilisi, the Court has no documents describing the injuries sustained by Mr Shamayev, Mr Aziev, Mr Khadjiev and Mr Vissitov, the four applicants extradited from cell no. 88.

383. In any event, even supposing that the applicants who appeared before the Court in Tbilisi had a tendency to exaggerate the seriousness of their own injuries and those of the other applicants (see paragraphs 125 and 135 above), the scale of the bruising observed by the doctor who examined Mr Khanchukayev, Mr Magomadov, Mr Gelogayev and Mr Issayev (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, pp. 3271-72, § 11) and the fracture to the left shoulder sustained by Mr Khanchukayev indicate that those applicants' injuries were sufficiently serious to amount to ill-treatment within the scope of Article 3 (see *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports* 1998-VI, p. 2699, § 21, and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, pp. 9 and 26, §§ 13 and 39). The Court observes that the evidence in its possession does not enable any conclusion to be drawn as to whether the injuries in question had any long-term consequences. It merely notes that no appropriate and timely medical examination took place and that the applicants were given only limited medical care (see paragraphs 126, 153 *in fine* and 206-11 above).

384. The Court has not overlooked the fact that prison wardens and members of the special forces were also injured in "hand-to-hand combat" with the applicants (see paragraphs 151, 158 and 204-05 above). Following an investigation, four of the applicants were identified as having inflicted those injuries and sentenced on 25 November 2004 to two years and five months' imprisonment. Proceedings are currently pending with regard to three other applicants (see paragraphs 98 and 99 above). On the other hand, it does not appear that the Georgian authorities have conducted an investigation into the proportionality of the force used against the applicants.

385. Having regard to the unacceptable circumstances of the procedure for the enforcement of the extradition orders against four applicants by the Georgian authorities (see paragraphs 378-81 above), and in view of the injuries inflicted on some of the applicants by the special forces, followed by the lack of appropriate medical treatment in good time, the Court considers that the eleven applicants held in Tbilisi Prison no. 5 during the

night of 3 to 4 October 2002 were subjected to physical and mental suffering of such a nature that it amounted to inhuman treatment.

386. Accordingly, there has been a violation of Article 3 of the Convention by Georgia.

III. ALLEGED VIOLATION OF ARTICLE 5 §§ 1, 2 AND 4 OF THE CONVENTION BY GEORGIA

387. The relevant parts of Article 5 §§ 1, 2 and 4 of the Convention provide:

> "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;
>
> ...
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
>
> 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.
>
> ...
>
> 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."

1. The parties' submissions

388. The applicants' representatives claimed that their clients had never officially been detained with a view to their extradition and that their placement in custody on 6 and 7 August 2002 was a disguised form of detention for the purpose of Article 5 § 1 (f) of the Convention. Their transfer on those dates from the civilian hospital to prison (the prison infirmary in the case of Mr Margoshvili) was the result of a visit to Georgia on 6 August 2002 by the Russian Procurator-General, who had brought with him the request for the applicants' extradition (see paragraphs 58-60 and 62 above). Quite apart from the requirement of promptness set out in Article 5 § 2 of the Convention, the applicants were not informed either during their transfer to prison or subsequently that they had been arrested with a view to being handed over to the Russian authorities. The applicants had thus been deprived of the possibility of challenging the lawfulness of that detention.

Submitting the same complaints, Mr Khadjiev relied on Article 5 § 2 and Article 6 § 3 of the Convention (see paragraph 235 above). He also complained that he had been questioned without an interpreter at the civilian hospital and that he had not been informed of the accusations against him when he was brought before a judge on 6 August 2002 (see paragraph 58 above).

389. The lawyers complained of the sudden disappearance from Tbilisi of Mr Khashiev and Mr Baymurzayev, followed by their equally unexpected reappearance in a Russian prison. They dismissed the Governments' argument that those applicants had been arrested in Russia while crossing the Russo-Georgian border. They pointed out that when they were released on 6 February 2004 (see paragraphs 100-05 above) the applicants in question were already only too well aware that proceedings had been brought in connection with their extradition to Russia. They would not therefore have travelled towards the border of their own volition in order to enter that country. The lawyers considered the information provided by the two Governments to be unsatisfactory and submitted that, in the absence of plausible explanations from them, those applicants could be deemed to have been handed over in secret to the Russian authorities and detained contrary to Article 5 of the Convention.

390. The Georgian Government maintained that the applicants' detention complied with the requirements of Article 5 § 1 (f) of the Convention. They had been informed by Mr Darbaydze, a trainee prosecutor at the Procurator-General's Office, that extradition proceedings against them were under way. On 23 August 2002 Mr Darbaydze, accompanied by his colleague Ms Nadareishvili, met Mr Issayev, Mr Khanchukayev, Mr Aziev, Mr Shamayev and Mr Khadjiev, and informed them of the possibility that they would be extradited to Russia. The applicants had allegedly refused to comment. In support of this argument, the Government submitted the record of that meeting. On 13 September 2002 the same trainee prosecutor, accompanied by his colleague Ms Kherianova, informed Mr Baymurzayev, Mr Gelogayev, Mr Magomadov, Mr Kushtanashvili, Mr Adayev, Mr Khashiev, Mr Vissitov and Mr Margoshvili of the situation. They had also refused to comment.

391. The applicants' representatives contested that submission and claimed that the names of the trainee prosecutors in question did not appear in the visitors' log for Prison no. 5. Further, they questioned whether a trainee prosecutor had the authority to inform prisoners of the existence of extradition proceedings against them.

392. In reply, the Georgian Government explained that the “visitors' log (citizens, lawyers and investigators)” was intended for individuals who required a pass, delivered in advance by the prison authorities. In accordance with the “security rules for penitentiary establishments”, prosecutors were allowed access to prisons on presentation of their

professional ID badge. This was why their names were not entered in the log. On the other hand, the Government submitted extracts from the "register of requests to have a prisoner brought to the investigation room", which showed that at 12.15 p.m. on 23 August 2002, investigators from the Ministry of Security had met Mr Issayev, Mr Khanchukayev, Mr Aziev, Mr Shamayev and Mr Khadjiev. On 13 September 2002, at 1.15 p.m., the same investigators met Mr Gelogayev, Mr Adayev, Mr Khanchukayev, Mr Magomadov, Mr Khashiev and Mr Baymurzayev. On those two dates Mr Darbaydze, a trainee prosecutor, had gone directly to the investigation room and had met the above-mentioned applicants (see paragraphs 162, 163 and 166 above). A letter from the prison governor confirmed that Mr Darbaydze's visits had taken place.

393. With regard to the status of trainee prosecutors, the Government explained that they had the same functions as prosecutors and deputy prosecutors. Consequently, Mr Darbaydze and his colleagues had acted within their legally established roles.

394. The applicants' representatives added that, on 22 August 2002, the applicants' lawyers before the domestic courts had asked the Procurator-General's Office to allow them access to documents concerning the charges brought against their clients in Russia. On 30 August 2002 that request was refused on the ground that the documents in issue concerned acts which were allegedly committed by the applicants in Russia, and had no connection with the cases in which the lawyers were representing their clients before the Georgian authorities.

395. The Georgian Government submitted on this point that, as the right not to be extradited was not guaranteed by the Convention, the Georgian authorities had not been obliged to ensure that the applicants had access to the criminal case files prepared against them in Russia. On the other hand, the authorities had guaranteed their right to be informed, with the assistance of interpreters, of the reason for their arrest in Georgia and of the charges brought against them by the Georgian authorities. Their right of access to the Georgian case files and assistance by the lawyers of their choice had also been respected.

2. The Court's assessment

(a) The intrinsic lawfulness of the detention

396. The Court points out that Article 5 § 1 circumscribes the circumstances in which individuals may be lawfully deprived of their liberty, it being stressed that these circumstances must be given a narrow interpretation having regard to the fact that they constitute exceptions to a most basic guarantee of individual freedom (see *Quinn v. France*, judgment of 22 March 1995, Series A no. 311, p. 17, § 42). By laying down that any deprivation of liberty should be "in accordance with a procedure prescribed

by law", Article 5 § 1 requires, firstly, that any arrest or detention should have a legal basis in domestic law (see *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, pp. 850-51, § 50).

397. The exception contained in Article 5 § 1 (f) of the Convention requires only that "action is being taken with a view to ... extradition". Although it does not provide the same protection as Article 5 § 1 (c) (see *Chahal*, cited above, p. 1862, § 112), the requirement of "lawfulness" implies in any event the absence of arbitrariness (see *Bozano*, cited above, pp. 25-26, § 59, and *Raf v. Spain*, no. 53652/00, § 53, 17 June 2003). The Court will consider whether this requirement was met, with particular reference to the safeguards provided by the national system (see *Dougoz v. Greece*, no. 40907/98, § 54, ECHR 2001-II).

398. In the instant case the Court observes, firstly, that, in challenging the applicants' arrest and detention after their arrival in Georgia, their representatives have not submitted complaints with regard to the various periods of detention experienced by the different applicants following the extradition of five of their number to Russia on 4 October 2002. The period in issue thus extends from 3 August (date of the first arrest, that of Mr Shamayev) to 4 October 2002.

399. Arrested between 3 and 7 August 2002, the applicants were placed under investigation on 5 and 6 August 2002 for crossing the border illegally and for the illegal import, handling and transport of weapons. On 6 and 7 August 2002 the Vake-Saburtalo Court of First Instance ordered that they be placed in detention in connection with that investigation (see paragraph 59 above). Their detention from those dates was therefore based on a document issued in accordance with domestic law by a competent court (see paragraph 254 above) and was covered by the exception provided for in Article 5 § 1 (c) of the Convention.

400. The Court notes that this pre-trial detention and the applicants' detention pending the extradition proceedings had partly overlapped (see *Kolompar v. Belgium*, judgment of 24 September 1992, Series A no. 235-C, and *Scott v. Spain*, judgment of 18 December 1996, *Reports* 1996-VI). The applicants' representatives place the real start of the detention pending extradition at 6 August 2002, date of the Russian Procurator-General's visit to Georgia.

401. The Court is not persuaded by this argument. It considers that the fact that proceedings were conducted concurrently cannot in itself warrant the conclusion that there was abuse, for purposes relating to national law, of the extradition procedure (see, *mutatis mutandis*, *Quinn*, cited above, pp. 18-19, § 47).

402. It appears from paragraph 1 of Article 259 of the Georgian Code of Criminal Procedure ("the CCP") (see paragraph 254 above), read in conjunction with paragraph 3 of the same Article, that an individual against whom extradition proceedings have been brought may be detained on the

basis of the extradition request if the latter is accompanied by a detention order issued by the competent court in the requesting State. The initial duration of such detention may not exceed three months and the person concerned may apply to a court in order to protect his or her rights (see paragraph 4 of the same Article). In the context of extradition, the Georgian CCP thus gives direct legal force to a foreign detention order, and there is no mandatory requirement for a domestic decision to commit the individual to custody with a view to extradition. If, after three months, the order has not been extended by the requesting State, the individual whose extradition is sought must be released.

403. In the instant case, on 6 August 2002 the Russian Procurator-General submitted a request to his Georgian counterpart for the applicants' extradition. On the same day the Georgian Procurator-General, who is the relevant judicial authority in extradition matters, refused to examine the request, on the ground that the relevant documents, concerning the substantive and procedural aspects of the case, were missing (see paragraphs 62 and 63 above). He objected, *inter alia*, that the extradition request did not include detention orders issued by a competent Russian legal authority.

404. The Russian authorities subsequently produced all the necessary documents. On 19 August 2002 they submitted certified copies of the detention orders in respect of each of the applicants, issued on 16 August 2002 by a court of first instance in Grozny (see paragraph 64 above) to which the investigator responsible for the criminal charges against the applicants in Russia had applied. The decision to place the applicants in pre-trial detention had been taken in accordance with the requirements of Article 108 § 5 of the Russian CCP, which authorises such decisions in the absence of the person concerned only where he or she is the subject of an international search warrant (see paragraphs 64, point 3, and 264 above). Article 109 § 1 of that Code provides that the length of such detention may not exceed two months (see paragraph 264 above).

405. Having regard to all those circumstances, the Court does not consider that the applicants were detained from 6 August 2002 onwards with a view to their extradition. The argument that the Russian Procurator-General visited his Georgian counterpart and handed over the request for the applicants' extradition on that date does not in itself suffice to reach such a conclusion, especially as the Georgian Procurator-General informed the requesting State on the same date, orally and in writing (see paragraphs 63 and 182 above), that the request would not be examined on account of various shortcomings. In the light of the provisions of Article 259 of the Georgian CCP, and in the absence of evidence to the contrary, the Court considers that the applicants' detention for the purposes of Article 5 § 1 (f) of the Convention could only have begun on 19 August 2002, when the Georgian authorities received from the requesting State the necessary

documents, including the detention orders issued by a competent legal authority. From that date the applicants were detained, in accordance with Georgian law, on the basis of the extradition request and the corresponding detention orders.

406. The Court therefore notes that, during the period in issue, the applicants' detention was always governed by the exceptions set out in Article 5 § 1 (c) and (f) of the Convention and that it was not unlawful in view of the legal safeguards provided by the Georgian system. In the light of the evidence in its possession, the Court also considers that the applicants' detention was justified in principle under Article 5 § 1 (f) of the Convention.

407. It follows that there has been no violation of Article 5 § 1 of the Convention in respect of the applicants' impugned detention in Georgia.

408. Nonetheless, the Court will consider below whether, bearing in mind the other requirements of Article 5, there were sufficient safeguards in place to protect the applicants from arbitrariness (see paragraphs 413 et seq. below).

(b) The detention of Mr Khashiev (Elikhadjiev, Mulkoyev) and Mr Baymurzayev (Alkhanov) following their disappearance

409. The Court notes, firstly, that the fact that these applicants disappeared on 16 February 2004 emerged after the admissibility decision in the present case, and that that decision delimits the compass of the case brought before it (see *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, pp. 39-40, § 106, and *W. v. the United Kingdom*, judgment of 8 July 1987, Series A no. 121, p. 26, § 57). The Court accordingly lacks jurisdiction to examine or comment on the lawfulness of the arrest and detention of Mr Khashiev and Mr Baymurzayev by the Russian authorities.

410. However, in the light of the full jurisdiction that it enjoys once a case has been duly brought before it (see *De Wilde, Ooms and Versyp v. Belgium*, judgment of 18 June 1971, Series A no. 12, p. 29, § 49), the Court has found it necessary to ask the respondent Governments for explanations in order to shed light on the disappearance itself and those applicants' fate after their imprisonment in Russia (see paragraphs 45 and 100-03 above).

411. While it is true that the attainment of the required evidentiary standard may follow from the co-existence of sufficiently strong, clear and concordant inferences or unrebutted presumptions (see *Kaya v. Turkey*, judgment of 19 February 1998, *Reports* 1998-I, p. 322, § 77), in view of the information provided by the respondent Governments in the instant case and the arguments put forward by the applicants' representatives, the Court discerns no prima facie evidence indicating that the disappearance in issue was the result of an arbitrary extradition operation carried out in secret by the authorities of the States concerned. Even so, the Court wishes to make it clear that the credibility of the Governments' statements is reduced by the

fact that the Court was prevented from performing its tasks in Russia and questioning the two applicants concerned (see paragraph 504 below).

412. In any event, the Court concludes that it has no jurisdiction, in the context of the present application, to consider the complaint alleging the unlawfulness of the detention of Mr Khashiev (Elikhadjiev, Mulkoyev) and Mr Baymurzayev (Alkhanov) following their arrest in Russia on 19 February 2004.

(c) The alleged violation of Article 5 §§ 2 and 4 of the Convention

413. The Court reiterates that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty (see *Čonka*, cited above, § 50). This is a minimum safeguard against arbitrary treatment. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley v. the United Kingdom*, judgment of 30 August 1990, Series A no. 182, p. 19, § 40). Anyone entitled to take proceedings to have the lawfulness of his detention speedily decided cannot make effective use of that right unless he or she is promptly and adequately informed of the reasons relied on to deprive him of his liberty (see *Van der Leer v. the Netherlands*, judgment of 21 February 1990, Series A no. 170-A, p. 13, § 28).

414. In the instant case the Court notes there is no call to exclude the applicants from the benefits of paragraph 2, as paragraph 4 makes no distinction between persons deprived of their liberty by arrest and those deprived of it by detention (ibid.).

415. As Article 5 § 2 is therefore applicable in the instant case, the Court notes that the applicants were arrested between 3 and 7 August 2002 (see paragraphs 57-59 above). It has already established that their detention with a view to extradition began on 19 August 2002 (see paragraph 405 above). The Court must therefore assess whether, from that date, the applicants were informed of this detention in accordance with the requirements of Article 5 § 2 of the Convention.

416. It transpires from the evidence before the Court that the first attempt to inform the applicants that extradition proceedings had been brought against them was made on 23 August 2002 (see paragraphs 162, 171 and 392 above). Prior to that date the applicants received information about their detention with a view to extradition only through rumours and,

given the case's high media profile, journalists (see paragraphs 136, 145, 176 and 183 above). Even supposing that Mr Darbaydze and Ms Nadareishvili provided the applicants with sufficient information on 23 August 2002 as to the reason for their detention since 19 August 2002, in the specific context of the present case an interval of four days must be deemed incompatible with the constraints of time imposed by the notion of promptness in Article 5 § 2 (see *Fox, Campbell and Hartley*, cited above, pp. 19-20, §§ 41-43, and *Murray v. the United Kingdom*, judgment of 28 October 1994, Series A no. 300-A, p. 33, § 78).

417. The Court does not consider it necessary to examine whether the status of trainee prosecutor enabled Mr Darbaydze and his colleagues to act in the context of this extradition case. It merely observes that they were instructed by the competent authorities at the Procurator-General's Office to go to the prison and inform the prisoners that extradition proceedings had been brought against them (see paragraphs 162 and 176 above). Within the Procurator-General's Office the trainee prosecutors in question were also responsible for performing various tasks in connection with the extradition case against the applicants (see paragraphs 162 and 171 above). Notwithstanding their status within the Georgian public service, and in the light of the functions entrusted to them, the Court considers that the actions of the trainee prosecutors engaged the State's responsibility under the Convention (see *Assanidze v. Georgia* [GC], no. 71503/01, § 146, ECHR 2004-II).

418. Unlike the applicants' representatives, the Court does not doubt that Mr Darbaydze and his colleagues visited the prison on 23 August and 13 September 2002. These visits were confirmed by several witnesses (see paragraphs 162, 171 and 176 above) and, above all, are attested by extracts from the "register of requests to have a prisoner brought to the investigation room", submitted by the Georgian Government (see paragraph 392 above). The Court must therefore examine, for each of those visits, whether sufficient information was given to the applicants for the purposes of Article 5 § 2 of the Convention.

419. It notes, firstly, that the Government's submissions and the extracts from the above-mentioned register are inconsistent with each other as regards the names and number of persons met by the trainee prosecutors on 23 August and 13 September 2002 (see paragraph 392 above). The Court considers it appropriate to rely on the information contained in the extracts from the register (a document which is updated daily by the prison authorities), which is in turn corroborated by statements from Mr Bakashvili and Mr Saydayev (see paragraphs 187, 190 and 192 above). It concludes from those extracts that, on 23 August 2002, the trainee prosecutors met Mr Issayev, Mr Khanchukayev, Mr Aziev, Mr Shamayev and Mr Khadjiev. On 13 September 2002 they met Mr Gelogayev, Mr Adayev, Mr Khanchukayev, Mr Magomadov, Mr Khashiev and Mr Baymurzayev.

420. Thus, Mr Margoshvili, Mr Kushtanashvili and Mr Vissitov were not present at the two meetings intended to inform the applicants about the extradition proceedings against them.

421. As to the applicants met by the trainee prosecutors, on 23 August 2002 only Mr Khanchukayev had an individual meeting with Mr Darbaydze (see paragraph 163 above), and no lawyer or interpreter was present (see paragraphs 162 and 171 above). According to the record of that meeting, signed only by Mr Darbaydze and Ms Nadareishvili, the latter visited the applicant "to obtain [from him] an explanatory statement concerning his extradition". However, this statement, drawn up in Russian by Ms Nadareishvili and signed by Mr Darbaydze, makes no mention of extradition proceedings. It contains information concerning the identity of Mr Khanchukayev, who was known at that time under the name of Khanoyev (ibid.). The applicant refused to sign the statement and the minutes of the meeting, and declared that he would only provide explanations if his lawyer (and an interpreter, according to Mr Darbaydze) was present. Faced with this refusal, subsequently repeated by the other applicants in the investigation room (Mr Shamayev, Mr Khadjiev, Mr Issayev and Mr Aziev), Mr Darbaydze and his colleague left the premises (see paragraph 165 above).

422. Having regard to those circumstances, the Court concludes that, on 23 August 2002, insufficient information was provided to Mr Khanchukayev, Mr Shamayev, Mr Khadjiev, Mr Issayev and Mr Aziev, either concerning their detention in the context of extradition proceedings or concerning the accusations brought against them by the Russian authorities.

423. On 13 September 2002 a second visit by Mr Darbaydze, this time accompanied by Ms Kherianova, took place in the presence of Mr Saydayev, a freelance interpreter hired by the Ministry of Security in connection with the criminal case against the applicants (see paragraphs 166, 189 and 192 above), who was in the prison investigation room as a result of a combination of circumstances (ibid.) or as a result of an arrangement between Mr Mskhiladze and Mr Bakashvili (see paragraph 165 above). Mr Saydayev agreed to provide a one-off service to Mr Darbaydze and act as interpreter for him.

424. The Court established in Tbilisi that, when introducing himself, Mr Darbaydze informed Mr Saydayev of his duties and of the fact that he had come to meet the applicants "on account of extradition proceedings" (see paragraphs 166 and 192 above). When the interpreter asked what he was to interpret for the applicants, Mr Darbaydze asked that the applicants provide him with information about their identity. Since the applicants refused, Mr Darbaydze left the premises. He did not give the applicants any documents (see paragraph 192 above). Subsequently, since he was required to prove to his hierarchical superiors that he had visited the applicants on the date in issue, Mr Darbaydze contacted Mr Saydayev (see paragraphs 170

and 195 above) and had him draw up an affidavit. In that certified document Mr Darbaydze had the interpreter attest that he had informed the applicants of the extradition proceedings against them. When he appeared before the Court in Tbilisi, Mr Saydayev confirmed Mr Darbaydze's presence in the prison on 13 September 2002, but categorically denied that the latter had informed the applicants of the extradition proceedings. Having regard to all the evidence in its possession, the Court considers that Mr Saydayev's explanations for the erroneous statement in the affidavit, to the effect that the applicants had been informed of the extradition proceedings, are reliable (see paragraphs 195-98 above).

425. For the Court, the issue is not whether the applicants concluded or could have concluded from various clues that extraditions proceedings were pending against them, or whether Mr Saydayev ought to have shown zeal in the context of a favour which he was providing unofficially to a State employee. The issue is whether that employee himself, instructed by his hierarchical superiors to perform a specific task, properly informed the applicants of the fact that they were being held on account of a request for extradition to Russia. The Court has not overlooked the fact that it was impossible for Mr Darbaydze to assess the accuracy of the impugned interpretation into Chechen; however, in the light of the responsible task entrusted to him and the serious objections that the question of extradition could have provoked among the applicants, it was incumbent on him to phrase his interpretation request with meticulousness and precision. The Court notes that this was not the case.

426. Having regard to the foregoing, the Court concludes that, during their visits on 23 August and 13 September 2002, the trainee prosecutors from the Georgian Procurator-General's Office met only ten applicants (see paragraphs 418-20 above), who did not receive sufficient information with regard to their detention pending extradition for the purposes of Article 5 § 2 of the Convention.

427. The Government do not dispute that the applicants' lawyers were denied access to the extradition files. Having regard to the argument relied on in this connection by Mr Mskhiladze (see paragraph 177 above), the Court has no doubt that the employees of the Procurator-General's Office themselves needed to carry out a detailed examination of the documents submitted by the Russian authorities. However, this ground does not in itself justify refusing the applicants all access to documents which had direct repercussions on their rights and on which the exercise of the remedy set out in Article 5 § 4 of the Convention was contingent. The Court does not accept the Government's argument that, since the right not to be extradited is not guaranteed by the Convention, it was not the task of the Procurator-General's Office to grant the applicants access to the case files concerning their extradition (see paragraph 395 above). It points out that, while Article 5 § 2 does not require that the case file in its entirety be made

available to the person concerned, the latter must nonetheless receive sufficient information so as to be able to apply to a court for the review of lawfulness provided for in Article 5 § 4 (see *Fox, Campbell and Hartley*, cited above, § 40; and *Čonka*, cited above, § 50).

428. In the light of the foregoing, the Court concludes that there has been a violation of the applicants' rights under Article 5 § 2 of the Convention.

429. Given that finding, it does not consider it necessary to examine also under Article 6 § 3 Mr Khadjiev's complaint under Article 5 § 2 of the Convention (see paragraph 388 above).

430. With regard to Mr Khadjiev's complaint concerning the failure to provide an interpreter during questioning at the civilian hospital in Georgia and the lack of information about the accusations made against him by the Georgian authorities, the Court notes that these complaints are not covered by the admissibility decision in this case, which determines the scope of the case brought before it (see *Guzzardi*, cited above, pp. 39-40, § 106). As such it has no jurisdiction to examine them.

431. With regard to the complaint under Article 5 § 4 of the Convention, the Court notes at the outset that, in the instant case, the review of lawfulness required by this provision was not incorporated in the detention orders issued by the Russian court (see paragraph 64, point 3, above). Those orders were decisions to place the applicants in detention in the context of the criminal proceedings against them in Russia; having been recognised as enforceable in Georgia, they represented, together with the extradition request, the legal basis of the applicants' detention pending extradition (see paragraphs 404-05 above). As the procedure provided for in Article 5 § 4 requires that the individual concerned be given guarantees appropriate to the kind of deprivation of liberty in question (see *De Wilde, Ooms and Versyp*, cited above, pp. 40-41, § 76), the Russian orders, issued for the purposes of Article 5 § 1 (c), cannot be construed as including a review, under Georgian law, of the lawfulness of the applicants' detention pending extradition.

432. The Court has already concluded that the applicants were not informed that they were being detained pending extradition and that they were given no material from the case file. Those facts in themselves meant that their right to appeal against that detention was deprived of all substance.

433. In those circumstances the Court does not consider it necessary to determine whether the remedies available under Georgian law could have offered the applicants sufficient guarantees for the purposes of Article 5 § 4 of the Convention.

434. The Court concludes that there has been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION BY GEORGIA OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 2 AND 3

435. The Court notes that, on 5 November 2002, it decided to examine of its own motion, under Article 5 §§ 1, 2 and 4 of the Convention – which is the *lex specialis* in matters of detention – the complaints concerning extradition submitted by the applicants under Articles 6 and 13 (see paragraph 16 above). All of the complaints were declared admissible on 16 September 2003. In the submissions on the merits, Ms Mukhashavria reiterated that the applicants' complaints were based not only on Article 5 of the Convention, but also on Article 13.

436. The Court points out that, in the performance of its task, it is free to attribute to the facts of the case, as found to have been established on the evidence before it, a characterisation in law different from that given by the applicant or, if need be, to view the facts in a different manner (see *Camenzind v. Switzerland*, judgment of 16 December 1997, *Reports* 1997-VIII, pp. 2895-96, § 50). Having sought to establish the facts in Tbilisi and having regard to the information in its possession, the Court considers it appropriate to examine the admissible complaints also from the perspective of Article 13 of the Convention, which 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."

1. The parties' submissions

437. The applicants' representatives alleged that the extradited applicants learned of their extradition before being driven to the airport. As the extradition orders of 2 October 2002 had not been served on them, they had been deprived of the possibility of bringing their complaints under Articles 2 and 3 of the Convention before a court. In addition, the extradition orders were not served on the applicants' lawyers before the domestic courts. The latter learned by chance on 3 October 2002 that the extraditions were imminent.

438. The applicants' representatives added that, in extradition matters, Georgian legislation was vague and did not provide guarantees against arbitrariness. There was no judicial remedy against extradition orders, which were issued by the Procurator-General acting with full autonomy.

439. Mr Khadjiev also complained in his application form (see paragraph 235 above) that his extradition had been decided without the intervention of a court. He relied on Article 2 § 1 and Article 4 of Protocol No. 4.

440. At the admissibility hearing the Georgian Government stated that the mere fact that the applicants had not been informed of the extradition

orders did not as such entail any violation of their rights under the Convention. They subsequently amended this position and alleged that, although the Georgian CCP did not impose an obligation on the Procurator-General's Office to serve an extradition order on the person concerned, the applicants had been informed on 23 August and 13 September 2002 of the extradition proceedings by Mr Darbaydze and of the extradition orders of 2 October 2002 by Mr Mskhiladze. This version of events was confirmed by Mr Darbaydze and Mr Mskhiladze during the proceedings in Tbilisi.

441. Duly informed, the applicants had raised no complaints under Articles 2 and 3 of the Convention, in reliance on Article 42 § 1 of the Constitution and Article 259 § 4 of the CCP, either before the Procurator-General's Office or before a court. The Government considered that the above-mentioned provisions guaranteed the right to a remedy against an extradition order. Thus, three applicants against whom extradition orders had been issued on 28 November 2002 had used this right and had succeeded in having execution of those orders stayed (see paragraphs 84 et seq. above). In addition, the Government drew the Court's attention to the Georgian Supreme Court's judgment in *Aliev* and claimed that, had the applicants so wished, they, like Mr Aliev, could have asserted their rights before the domestic courts.

442. The Georgian Government submitted a draft new Code of Criminal Procedure, which was under preparation and which provided more substantial guarantees to individuals against whom extradition measures were pending.

2. The Court's assessment

443. The Court has already concluded, under Article 5 § 2 of the Convention, that, prior to 2 October 2002, the applicants were not informed of the extradition proceedings and that they were not granted access to the case files submitted by the Russian authorities (see paragraph 428 above). It therefore needs to be examined whether the extradition orders against five of them, issued on 2 October 2002, were served on the applicants so that they could raise their complaints under Articles 2 and 3 of the Convention before a "national authority".

444. The Court reiterates that, notwithstanding the terms of Article 13 read literally, the existence of an actual breach of another provision of the Convention (a "substantive" provision) is not a prerequisite for the application of the Article (see *Klass and Others v. Germany*, judgment of 6 September 1978, Series A no. 28, p. 29, § 64). It guarantees the availability at the national level of a remedy to enforce – and hence to allege non-compliance with – the substance of the Convention rights and freedoms in whatever form they might happen to be secured (see *Lithgow and Others v. the United Kingdom*, judgment of 8 July 1986, Series A no. 102, p. 74, § 205). However, Article 13 cannot reasonably be interpreted so as to

require a remedy in domestic law in respect of any supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be: the grievance must be an arguable one in terms of the Convention (see *Leander v. Sweden*, judgment of 26 March 1987, Series A no. 116, p. 29, § 77 (a)).

445. In the instant case, given the legitimacy of the applicants' fears (see paragraph 340 above) and the Court's considerations as to the circumstances in which their extradition took place, the complaints under Articles 2 and 3 of the Convention cannot be considered as not arguable on the merits (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52). Accordingly, Article 13 is applicable in the instant case. Indeed, there was no dispute on this point before the Court.

446. Article 13 requires the provision of a domestic remedy allowing the competent "national authority" both to deal with the substance of the relevant Convention complaint and to grant appropriate relief (see *Soering*, cited above, p. 47, § 120, and *Vilvarajah and Others*, cited above, p. 39, § 122). However, it does not go so far as to require any particular form of remedy, Contracting States being afforded a margin of discretion in conforming to their obligations under this provision. Nor does the effectiveness of a remedy for the purposes of Article 13 depend on the certainty of a favourable outcome for the applicant (see *Swedish Engine Drivers' Union v. Sweden*, judgment of 6 February 1976, Series A no. 20, p. 18, § 50). In certain circumstances the aggregate of remedies provided by national law may satisfy the requirements of Article 13 (see *Jabari*, cited above, § 48).

447. The remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2286, § 95).

448. The Court considers it important to point out that an applicant's complaint alleging that his or her extradition would have consequences contrary to Articles 2 and 3 of the Convention must imperatively be subject to close scrutiny by a "national authority" (see, *mutatis mutandis*, *Chahal*, cited above, p. 1855, § 79, and p. 1859, § 96, and *Jabari*, cited above, § 39).

449. In the instant case, the Court notes that, after the instant application had been lodged, the Georgian Government waited more than a year before alleging that the extradition orders of 2 October 2002 had been sent to the applicants' lawyers. The letter which Mr Mskhiladze allegedly sent them during the day of 2 October 2002 was not submitted to the Court until the individual in question was heard in Tbilisi (see paragraph 178 above). The Court is not persuaded by the Government's argument, since it has not been corroborated by other evidence and material in its possession.

450. In the first place the Court notes that, at the admissibility hearing, the Georgian Government stated that the failure to serve the extradition orders on the applicants did not entail a violation of the Convention. Later, they agreed with Mr Mskhiladze's claim that the applicants' lawyers had been notified in due time by telephone and in writing. Mr Mskhiladze maintained before the Court that he had given the letter of notification to Mr Darbaydze, who had taken it to the lawyers' office (see paragraph 178 above). Mr Darbaydze himself thought that he remembered going to the office for that purpose (see paragraph 168 above).

451. The fact that the Government changed their initial position and adopted another, diametrically opposed, position, and that Mr Darbaydze was reluctant to confirm Mr Mskhiladze's statements without reservation, casts serious doubt on the credibility of the argument developed by the Government following the admissibility hearing.

452. The Court also notes that the signature confirming receipt of the disputed letter of notification is practically illegible and that it has not been recognised by any of the applicants' three lawyers as being that of a person working in their office (see paragraph 213 above). The latter unanimously denied the Government's submission and argued that they were never informed of the extradition orders against their clients (ibid.). The circumstances in which Mr Gabaydze learned of the imminence of this measure (see paragraph 214 above) and his unsuccessful attempts to obtain further information from the Procurator-General's Office are confirmed by the news bulletin broadcast at 11 p.m. on the Rustavi-2 television channel (see paragraph 216 above). Contrary to what the Government seem to be asserting, the recording of this programme confirms that the lawyer did not know the exact number and names of the applicants who were likely to be extradited, that he did not know when the decision had been taken and was unaware of the state of progress of the extradition proceedings. It is clear from his television interview that he went to Rustavi-2 with the intention of denouncing publicly the hidden and secret nature of those proceedings.

453. Moreover, the Court attaches weight to the statements made by the prison wardens heard in Tbilisi, who had not been informed in advance of the prisoners' imminent extradition and had therefore been puzzled as to why a revolt had broken out in cell no. 88 (see paragraphs 145, 147 *in fine*, 154 and 156 above). Even Mr Dalakishvili, who was normally responsible for preparing prisoners' transfers and informing them of developments, was unaware that the applicants were due to be removed (see paragraph 154 above). It is clear from the witness statements in question that only the prison governor and three other employees of the prison administration were aware of the operation which was being prepared (see paragraphs 145 and 148 above).

454. In the Court's opinion, such an enforcement procedure cannot be regarded as transparent and hardly demonstrates that the competent

authorities took steps to protect the applicants' right to be informed of the extradition measure against them.

455. In the light of the evidence in its possession, the Court considers it established that the applicants detained in Prison no. 5 learned that it was probable that some of their number were to be imminently extradited only when watching the television interview given by Mr Gabaydze on the evening of 3 October 2002 (see paragraphs 98, 124, 152 and 216 above). The lawyer alleged that he had been informed that an extradition operation was being prepared by a friend who worked in the Ministry of Security. The applicants realised that this information was accurate when, a few hours later, the prison authorities asked them to leave the cell, putting forward fictitious reasons (see paragraph 378 above).

456. As to Mr Adayev, the fifth person included in the extradition measure, he was at that time detained in the prison infirmary and, unlike the other applicants, did not even have access to the cursory information broadcast on the television news programme in question.

457. Having regard to the above-mentioned circumstances, the Court cannot accept the Georgian Government's assertion that the applicants' lawyers received a telephone call from Mr Mskhiladze during the day of 2 October 2002 and that the extradition orders concerning their clients were served on them. The fact that the applicants themselves were not informed of those decisions is not in dispute between the parties.

458. In those circumstances it is hardly necessary to reiterate that, in order to challenge an extradition order on the basis of Article 42 § 1 of the Constitution and Article 259 § 4 of the CCP (see the Government's submissions), the applicants or their lawyers would have had to have sufficient information, served officially and in good time by the competent authorities (see *Bozano*, cited above, pp. 25-26, § 59). Accordingly, the Government do not have grounds for criticising the applicants' lawyers for failing to lodge an appeal against a measure whose existence they learned of only through a leak from inside the State administration.

459. Furthermore, even supposing that, in spite of a very limited space of time, the four applicants held in Prison no. 5 could, at least in theory, have applied to a court after watching the 11 p.m. news broadcast on 3 October 2002, the Court notes that they were effectively deprived of that possibility given their detention in conditions of isolation and the dismissal of their request to have their lawyers summoned (see paragraphs 124 and 135 above).

460. It is not the Court's task to determine *in abstracto* the time that should elapse between the adoption of an extradition order and its enforcement. However, where the authorities of a State hasten to hand over an individual to another State two days after the date on which the order was issued, they have a duty to act with even greater promptness and expedition to enable the person concerned to have his or her complaint under Articles 2

and 3 submitted to independent and rigorous scrutiny and have enforcement of the impugned measure suspended (see *Jabari*, cited above, § 50). The Court finds it unacceptable for a person to learn that he is to be extradited only moments before being taken to the airport, when his reason for fleeing the receiving country has been his fear of treatment contrary to Article 2 or Article 3 of the Convention.

461. Accordingly, the Court concludes that neither the applicants extradited on 4 October 2002 nor their lawyers were informed of the extradition orders issued in respect of the applicants on 2 October 2002, and that the competent authorities unjustifiably hindered the exercise of the right of appeal that might have been available to them, at least theoretically.

462. Having regard to that finding, the Court does not consider it necessary to deal with the question of the effectiveness of the remedy which, according to the Government, a court could have offered the applicants under Article 42 § 1 of the Constitution and Article 259 § 4 of the CCP. It merely notes that those provisions (see paragraphs 253 and 254 above), the only texts on which the applicants could have based their appeal, are worded in excessively general terms and do not specify any rules governing the use of this remedy or indicate before which court and within which period such an appeal must be lodged. Moreover, no other domestic provision sets out the procedure for issuing and executing an extradition order made by the Procurator-General.

463. This situation was described as a "shortcoming" by the Georgian Supreme Court when examining the *Aliev* case, referred to by the Government (see paragraph 258 above). When heard by the Court, Mr Gabrichidze, Mr Mskhiladze and Mr Darbaydze also acknowledged that, apart from *Aliev*, they were unaware of other cases in which the domestic-law provisions enabling an extradition order to be challenged before the courts had been used (see paragraphs 169, 176 and 185 above). The former Georgian Procurator-General has strongly emphasised the need for reform of the domestic legislation on extradition.

464. The Court does not share the Government's opinion that, had the extradited applicants so wished, they could have asserted their rights before the domestic courts in the same way as Mr Aliev. It notes that the judgment in *Aliev*, delivered on 28 October 2002 by the Georgian Supreme Court, occurred only after the instant application had been communicated to the Government and did not involve any acknowledgment of the alleged violations of the rights of those concerned (see, *mutatis mutandis*, *Burdov v. Russia*, no. 59498/00, § 31, ECHR 2002-III). That precedent, which introduced in practice a judicial remedy against extradition decisions taken by the Procurator-General, enabled Mr Gelogayev, Mr Khashiev and Mr Baymurzayev to challenge the decision to hand them over to the Russian authorities, taken on 28 November 2002 (see paragraph 84 above). This makes no difference to the finding that Mr Shamayev, Mr Adayev,

Mr Aziev, Mr Khadjiev and Mr Vissitov, extradited on 4 October 2002, had no opportunity to submit their complaints under Articles 2 and 3 of the Convention to a national authority.

465. As to the provisions of the new Code of Criminal Procedure, these have not yet been enacted and, in any event, they could not provide sufficient satisfaction to those applicants who have already been extradited.

466. In conclusion, the requirements of Article 13 of the Convention have been breached in respect of the five applicants who were extradited on 4 October 2002.

467. Having regard to this finding, the Court considers that it is not necessary to examine the same complaint by Mr Khadjiev under Article 2 § 1 of the Convention and Article 4 of Protocol No. 4.

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION BY GEORGIA

468. Having regard to the order of events as set out in paragraphs 5 to 12 above, the Court has decided to raise of its own motion the question of Georgia's compliance with its obligation under Article 34 of the Convention, which reads:

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

469. Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
>
> 2. Notice of these measures shall be given to the Committee of Ministers.
>
> 3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

470. The obligation in Article 34 not to interfere with an individual's effective exercise of the right to submit and pursue a complaint before the Court confers upon an applicant a right of a procedural nature – which can be asserted in Convention proceedings – distinguishable from the substantive rights set out under Section I of the Convention or its Protocols (see *Cruz Varas and Others*, cited above, pp. 35-36, § 99, and *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1218, § 103).

471. 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 are able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression "any form of pressure" must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or potential applicants or their families or legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy (see, in particular, *mutatis mutandis*, *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, pp. 1192-93, §§ 159-60, and *Sarli v. Turkey*, no. 24490/94, §§ 85-86, 22 May 2001).

472. The exercise of the right of application guaranteed by Article 34 of the Convention does not, as such, have suspensive effect in domestic law, and, in particular, has no suspensive effect on the execution of an administrative or judicial decision. The issue of whether the fact that a State has failed to comply with an indication from the Court, decided under Rule 39, may be regarded as a violation of its obligation under Article 34 of the Convention must be assessed in the light of the particular circumstances of the case.

473. The Court has recently reiterated that, where there is plausibly asserted to be a risk of irreparable damage to the enjoyment by the applicant of one of the core rights under the Convention, the object of an interim measure is to maintain the status quo pending the Court's determination of the justification for the measure. As such, being intended to ensure the continued existence of the matter that is the subject of the application, the interim measure goes to the substance of the Convention complaint. As far as the applicant is concerned, the result that he or she wishes to achieve through the application is the preservation of the asserted Convention right before irreparable damage is done to it. Consequently, the interim measure is sought by the applicant, and granted by the Court, in order to facilitate the "effective exercise" of the right of individual petition under Article 34 of the Convention in the sense of preserving the subject matter of the application when that is judged to be at risk of irreparable damage through the acts or omissions of the respondent State. It is implicit in the notion of the effective exercise of the right of application that for the duration of the proceedings in Strasbourg the Court should remain able to examine the application under its normal procedure (see *Mamatkulov and Askarov*, cited above, § 108). Indications of interim measures given by the Court, as in the present case, allow it not only to carry out an effective examination of the application but also to ensure that the protection afforded to the applicant by the Convention is effective; they also subsequently allow the Committee of Ministers to supervise execution of the final judgment. Such measures thus enable the State concerned to discharge its obligation to comply with the final judgment of the Court, which is legally binding by virtue of Article 46 of the Convention (ibid., § 125). Thus, in *Mamatkulov and Askarov*, the

Court concluded that a failure by a Contracting State to comply with interim measures is to be regarded as preventing the Court from effectively examining the applicant's complaint and as hindering the effective exercise of his or her right and, accordingly, as a violation of Article 34 (ibid., § 128).

474. Applying those principles to the present case, the Court notes that four applicants affected by an extradition order were removed from their cell on 4 October 2002, at about 4 a.m., with a view to their extradition. Mr Adayev, the fifth applicant concerned, was taken from the prison infirmary at about the same time. The request for application of Rule 39, made on behalf of eleven applicants (Mr Adayev and Mr Khanchukayev were not mentioned), was received by the Court on the same date between 3.35 p.m. and 4.20 p.m., in the form of several faxes.

475. At 6 p.m. on the same date the Georgian Government were informed, via their General Representative, that the Vice-President of the Court's Second Section had decided to apply Rule 39. A few minutes later, the names of the individuals who had applied to the Court were dictated over the telephone to the General Representative's assistant. In view of the connection problems (see paragraphs 9 and 10 above) and the unsuccessful requests from the Court's Registry that those be solved, the Court's decision was formally repeated at 7.45 p.m. (Strasbourg time), by telephone, to the Deputy Minister of Justice (see paragraph 11). It could not be confirmed by fax until 7.59 p.m. (Strasbourg time). The Georgian authorities extradited the applicants on the same day at 7.10 p.m. (Strasbourg time).

476. Following their extradition, the extradited applicants were placed in isolation. Even for the Court, obtaining the address of their place of detention was made conditional on the provision of guarantees of confidentiality (see paragraph 15 above). The applicants were unable to maintain contact with their representatives before the Court, and the latter were not authorised by the Russian authorities to visit them, in spite of the Court's specific indication on this matter (see paragraphs 228, 229 and 310 above). Yet the Russian Government firmly alleged that the extradited individuals had never intended to lodge an application with the Court, at least not against Russia, and that examination of the merits of the application as a whole was barely possible from a procedural point of view. Thus, the principle of equality of arms, inherent in the effective exercise of the right of application during proceedings before the Court, was unacceptably infringed (see paragraph 518 below).

477. In addition, the Court itself was unable to carry out the fact-finding visit to Russia decided under Article 38 § 1 (a) of the Convention (although this circumstance cannot be attributed to Georgia – see paragraph 504 below), and, having had to base itself on a few written communications with the extradited applicants (see paragraphs 235 and 238 above), has not been in a position to complete its examination of the merits of their complaints

against Russia (see paragraph 491 below). The gathering of evidence has thus been hindered.

478. The Court considers that the difficulties faced by Mr Shamayev, Mr Aziev, Mr Khadjiev and Mr Vissitov following their extradition to Russia were of such a nature that the effective exercise of their right under Article 34 of the Convention was seriously obstructed (see *Mamatkulov and Askarov*, cited above, § 128). The fact that the Court was able to complete its examination of the merits of their complaints against Georgia does not mean that the hindrance to the exercise of that right did not amount to a breach of Article 34 of the Convention (see *Akdivar and Others*, cited above, p. 1219, § 105).

479. Consequently, by failing to abide by the indication given by the Court (under Rule 39 of the Rules of Court) concerning the suspension of the extradition of Mr Shamayev, Mr Aziev, Mr Khadjiev and Mr Vissitov, Georgia failed to discharge its obligations under Article 34 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLES 2, 3 AND 6 §§ 1, 2 AND 3 OF THE CONVENTION BY RUSSIA

1. The parties' submissions

480. Relying on Article 2 of the Convention, the applicants' representatives alleged that Mr Aziev had died in Georgia or Russia. They based their submission on the reasons set out in paragraph 318 above.

481. In addition, the lawyers considered that, during their extradition on 4 October 2002, the applicants had been subjected to treatment contrary to Article 3 of the Convention by the Russian authorities. They referred mainly to the way in which the applicants had been removed from the plane on arrival in Russia: they had been blindfolded and bent over double (see paragraph 74 above). Their subsequent detention in conditions of strict confidentiality (see paragraphs 15, 17 and 246 above) strengthened the reasonable doubt that those applicants had been and continued to be subjected to ill-treatment in prison.

482. According to the lawyers, the extradited applicants did not have access to freely chosen lawyers following their arrival in Russia. They had received formal assistance from officially assigned lawyers but, given their total isolation and the impossibility of obtaining any information whatsoever about them, this assistance could not be regarded as an effective defence for the purposes of Article 6 §§ 1 and 3 of the Convention. Prior to the hearing on admissibility, the lawyers revealed that even the applicants' close relatives were unaware of where they were being held.

483. Further, the applicants' representatives complained about the terms “terrorists” and “international terrorists” used with reference to the

applicants by the Representative of the Russian Federation and the prosecution authorities in the letters of 8 and 16 October and 5 December 2002 (see paragraphs 76, 77 and 227 above). Such statements entailed a violation of Article 6 § 2 of the Convention and jeopardised the applicants' right to a fair trial.

484. In his application form (see paragraph 235 above), Mr Khadjiev alleged that the Russian authorities had illegally accused him of various crimes; that the Stavropol Regional Court did not have jurisdiction to examine his case; that between 5 October and 2 December 2002 his detention in Russia had been unlawful; and that no steps had been taken to inform his mother of his arrest, in breach of the requirements of the Russian Code of Criminal Procedure.

485. The Russian Government submitted several sets of photographs of the extradited applicants to the Court, as well as photographs and a video recording showing their conditions of detention (see paragraphs 20, 109 and 242 above). On four occasions they submitted to the Court medical certificates for the applicants, documents which had been prepared not only by prison doctors but also by doctors from the civilian hospital in town B (see paragraphs 246 et seq. above).

486. The Russian Government claimed that the extradited applicants had received assistance from lawyers from the date of their arrival in Russia, and that the names and addresses of those lawyers had been submitted (see paragraphs 218 et seq. above). They also produced documents stating the number and duration of meetings between those lawyers and each extradited applicant. The meetings had been held under the supervision of wardens, who could observe the interview but were unable to hear what was said.

2. The Court's assessment

487. The Court has already concluded that Mr Aziev's right to life has not been violated (see paragraphs 320-23 above). It considers it superfluous to re-examine this question.

488. It notes that the complaint under Article 3, concerning the manner in which the extradited applicants were transferred to Russia, was raised by the applicants' representatives for the first time on 8 August 2004, in the context of the final observations on the merits of the case. This complaint was not therefore covered by the admissibility decision of 16 September 2003, which defines the scope of the Court's examination of the merits of the case (see *Assanidze*, cited above, § 162). Consequently, the Court does not have jurisdiction to deal with it.

489. As to the alleged infringement of the presumption of innocence with regard to the applicants, the Court notes, firstly, that the terms used by the Representative of the Russian Federation in his letter of 5 December 2002 were criticised by the applicants' lawyers at the hearing on admissibility on 16 September 2003. The use of those terms and other

expressions by the Russian prosecution authorities was criticised on 8 August 2004 in the observations on the merits of the case. Having regard to the arguments and reasons submitted on this subject in those observations (see paragraph 483 above), the Court considers that this complaint does not amount merely to a further legal submission, but rather to a separate complaint under Article 6 § 2 of the Convention. Given that the admissibility decision did not cover that complaint (see paragraph 488 above), the Court does not have jurisdiction to examine it.

490. The same applies to the complaints against Russia raised on 27 October 2003 by Mr Khadjiev (see paragraph 484 above).

491. With regard to the treatment contrary to Article 3 of the Convention to which the extradited applicants, detained in conditions of isolation, have allegedly been and continue to be subjected in prison in Russia, and the impossibility for them to have access to an effective defence since their extradition, the Court repeats that it has been unable to ascertain the facts of the case in Russia (see paragraphs 27 et seq. above). The evidence in its possession does not enable it to adjudicate between the claims made by each of the parties concerning the alleged violation by Russia of Articles 3 and 6 §§ 1 and 3 of the Convention. The Court must therefore determine whether, by placing it in this situation, Russia has failed to fulfil its obligations under Articles 34 and 38 § 1 (a) of the Convention.

VII. ALLEGED FAILURE BY RUSSIA TO DISCHARGE ITS OBLIGATIONS UNDER ARTICLE 38 § 1 OF THE CONVENTION

492. The relevant provisions of Article 38 § 1 of the Convention provide:

> "If the Court declares the application admissible, it shall
>
> (a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
>
> ..."

493. The Court would emphasise the fundamental importance of the principle, enshrined in sub-paragraph (a) *in fine*, that the Contracting States have a duty to cooperate with it (see *Ireland v. the United Kingdom*, cited above, pp. 59-60, § 148).

494. The Court also reiterates that, in the instant case, in addition to this obligation, the Russian Government had a duty to comply with the specific undertakings they had given to the Court on 19 November 2002 (see paragraph 18 above), notably an undertaking that the Court would be given completely unhindered access to the extradited applicants, including, *inter alia*, the possibility of a fact-finding visit. Contrary to the Russian Government's subsequent submissions (see paragraph 38 above), the letter

of 19 November 2002 did not limit the scope of the undertakings in question to a particular stage of the proceedings and was unequivocal. The Court had considered it necessary to obtain those undertakings in view of the specific features of the proceedings in the part of the application concerning Russia (see paragraphs 15-17 above).

495. On the basis of those undertakings, the Court decided on 26 November 2002 to lift the interim measure indicated to Georgia on 4 October 2002 (see paragraph 21 above). On 16 September 2003 it decided to hold an on-the-spot investigation in Georgia and Russia. However, only the Georgian part of this visit could be carried out (see paragraphs 43-49 above).

496. The Court reiterates that the Contracting States must furnish "all necessary facilities" for the effective conduct of the investigation and that such "facilities" entail, first and foremost, access to the country, to those applicants whom the Court decides to question and to premises that it considers it necessary to visit. In the instant case, faced with refusal of access to the applicants on several occasions, the Court urged the Russian Government to enable it to establish the facts and thus to meet the obligations incumbent on them under Article 38 § 1 (a) of the Convention. The Russian Government did not respond favourably to those requests (see paragraphs 27 et seq. above).

497. Relying both on the refusals of the Stavropol Regional Court (see paragraphs 29, 30 and 47 above) and on domestic law (see paragraphs 31 and 34 above), the Russian Government have argued since October 2003 that it would be impossible for the Court to carry out a fact-finding visit to Russia. Apart from subsidiary reasons (presidential election, possible terrorist act in the North Caucasus, weather conditions or public holidays), the main reason for this refusal has been the claim that, as long as their case remained pending before the Russian courts, contact between the Court's delegation and the applicants detained in Russia would be contrary to the domestic rules of criminal procedure and would infringe the principle of subsidiarity inherent in the machinery of the Convention. An argument alleging that the applicants had not lodged an application with the Court against Russia was also raised (see paragraph 29 above). Conveying the reasoning of the Stavropol Regional Court, the Russian Government claimed that, as the executive branch, they could not interfere in the unfettered power of assessment of the facts enjoyed by that judicial body. They advised the Court to apply directly to the Regional Court, asking it to reconsider its decision of 14 October 2003 (see paragraph 35 above).

498. In this regard the Court wishes to reiterate, as clearly as possible, that it cannot have several national authorities or courts as interlocutors, and that it is only the liability of the Russian State as such – and not that of a domestic authority or body – that is in issue before it (see, *mutatis mutandis*, *Assanidze*, cited above, § 149). It is not therefore for the Court to assess the

merits of the Stavropol Regional Court's refusals, on which the Russian Government seek to rely. Its examination is limited to the arguments presented before it by the Representative of the Russian Federation and the question of whether that State, a High Contracting Party to the Convention, has discharged its obligations under the provisions of that treaty.

499. The Court does not find the submitted arguments persuasive.

500. It observes, firstly, that, contrary to the Russian Government's claims, the Constitution of the Russian Federation and the Code of Criminal Procedure acknowledge the supremacy of the rules of international law over domestic rules and, in particular, over those governing the conduct of criminal proceedings (see paragraphs 259 and 264 above). In any event, the conduct of a fact-finding visit, decided by the Court under Article 38 § 1 (a) of the Convention, does not depend on the progress of domestic proceedings. Contrary to the Government's submissions (see paragraphs 34 and 35 above), such a visit by the Court does not call into question the principle of subsidiarity inherent in the Convention system. Indeed, the Court's fact-finding visit does not replace national supervision by the European supervision introduced by the Convention, but amounts to a procedural measure in the context of that supervision. Through its system of collective enforcement of the rights it establishes, the Convention reinforces, in accordance with the principle of subsidiarity, the protection afforded at national level (see *United Communist Party of Turkey and Others v. Turkey*, judgment of 30 January 1998, *Reports* 1998-I, p. 17, § 28), but never limits it (Article 53 of the Convention).

501. The Court does not therefore accept the main ground (see paragraph 497 above) on which the Russian Government based their repeated refusals to grant the Court's delegates access to the applicants detained in Russia. Furthermore, it considers it superfluous to rule on the other subsidiary grounds put forward (presidential election, etc.), especially as, at the appropriate times, it had taken all of those grounds into consideration and had postponed its visit in consequence, suggesting, in turn, three possible sets of dates in October 2003, February 2004 and June 2004 (see paragraphs 27 et seq. above). With regard to the argument alleging the extradited applicants' failure to apply to the Court, it refers to its assessment in paragraphs 292 to 297 above.

502. In the Court's opinion, none of the grounds put forward by the Government was such as to release the Russian State, in its capacity as the respondent State, from its duty to cooperate with it in arriving at the truth (see *Artico v. Italy*, judgment of 13 May 1980, Series A no. 37, pp. 14-15, § 30). In addition, it considers that the Government's attempts to rely on the Regional Court's refusals amount to accepting that those refusals obstruct the functioning of the system of collective enforcement established by the Convention. In order to be effective, this system requires, on the contrary, cooperation with the Court by each of the Contracting States (see *Cyprus v.*

Turkey, no. 8007/77, Commission's report of 4 October 1983, Decisions and Reports 72, p. 73, § 49).

503. Having regard to the foregoing, the Court considers that it is entitled to draw inferences from the Russian Government's conduct in the instant case (see *Tepe v. Turkey*, no. 27244/95, § 135, 9 May 2003).

504. The Court considers that, by obstructing its fact-finding visit and denying it access to the applicants detained in Russia, the Russian Government have unacceptably hindered the establishment of part of the facts in this case and have therefore failed to discharge their obligations under Article 38 § 1 (a) of the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION BY RUSSIA

505. In their observations on the merits (see paragraph 50 above), the applicants' representatives raised a complaint against the Russian Federation under Article 34 of the Convention, which provides:

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

506. They pointed out, *inter alia*, that, for a month following their extradition, the extradited applicants were held incommunicado and that the Russian authorities subsequently refused to authorise the lawyers to visit them. By this action, those applicants had been prevented from substantiating their application and taking part in the proceedings before the Court.

507. The Court observes, firstly, that the date on which the applicants submitted their complaint under Article 34 does not give rise to any issue of admissibility under the Convention (see *Ergi*, cited above, p. 1784, § 105).

508. In addition to the principles set out in paragraphs 470 to 473 above, the Court considers it necessary to note, not for the first time, that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle that he who alleges something must prove that allegation, and that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu*, cited above, § 70, and *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 253, ECHR 2004-III).

509. This obligation requires the Contracting States to furnish all facilities necessary to the Court for it to conduct an on-site investigation or to carry out the general tasks which are incumbent on it when examining applications. The failure by a Government, as has been the situation in the

present case, to enable the Court to hear witnesses and to ascertain the facts without a satisfactory explanation may reflect negatively on the level of compliance by a respondent State with its obligations under Articles 34 and 38 § 1 (a) of the Convention (see, *mutatis mutandis*, *İpek v. Turkey*, no. 25760/94, § 112, ECHR 2004-II; *Tekdağ v. Turkey*, no. 27699/95, § 57, 15 January 2004; and *Tahsin Acar*, cited above, § 254).

510. In the instant case the Court points out, firstly, that, in addition to its obligations under Article 34 of the Convention, the Russian Government had a duty to comply with the specific undertakings they had given to the Court on 19 November 2002. This included, *inter alia*, an undertaking that all the applicants, without exception, would enjoy completely unhindered access to the Court (see paragraph 18 above). On the basis of those unequivocal undertakings, on 26 November 2002 the Court lifted the interim measure indicated to Georgia on 4 October 2002 (see paragraphs 18 and 21 above).

511. On 17 June 2003 the Court decided to ask the Russian Government, under Rule 39, to allow Ms Mukhashavria and Ms Dzamukashvili unhindered access to the extradited applicants with a view to the hearing on admissibility (see paragraph 228 above). On 4 August 2003 Ms Mukhashavria made direct contact with the Representative of the Russian Federation at the Court, asking that the necessary steps be taken to provide visas and ensure access to the applicants. On 21 August 2003 the latter informed the Court that he was unable to enter into communication with Ms Mukhashavria and that the question of access to the applicants came under the sole competence of the Stavropol Regional Court, to which the lawyer should apply directly.

512. In spite of the Court's decision, Ms Mukhashavria and Ms Dzamukashvili were never granted access to the extradited applicants. The Court itself was denied the possibility of hearing the applicants. Contact by post was irregular and insufficient to ensure effective examination of an appreciable portion of their case (see *Akdivar and Others*, cited above, p. 1218, § 103). Against this background, the Russian Government have also several times expressed doubts as to the extradited applicants' intention to apply to the Court, and as to the authenticity of their applications and of their lawyers' authorities to act (see paragraphs 290 et seq. above).

513. Since the assessment of the authenticity of an application comes under the exclusive jurisdiction of the Court, and not that of a Government (see *Orhan*, cited above, § 409), the Court itself attempted to contact the extradited applicants via their Russian lawyers. In response to its letter to those lawyers, dated 20 November 2002, it received a letter from the Russian Government alleging that the lawyers objected to the Court's attempts to contact them (see paragraph 232 above). In August 2003 two of

the lawyers nonetheless replied, claiming that their clients had never wished to apply to the Court (see paragraph 241 above).

514. The Court's correspondence, sent directly to the extradited applicants in prison, was received by the prison authorities on 24 December 2002. However, the Russian Government initially argued that it had not arrived (see paragraph 233 above). In its rulings of 14 October 2003 and 21 April 2004, the Stavropol Regional Court even stated that those individuals had never submitted a complaint to the Court in respect of Russia. However, four of the extradited applicants later confirmed unequivocally that they had applied to the Court from Georgia (see paragraphs 238 and 240 above).

515. That being so, the Court considers that there is reason for serious doubt as to the freedom of the extradited applicants to correspond with it without hindrance and to put forward their complaints in greater detail, which they had been prevented from doing by the haste with which they were extradited (see paragraph 479 above).

516. Mr Baymurzayev and Mr Khashiev were unable to appear before the Court in Tbilisi on account of their disappearance on 16 February 2004. To date, neither of the respondent States has supplied a convincing explanation of either the disappearance of these two applicants a few days before the arrival of the Court's delegation in Tbilisi or their arrest three days later by the Russian authorities. Like the extradited applicants, they could not be questioned by the Court in Russia (see paragraphs 46-49 above). They have not contacted the Court since being imprisoned in Russia.

517. The Court has nonetheless been able, on the basis of documents provided by the Georgian Government and evidence gathered during its fact-finding visit to Tbilisi, to complete its examination of the merits of the part of the application concerning Georgia. This does not prevent an issue arising under Article 34 with regard to the application as a whole (see *Orhan*, cited above, § 406). The effective examination of the applicants' complaints against Georgia was detrimentally affected by the conduct of the Russian Government, and examination of the admissible part of the application against Russia has proved impossible (see paragraph 491 above).

518. Having regard to the foregoing, the Court considers that the measures taken by the Russian Government have hindered the effective exercise by Mr Shamayev, Mr Aziev, Mr Vissitov, Mr Khadjiev, Mr Adayev, Mr Khashiev (Elikhadjiev, Mulkoyev) and Mr Baymurzayev (Alkhanov) of the right to apply to the Court, as guaranteed by Article 34 of the Convention. There has thus been a violation of that provision.

IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

519. 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. Damage

1. The parties' submissions

520. On 17 November 2003 and 29 January 2004 Ms Mukhashavria and Ms Kintsurashvili asked that 500,000 euros (EUR) be paid to each of the five applicants who were extradited on 4 October 2002, EUR 100,000 to each of the seven non-extradited applicants and EUR 68,455.84 to Mr Margoshvili, who was released on 8 April 2003. They stated, *inter alia*, that the applicants, who had been kept in a state of anxiety and constant uncertainty during the two months following their arrest in August 2002 and detained pending a probable extradition about which they had not been duly informed, had sustained considerable non-pecuniary damage. In addition, five applicants had been subjected to forced extradition in violent and humiliating circumstances. They considered that the damage caused to those applicants was all the more severe in that the Georgian authorities, who had granted refugee status to more than 4,000 Chechens since the second Chechen war, were well aware of the risk they ran.

521. The Georgian Government considered that those claims were based on tendentious assessments and that accordingly they were ill-founded and had to be dismissed. In addition, there was no causal link between the alleged violations and the damage allegedly sustained by the applicants, and the amounts claimed by their lawyers were "highly exaggerated". Nonetheless, were the Court to conclude that there had been a violation of the Convention, the Georgian Government considered that such a finding would constitute in itself sufficient just satisfaction for any non-pecuniary damage.

522. For their part, the Russian Government maintained that (with the exception of Mr Khadjiev) the extradited applicants had never applied to the Court. They refused to make any comment on the claims for just satisfaction formulated, they alleged, by "purported representatives".

2. The Court's assessment

Non-pecuniary damage

523. The Court reiterates its conclusions that eleven applicants were victims of inhuman treatment during the attempted extradition of five of

their number, and that the rights of all the applicants as guaranteed by Article 5 §§ 2 and 4 were violated by the Georgian authorities. Furthermore, the five applicants extradited on 4 October 2002 were deprived of any possibility of raising their complaints under Articles 2 and 3 of the Convention before a national authority. The Court has found the circumstances which surrounded the extradition proceedings as a whole and the haste with which the five applicants were extradited to be unacceptable.

524. The Court has also found a violation of Article 34 of the Convention by both Georgia and Russia.

525. It has no doubt that the applicants must have suffered non-pecuniary damage which cannot be compensated solely by the finding of violations. Having regard to the gravity of the violations and to equitable considerations, it awards the applicants the following sums, together with any tax that may be chargeable:

(a) to Mr Shamayev, Mr Aziev, Mr Khadjiev and Mr Vissitov, extradited on 4 October 2002, EUR 8,000 each for non-pecuniary damage sustained as a result of the violation of Article 3, Article 5 §§ 2 and 4, and Article 13 taken in conjunction with Articles 2 and 3 of the Convention (see paragraphs 386, 428, 434 and 466 above);

(b) to Mr Adayev, extradited on 4 October 2002, EUR 6,000 for non-pecuniary damage sustained as a result of the violation of Article 5 §§ 2 and 4, and Article 13 taken in conjunction with Articles 2 and 3 of the Convention (see paragraphs 428, 434 and 466 above);

(c) to Mr Issayev, Mr Kushtanashvili, Mr Khanchukayev, Mr Magomadov, Mr Gelogayev, Mr Khashiev (Elikhadjiev, Mulkoyev) and Mr Baymurzayev (Alkhanov) EUR 4,000 each for non-pecuniary damage sustained as a result of the violation of Article 3 and Article 5 §§ 2 and 4 of the Convention (see paragraphs 386, 428 and 434 above);

(d) to Mr Margoshvili EUR 2,500 for non-pecuniary damage sustained as a result of the violation of Article 5 §§ 2 and 4 of the Convention (see paragraphs 428 and 434 above);

(e) to Mr Shamayev, Mr Aziev, Mr Khadjiev and Mr Vissitov, extradited on 4 October 2002, EUR 3,000 each for non-pecuniary damage sustained as a result of the violation of Article 34 of the Convention by Georgia (see paragraph 479 above);

(f) to Mr Shamayev, Mr Aziev, Mr Khadjiev, Mr Adayev and Mr Vissitov, extradited on 4 October 2002, and to Mr Khashiev (Elikhadjiev, Mulkoyev) and Mr Baymurzayev (Alkhanov), arrested in Russia on 19 February 2004, EUR 6,000 each for non-pecuniary damage sustained as a result of the violation of Article 34 of the Convention by Russia (see paragraph 518 above).

526. With regard to Mr Gelogayev's extradition, no violation of Article 3 has yet occurred. Nonetheless, the Court has concluded that execution of the extradition order of 28 November 2002 would entail such a violation (see

paragraph 368 above). Consequently, Article 41 of the Convention must be taken as applying in the case (see *Ahmed*, cited above, p. 2208, § 49). The Court considers that the applicant must have suffered non-pecuniary damage but that the Court's finding affords him sufficient compensation in that respect.

B. Costs and expenses

527. On 29 January 2004 Ms Mukhashavria asked that the applicants be paid EUR 34,080.70 in respect of costs and expenses. She did not submit any document in support of the claim. The Court notes that this sum corresponds exactly to the quantified claim that the lawyer submitted on 21 August 2003 for the purpose of legal aid.

528. The Georgian Government described this sum as exorbitant and considered that those costs had not actually been incurred. However, they declared themselves willing to pay the applicants a reasonable amount in respect of costs and expenses that had genuinely been incurred and were not covered by the legal aid awarded by the Court.

529. The Russian Government submitted no comment on this matter.

530. The claim by the applicants' representatives of 29 January 2004 was not accompanied by supporting documents. Even supposing that the lawyers had wished to refer, in support of their claim, to the details submitted on 21 August 2003 for the purpose of legal aid, the Court notes that they had also failed to produce documents in support of their claim on that date. Nonetheless, in its decision of 28 August 2003, the Court had considered it proper to award, in legal aid, EUR 2,546.54 to seven of the applicants in respect of Ms Mukhashavria's services and EUR 1,126.54 in respect of Ms Kintsurashvili's work.

531. As this legal aid was restricted to the admissibility stage and the case subsequently gave rise to several rounds of written submissions and to proceedings lasting three days in Tbilisi for the purpose of hearing witnesses (see paragraph 43 above), the Court considers that, in spite of the lack of detail regarding the submitted claim, the amount awarded to the applicants by the Council of Europe as legal aid cannot be considered as covering adequately all the costs and expenses incurred in the proceedings before the Court in Strasbourg and during the fact-finding visit to Tbilisi.

532. Consequently, having regard to equitable considerations and taking into account the sums already received by the applicants by way of legal aid, the Court awards the applicants EUR 3,000 for Ms Mukhashavria's services, EUR 1,500 for those of Ms Kintsurashvili and EUR 1,500 for Ms Dzamukashvili's services, together with any value-added tax that may be chargeable. Having regard to the imputability of the different violations of the Convention found by the Court, the Russian Federation is to pay a third of those sums, the remainder to be payable by Georgia.

C. Default interest

533. 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.

X. EXPENSES INCURRED BY THE COURT

534. The Court points out that the preparations for the fact-finding visit to Russia, scheduled for 27 October 2003, were made in good time and that all the necessary expenses were planned in advance. However, the visit could not go ahead on account of the Russian Government's communication on 20 October 2003 (see paragraphs 28 and 29 above).

535. Although the majority of the travel expenses were covered by insurance, the Court had nonetheless to bear the cost of cancelling air tickets for the entire delegation (EUR 561.13) and of paying for two interpreters who had been hired in Russia (EUR 1,019.57).

536. Since the impossibility of carrying out this visit on the scheduled date was imputable to the attitude of the authorities of the Russian Federation (see paragraphs 499 et seq. above), the Court considers that this State should reimburse the costs incurred by the Court as set out above, and pay in this respect a total amount of EUR 1,580.70 into the Council of Europe's budget.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Russian Government's preliminary objection alleging the impossibility of examining the present application on the merits, together with their request to set aside the proceedings in the case (see paragraph 289 above);

2. *Dismisses* by six votes to one the Russian Government's preliminary objection alleging that the five extradited applicants had not applied to the Court (see paragraph 297 above);

3. *Dismisses* by six votes to one the Russian Government's preliminary objection alleging the applicants' failure to be properly represented before the Court (see paragraph 315 above);

4. *Holds* unanimously that there has not been a violation of Mr Aziev's right to life under Article 2 of the Convention (see paragraph 323 above);

5. *Holds* unanimously that there has not been a violation by Georgia of Article 3 of the Convention in respect of the five extradited applicants (see paragraph 353 above);

6. *Holds* unanimously that the complaints under Articles 2 and 3 of the Convention, in so far as they concern the extradition to Russia of Mr Issayev, Mr Khanchukayev, Mr Magomadov, Mr Kushtanashvili and Mr Margoshvili, are incompatible *ratione personae* with the provisions of the Convention (see paragraph 355 above);

7. *Holds* unanimously that it is unnecessary to continue the examination of the complaints under Articles 2 and 3 of the Convention in so far as they concern the extradition to Russia of Mr Khashiev and Mr Baymurzayev (see paragraph 357 above);

8. *Holds* by six votes to one that there would be a violation by Georgia of Article 3 of the Convention if the decision to extradite Mr Gelogayev to Russia, taken on 28 November 2002, were to be executed (see paragraph 368 above);

9. *Holds* unanimously that there has not been a violation by Georgia of Article 2 of the Convention with regard to the five extradited applicants (see paragraph 372 above);

10. *Holds* by six votes to one that there has been a violation by Georgia of Article 3 of the Convention with regard to Mr Shamayev, Mr Aziev, Mr Khadjiev, Mr Vissitov, Mr Baymurzayev, Mr Khashiev, Mr Gelogayev, Mr Magomadov, Mr Kushtanashvili, Mr Issayev and Mr Khanchukayev, on account of the treatment to which they were subjected during the night of 3 to 4 October 2002 (see paragraph 386 above);

11. *Holds* unanimously that there has not been a violation by Georgia of Article 5 § 1 of the Convention (see paragraph 407 above);

12. *Holds* unanimously that it does not have jurisdiction, in the context of the present application, to examine the complaint under Article 5 § 1 of the Convention in so far as it concerns the detention of Mr Khashiev and Mr Baymurzayev following their arrest in Russia on 19 February 2004 (see paragraph 412 above);

13. *Holds* unanimously that there has been a violation by Georgia of Article 5 § 2 of the Convention in respect of all the applicants (see paragraph 428 above);

14. *Holds* unanimously that it is not necessary to examine Mr Khadjiev's complaint under Article 5 § 2 of the Convention from the standpoint of Article 6 § 3 of the Convention (see paragraph 429 above);

15. *Holds* unanimously that it does not have jurisdiction to examine Mr Khadjiev's complaint alleging a failure to provide an interpreter during questioning at the civilian hospital in Georgia and a lack of information about the accusations brought against him by the Georgian authorities (see paragraph 430 above);

16. *Holds* unanimously that there has been a violation by Georgia of Article 5 § 4 of the Convention in respect of all the applicants (see paragraph 434 above);

17. *Holds* by six votes to one that there has been a violation by Georgia of Article 13 of the Convention taken in conjunction with Articles 2 and 3 in respect of Mr Shamayev, Mr Adayev, Mr Aziev, Mr Khadjiev and Mr Vissitov (see paragraph 466 above);

18. *Holds* unanimously that it is not necessary to examine from the standpoint of Article 2 § 1 of the Convention and Article 4 of Protocol No. 4 Mr Khadjiev's complaint alleging that he was handed over to the Russian authorities without any court decision (see paragraph 467 above);

19. *Holds* by six votes to one that there has been a violation by Georgia of Article 34 of the Convention in respect of Mr Shamayev, Mr Aziev, Mr Khadjiev and Mr Vissitov (see paragraph 479 above);

20. *Holds* unanimously that it does not have jurisdiction to examine the complaint under Article 3 of the Convention in so far as it concerns the transfer of the extradited applicants to Russia by the Russian authorities (see paragraph 488 above);

21. *Holds* unanimously that it does not have jurisdiction to entertain the complaint under Article 6 § 2 of the Convention against the Russian Federation (see paragraph 489 above);

22. *Holds* unanimously that it does not have jurisdiction to examine the complaints raised on 27 October 2003 by Mr Khadjiev against the Russian Federation (see paragraph 490 above);

23. *Holds* unanimously that the Russian Federation has failed to comply with its obligations under Article 38 § 1 (a) of the Convention (see paragraph 504 above);

24. *Holds* by six votes to one that there has been a violation by the Russian Federation of Article 34 of the Convention in respect of the five applicants extradited to that country on 4 October 2002 and the two applicants arrested by the Russian authorities on 19 February 2004 (see paragraph 518 above);

25. *Holds* by six votes to one that the finding of a potential violation of Article 3 constitutes in itself sufficient just satisfaction for any non-pecuniary damage that may have been sustained by Mr Gelogayev (see paragraph 526 above);

26. *Holds*

by six votes to one

(a) that Georgia is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Georgian laris at the rate applicable at the date of settlement:

(i) to Mr Shamayev, Mr Aziev, Mr Khadjiev and Mr Vissitov, extradited on 4 October 2002, EUR 8,000 (eight thousand euros) each for non-pecuniary damage sustained as a result of the violation of Article 3, Article 5 §§ 2 and 4, and Article 13 taken in conjunction with Articles 2 and 3 of the Convention;

(ii) to Mr Adayev, extradited on 4 October 2002, EUR 6,000 (six thousand euros) for non-pecuniary damage sustained as a result of the violation of Article 5 §§ 2 and 4, and Article 13 taken in conjunction with Articles 2 and 3 of the Convention;

(iii) to Mr Issayev, Mr Kushtanashvili, Mr Khanchukayev, Mr Magomadov, Mr Gelogayev, Mr Khashiev (Elikhadjiev, Mulkoyev) and Mr Baymurzayev (Alkhanov), EUR 4,000 (four thousand euros) each for non-pecuniary damage sustained as a result of the violation of Article 3 and Article 5 §§ 2 and 4 of the Convention;

(iv) to Mr Shamayev, Mr Aziev, Mr Khadjiev and Mr Vissitov, extradited on 4 October 2002, EUR 3,000 (three thousand euros)

each for the non-pecuniary damage resulting from the failure to comply with Article 34 of the Convention;

(v) any tax that may be chargeable on the above amounts;

unanimously

(b) that Georgia is to pay Mr Margoshvili, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,500 (two thousand five hundred euros) for non-pecuniary damage sustained as a result of the violation of Article 5 §§ 2 and 4 of the Convention, to be converted into Georgian laris at the rate applicable at the date of settlement, together with any tax that may be chargeable on the above amount;

by six votes to one

(c) that Georgia is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the sum of EUR 4,000 (four thousand euros) in respect of costs and expenses, together with any tax that may be chargeable on the above amount, to be converted into Georgian laris at the rate applicable at the date of settlement;

(d) 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;

27. *Holds* by six votes to one

(a) that the Russian Federation 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 sums, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) to Mr Shamayev, Mr Aziev, Mr Khadjiev, Mr Adayev and Mr Vissitov, extradited on 4 October 2002, and to Mr Khashiev (Elikhadjiev, Mulkoyev) and Mr Baymurzayev (Alkhanov), arrested in Russia on 19 February 2004, EUR 6,000 (six thousand euros) each in respect of the non-pecuniary damage sustained as a result of the breach of Article 34 of the Convention;

(ii) the sum of EUR 2,000 (two thousand euros) to those applicants in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(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;

28. *Dismisses* unanimously the remainder of the claim for just satisfaction;

29. *Holds* unanimously that the Russian Federation is to pay the sum of EUR 1,580.70 (one thousand five hundred and eighty euros seventy cents) into the Council of Europe budget, in respect of the Court's operational costs, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention (see paragraph 536 above).

Done in French, and notified in writing on 12 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ	J.-P. COSTA
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of Mr Kovler is annexed to this judgment.

J.-P.C.
S.D.

DISSENTING OPINION OF JUDGE KOVLER

(Translation)

I regret that I cannot share some of the conclusions reached by the majority of the Chamber in the present judgment, which I consider quite ambiguous.

From the beginning of examination of the case, in particular from the application of Rule 39 of the Rules of Court ("Interim measures") on 4 October 2002, the proceedings were marked by several irregularities: the applicants' representatives knowingly provided false names for the applicants; the nationality of some of them was uncertain; the representatives' authorities to act, submitted on 22 November 2002 on behalf of the five extradited applicants, referred only to Georgia as the respondent State, etc.

In reality, according to the lawyers' confessions as broadcast by the Georgian and Russian press and reproduced in their subsequent statements, including those before the Court, their clients misled the investigators in Georgia and Russia: in order to avoid extradition, they used a "strategy of false names" (see the transcripts of Mr Gabaydze's confessions in the admissibility decision), inventing surnames, addresses and dates of birth, which prevented their identity from being established before our Court. Yet Article 35 § 2 of the Convention provides: "The Court shall not deal with any application submitted under Article 34 that (a) is anonymous ..." In this connection, I would quote the British lawyer Philip Leach who, *inter alia*, presented the first so-called Chechen cases before the Court without any problem of procedural irregularity: "Every application to the European Court must identify the applicant (Article 35 (2) a). Any application which does not do so may be declared inadmissible on this ground alone" (Philip Leach, *Taking a Case to the European Court of Human Rights*, London, 2001, p. 85). We imposed fairly strict rules on the two Governments with regard to compliance with procedural formalities. Procedural rigour and the principle of equality of arms required the same attitude towards the applicants' representatives. However, I have not found convincing arguments in the judgment to justify the indulgence shown. The result has been that, even at the point of adopting its judgment, the Court has been obliged to refer occasionally to two surnames in respect of the same individual and to take pains to avoid mentioning the nationality of such or such an applicant.

The issue of the lawyers' authority to act as the applicants' representatives is presented even more mysteriously in the judgment. To judge by paragraph 14 of the judgment, "On 22 October 2002, under Rule 47, an application against *Georgia and Russia* was lodged on behalf of thirteen applicants by their representatives". Not until a month later did the

lawyers "fax[...] the powers of attorney authorising them to represent the extradited applicants before the Court. Those documents, which referred to *Georgia* as the respondent State, had been signed by the applicants' family members and friends living in Russia" (see paragraph 225). Although the Court justifies this interval by "extremely urgent circumstances which were not attributable to the applicants" (see paragraph 312), it gives the impression of justifying the irregularities on the part of professional lawyers in order to conclude that the applicants "may be considered [*sic*] to be validly represented". In the same way, the lawyers' "contradictory" (to say the least) statements about the signatures may be considered valid. The admissibility decision contains a phrase worthy of a detective novel: "The signatures on the authorities to act had allegedly been added by the applicants [N.B. they were already extradited] themselves on 22 November 2002 and obtained with the help of persons of Chechen origin living in Russia or, in certain cases, added by family members of the applicants, living in Russia." It was only when the handwriting report showed that the authorities to act had not been signed by the extradited applicants that one of the lawyers finally admitted having "appealed to their relatives and friends, and it was the latter's signatures which appeared on the authorities to act" (see paragraph 231 of the judgment). I regret that the Chamber has not taken into account the Court's case-law on the inadmissibility of improper applications (see, *mutatis mutandis*, *Stamoulakatos v. the United Kingdom* (dec.), no. 27567/95, 9 April 1997), including on the grounds of "deliberate misrepresentation", to use the expression employed by Karen Reid (Karen Reid, *A Practitioner's Guide to the European Convention on Human Rights*, London, 1998).

If I dwell on these regrettable facts, it is in order to point out that every applicant, or his or her representative, signs an application form containing the following declaration: "I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct." They thus confirm that the information provided is true, on pain of falling within the scope of Article 35 of the Convention, the Court being entitled at *any stage* of the proceedings to declare an application inadmissible where the right of application has been abused (Article 35 §§ 3 and 4 of the Convention), or of inducing the Court to have recourse from the outset to the investigative measures provided for in Rule 42 of the Rules of Court.

Not wishing to "be taken for" a moraliser, I nonetheless wish my approach to be clearly understood: the meticulous observance of all procedural details by the Court in its capacity as a strict arbiter is what guarantees the merits of its judgment. If a referee makes a concession to one side during a match, the other side considers itself free to manoeuvre as it wishes. The facts of the instant case provide much evidence of this.

In spite of my firm belief that this application is inadmissible on the grounds of its anonymity and abuse of the right of application, I am obliged to state my view on the merits of the case, and wish to set out my position briefly.

Although I agree with my colleagues' conclusions that there has been no violation by Georgia of Article 3 with regard to the five extradited applicants and that it is unnecessary to continue examination of the complaints under Articles 2 and 3 in so far as they concern the extradition of Mr Khashiev and Mr Baymurzayev to Russia, I am unable to accept that there would be a violation of Article 3 if the decision to extradite Mr Gelogayev to Russia were to be executed. In my opinion, this conclusion, based on factual conjecture (the "general situation in Chechnya" as described in paragraphs 364 and 366) and legal speculation (a fairly superficial interpretation of the validity of the Russian Constitutional Court's judgment of 2 February 1999), is also based on a value judgment concerning a deterioration of the situation in the region (see paragraph 367) and there is no justification for it in the Court's case-law. In *Mehemi (no. 1)*, the Court found that there would be a potential violation of Article 8 (right to respect for private and family life) if the applicant (who had family ties in France) were to be extradited (see *Mehemi v. France (no. 1)*, judgment of 26 September 1997, *Reports of Judgments and Decisions* 1997-VI); this is not the case here. As far as I am aware, the only examples of a finding of a potential violation of Article 3 in the event of extradition concern extradition to a State that is not a signatory to the Convention (see *Soering v. the United Kingdom*, judgment of 7 July 1989, Series A no. 161, and *Cruz Varas and Others v. Sweden*, judgment of 20 March 1991, Series A no. 201).

In my opinion, the Court lacks valid grounds for stating that it is "established" that there would be a violation of Article 3 of the Convention in the event of the applicant's extradition to a country which is a signatory to the Convention and which has provided the Georgian Government and the Court with all necessary assurances of compliance with the Convention *vis-à-vis* the applicants, including Mr Gelogayev.

As to the events during the night of 3 to 4 October 2002 (revolt by the prisoners and its suppression by the Georgian security forces), the Court has, in my opinion, taken a fairly strange position by speculating on "the applicants' particular vulnerability" (they were armed, let it be noted, with bricks and pieces of metal) and on the "legitimate fears" that they may have "experienced at the idea of their extradition". Even if the Court "has not overlooked the fact that prison wardens and members of the special forces were also injured in 'hand-to-hand combat' with the applicants" and that four of the seven applicants were sentenced by a Georgian court on 25 November 2004 to two years and five months' imprisonment, it nonetheless finds that there was "physical and mental suffering of a nature

amounting to inhuman treatment". From now on, the quelling of a prison riot is likely to be condemned as disproportionate...

I am also obliged to confess that the logic behind the finding of a violation of Article 34 by Georgia escapes me: is Georgia guilty of having permitted the plane carrying the extradited individuals to leave at around 7.10 p.m. (Strasbourg time), when it did not receive formal notification of the application of Rule 39 of the Rules of Court until more than half an hour later? Is it also responsible for the fact that the fact-finding visit to Russia did not take place (see paragraphs 477-78)? Moreover, I refer to the joint dissenting opinion of Judges Caflisch, Türmen and myself in *Mamatkulov and Askarov v. Turkey* ([GC], nos. 46827/99 and 46951/99, ECHR 2005-I), in which we question the binding nature of the interim measures indicated by the Court as they are currently set out in Rule 39 of the Rules of Court, particularly paragraph 3, the French version of which refers to "*mesures provisoires recommandées*" ("recommended interim measures").

In my opinion, the finding of a violation of Article 34 of the Convention by Russia derives from the mutual intransigence of the positions adopted by the Court and the Russian Government. The Court relies on the *Orhan* option, which consists in asserting that "the assessment of the authenticity of an application comes under the sole jurisdiction of the Court, and not that of a Government" (see *Orhan v. Turkey*, no. 25656/94, 18 June 2002, and paragraph 513 of the present judgment). For their part, the Government did not recognise the authorities to act of the "purported representatives" and prevented them from gaining access to the applicants. It is regrettable that the lack of procedural rigour (mentioned above) before the Court poisoned the remainder of the examination of the case. Each party has its own dignity which deserves respect, even in the case of a respondent Government.

However, I do agree with several of the Court's conclusions regarding certain failings by the Russian respondent Government to cooperate in the organisation of a fact-finding visit; at the same time I do not subscribe to the argument put forward in paragraph 500 to the effect that "the conduct of a fact-finding visit, decided by the Court ..., does not depend on the progress of domestic proceedings". I have difficulty in imagining the reaction of a domestic court if a delegation from the European Court were to arrive in town and begin questioning the defendants while it was examining a case...

Finally, with regard to the sums awarded to the applicants in respect of alleged non-pecuniary damage, I wish to point out that the two respondent Governments acted in accordance with the provisions of the European Convention on the Suppression of Terrorism (1977) and the European Convention on Mutual Assistance in Criminal Matters (1959), not to mention the Minsk Convention (1933), referred to in the judgment, which requires Contracting States to comply with those treaty provisions. I very much doubt that the obligations arising from those texts are to be interpreted as the cause of non-pecuniary damage to those who come under the scope of

the above-mentioned conventions. It is for this reason that, as in *Mamatkulov and Askarov*, I consider the finding of a violation (in so far as there has been one) to be sufficient just satisfaction in a case of this sort.