

Numéro de dossier
File-number

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

Conseil de l'Europe – *Council of Europe*
Strasbourg, France

REQUÊTE
APPLICATION

Timishev v. Russia

présentée en application de l'article 34 de la Convention européenne des Droits de l'Homme,
ainsi que des articles 45 et 47 du règlement de la Court

*under Article 34 of the European Convention on Human Rights
And Rules 45 and 47 of the Rules of the Court*

I. THE PARTIES

A. THE APPLICANT

1. *Surname:* **Timishev**

2. *First name(s):* Ilyas Yakubovich

Sex: male

3. *Nationality:* Russian

4. *Occupation:* Attorney at Law

5. *Date and place of birth:* 13.10.1950, USSR

6. *Permanent Address:* [REDACTED], Nalchik, Russia.

7. *Tel. No.:* [REDACTED]

8. *Present address (if different from 6.):* [REDACTED], Grozny, Russia.

9. *Name of Representatives:*

(1) James A. Goldston, Julia Harrington, Open Society Justice Initiative;

(2) Vladimir Luzin

10. *Occupation of Representatives:*

(1) Executive Director, Senior Legal Officer and Attorneys-at-Law;

(2) Attorney, Lawyer, Nizhny Novgorod Committee Against Torture

11. *Address of Representatives:*

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B. THE HIGH CONTRACTING PARTY

13. The Russian Federation

Introduction

This application concerns discriminatory restrictions on the freedom of movement imposed upon people of Chechen and Ingush ethnicity.

Since 1991 the Russian authorities have established a series of checkpoints on the two main roads between Nalchik in Karbardino-Balkaria and Grozny in Chechnya, severely restricting freedom of movement from one city to the other. There is no clear legal basis for these restrictions, resulting in arbitrary and discriminatory stops of vehicles on the basis of the perceived ethnicity of the occupants rather than for any legitimate purpose.

Those who are stopped are subject to lengthy delays, extortion, humiliating searches and other illegal conduct. This takes place in the context of a recent history of serious human rights violations occurring at the checkpoints, including unlawful detentions and disappearances. This has a chilling effect on anyone wishing to exercise their right to freedom of movement and to travel between the two cities.

The applicant has frequently been subjected to such arbitrary restrictions on his freedom of movement. In one incident in October 2006 he was travelling from Nalchik to Grozny when he was stopped by police. He was prevented from travelling for over four hours, only arriving at his destination late at night by hitch-hiking.

This was not an isolated example but demonstrates an ongoing situation that affects Mr Timishev and others of Chechen ethnicity who wish to exercise their right to freedom of movement.

This application relies on the testimony and personal experiences of people who regularly travel along the two main roads. In addition, on behalf of the applicant, the Open Society Justice Initiative has undertaken scientific testing on the two roads and has obtained an expert analysis of that testing. The expert concludes that “Every variable that was measured during this data collection effort indicated that Chechen vehicles [i.e. those with Chechen license plates] and their occupants are treated differently and more harshly than are non Chechen vehicles and their occupants”. (Exh.18 bis, at para.22). He continues:

“...Chechen vehicles are stopped more frequently than are non-Chechen ones, occupants of Chechen vehicles are more often required to produce their documents, Chechen vehicles are searched more often than are non Chechen vehicles and occupants of Chechen vehicles are asked questions about the purpose of their trip more frequently than are occupants of non Chechen vehicles.” At paragraph 23.

This evidence demonstrates that as a result of the checkpoint system in operation Mr Timishev and

others of Chechen ethnicity are subjected to discriminatory restrictions on their freedom of movement.

It is submitted that this is a violation of the European Convention:

Firstly, it violates the right to freedom of movement protected in Art.2 of Protocol 4, in that there are restrictions on the freedom of movement, those restrictions are not in accordance with any law, and they serve no legitimate aim.

Secondly, it violates the right not to be treated in a discriminatory fashion protected in Art.14, in conjunction with the right to freedom of movement.

The applicant asks the Court to find that there has been a violation of the Convention.

This case is distinct from the European Court's prior decision in *Timishev v. Russia* (Apps. 55762/00 and 55974/00), which concerned specific incidents of discrimination where the applicant was entirely prevented from travelling. In the current case, the applicant submits that the lack of legal basis for the checkpoint system has led to a situation where individuals are stopped, searched and subjected to harassment and unlawful treatment based on their ethnicity rather than for any appropriate reason provided for within the Convention. Consequently, the process is not in accordance with any law, and is arbitrary and discriminatory in nature.

The Justice Initiative, a worldwide legal program of the Open Society Institute, pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies. The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in five priority areas: equality and citizenship, national criminal justice, international justice, freedom of information and expression, and anti-corruption. Its offices are in Budapest (Hungary), New York (United States) and Abuja (Nigeria).

Supporting documents

This application is supported by a number of documents that are listed in the Index. These include the following:

- Affidavit of Mr Timishev (Exh.1)
- Supporting affidavits of other travelers (Exh.2-4)
- Court documents from the domestic proceedings (Exh5-8)

- Evidence from the testing (Exh.9-18)
- Expert report (Exh.18bis)
- Other supporting evidence (Exh.19-27)
- Newspaper articles (Exh.28-29)
- Photographs (Exh.30-33)

II. STATEMENT OF FACTS

A. The checkpoint system and inspection procedure

- 14.1 The traffic checkpoint system in the North Caucasus appeared in 1991 after General Dzhokhar Dudayev was elected president of Chechnya and declared Chechnya's independence from the Russian Federation. Since 1991, the Russian Ministry of Internal Affairs has deployed a system of checkpoints in the North Caucasus, in particular between the cities of Nalchik, the capital of the Republic of Kabardino-Balkaria, and Grozny, the capital of the Republic of Chechnya (Exs. 13-14). With the eruption of the military conflict between Moscow and Grozny in 1994, the Russian government increased the number of checkpoints and controls along the Nalchik-Grozny roads. Today, there are 21 checkpoints along these roads (Ex. 15).
- 14.2 Since 1996 the checkpoint system has evolved. At that time additional federal control checkpoints, the so-called FCPs (federal control points), emerged. Regular checkpoints are guarded by the police and traffic police; the FCP are guarded by police officers and the military. The checkpoints along these roads have become permanent barricade structures and all cars along the roads between Nalchik and Grozny must pass through the police controls at these checkpoints. At many checkpoints there are large signs saying: "Halt or I will shoot!," "Stop the car, turn off the engine," "Prepare documents for inspection!" (Exs. 24-27).
- 14.3 Currently, there are two roads (the federal and the republican) between Nalchik and Grozny. Each is approximately 220 km (Ex. 13). The federal road, "Kavkaz," passes through the Republics of Ingushetia and North Ossetia and contains 13 permanent checkpoints. At four of these checkpoints, all vehicles have to stop and the servicemen manning the checkpoints inspect identification documents. The republican road, "Malgobek," passes through Ingushetia and consists of eight checkpoints, at four of which stops are compulsory and inspection is universal. At the 13 checkpoints where stops are not compulsory, cars can nonetheless be stopped and examined.
- 14.4 The inspection procedure at each checkpoint consists of the following. If public transportation – which, in this part of Russia is a bus or a route taxi - is being stopped, a police officer or a military officer enters the bus and orders all the passengers to prepare their identification documents for inspection. The police officer or military officer collects the passports and counts them in order to ensure that the number of documents corresponds to the number of passengers.

The passengers' documents are then thoroughly checked against federal databases. When stopping private cars, the police record the license plate number, the car brand, the name of the driver, the destination and a description of the cargo. This system—the frequency of checkpoints, their permanence, the military personnel, the collection of information on the drivers of cars--can be found nowhere else in Russia.

- 14.5 The statement of Mr Timishev (Exhibit 1) provides the factual basis for the type of interference that he suffered. He explains that he often travels between Nalchik and Grozny for business reasons, and has done so for many years. He states that a journey that used to take two hours now takes up to twice that long. He states (at paragraph 13) that 'I am constantly subjected to degrading checks performed by the police and the military at each checkpoint ... and I remember a lot of situations when the police practiced bribe extortion'. He describes a specific incident on 10 October 2006 when he was delayed for four hours for spurious reasons.
- 14.6 In addition, three independent witnesses who frequently travel between Grozny and Nalchik give evidence as to the factual operation of the checkpoint system and how it has restricted their freedom of movement, through harassment, extortion of bribes and other unlawful conduct that is commonplace. They also describe the way in which the police have discriminated against them as Chechens.¹
- 14.7 The statement of Angela Islamova, a 25 year old Chechen who owns her own business, gives details of the degrading nature of the restrictions that are imposed, the abusive language used by police and the fear of worse treatment. Since 2000 Ms. Islamova, officially registered in Nalchik, has travelled to Grozny on a regular basis for two-three days at least once a month. Usually she uses public transport for such trips, namely, route taxis. In her statement (Ex. 3, Paras. 13-15) she states:

13. When all passports are checked, police officers summon some passengers to their office for additional checks. They also conduct personal searches and examine passengers' luggage. I can attest that the body search is conducted in a degrading way for us, Chechen women. Although such body searches are conducted by a woman, a man is always present in the room. This is extremely humiliating. I want to draw your attention to the most recent event: my relative, a 40-year old woman, a mother, was made to take off all her clothes, except her underwear, in the presence of male policemen despite all her objections, remonstrance and complaints.

14. It often happens that Chechens are detained at checkpoints and this may result in their disappearance. In such cases, the fate of these detained individuals depends on the courage and persistence of other passengers.

¹ Chechens are a distinct ethnic group as part of the 'multinational people of the Russian Federation' that are referred to in Article 3 and Article 65 of the Russian Constitution. They are closely related to the Ingush people, and are both distinct from those of Russian, Kabardian or Ossetian ethnicity. The primary cause of complaint in this application is for discrimination against Chechens, although it also includes examples of discriminatory treatment towards Ingush.

Last year I witnessed detention of two Chechen students on their way from Grozny. When fellow passengers inquired about them, the police answered that they had detained no one. For several hours we refused to leave the checkpoint until we found out about the fate of the detained youths. Only in the evening, when the police saw that we were quite firm and persistent, they released the detainees.

15. In the course of police checks, officers say disparaging, scornful things about Chechens. Even the mere word “Chechen” they pronounce as an insult. I understand the Kabardian language and that is why I often involuntarily hear Kabardian police officers say things that are insulting for me.

14.8 Mr. Mikhail Albogachiev is a 36 year old Ingush registered in Nazran but who is living with his family in Nalchik. He gives evidence as to operation of the checkpoint system, including the extortion of bribes and other unlawful behaviour. Since 1998, he often travels from Nalchik to Chechnya on business. Almost every day early in the morning Mr. Albogachiev left for Grozny by car and returned to Nalchik late at night. Mr. Albogachiev testifies the following (Ex. 4)

12. ...Today, February 19, I returned to Nalchik in the morning. At “Tersky Post” I had to explain in detail to the checkpoint officer where I was going and what for. The same happened at other checkpoints. Often I am subjected to fault-finding and biased attitudes because there is no stamp in my passport showing that I am liable to the draft.

13. Because of my job I often have to go to Stavropolskiy Kray, Krasnodarskiy Kray and other regions of Russia. In all of these other regions outside of the North Caucasus route between Nalchik and Grozny, I have never had any problems connected with the fact that there is no stamp or corresponding mark related to the draft in my passport. It is clear that the checkpoint officials on the Nalchik – Grozny route extort bribes from me due to the fact that they are biased against the Chechens and the Ingush.

15. There are cases of unlawful detention of ethnic Chechens and Ingush at checkpoints. I personally was detained several times by the police for 1 or more hours at Kavkaz checkpoint. The police never filled in the detention protocol. They threatened, intimidated, and extorted bribes from me. I have to confess that I had to bribe the checkpoint personnel and it was only after I did that, that I was released.

16. From 2002 till 2005, I regularly traveled on business to Novorossiysk in Krasnodarskiy Kray by car, it is situated 700 km away from Nalchik. At the administrative border crossings of Kabardino-Balkaria and Stavropolskiy Kray, as well as Stavropolskiy Kray and Krasnodarskiy Kray there are regular traffic police stations, although they are nothing like the checkpoint system on the Nalchik-Grozny route.

17. It is on these roads west of Kabardino-Balkaria that I experienced how police treat cars differently for stops and searches depending on where the cars are registered. For example, when I traveled in a car with state registration number 07 (Kabardino-Balkaria) or 26 (Stavropolskiy Kray), I was never stopped, unless I violated traffic rules. However, if I used a car with state registration number 06 (Ingushetia) or 95 (Chechnya), I was always stopped, although I did not violate any rules. The police was obviously biased against people who were coming from Ingushetia or Chechnya.

18. In 2003 I was driving a car with the registration number of territory 26 (Stavropolskiy Kray) in Rostov region and exceeded the speed limit. I was stopped by the traffic police and as soon as they discovered that I was Ingush, they detained me for 4 hours. During those 4 hours they checked whether I was on the federal wanted list and questioned me.

19. So, within the distance of 220 km between Nalchik and Grozny there are 10 checkpoints that look like fortified military bases and are guarded by the military, the checks there are compulsory and universal, and at the same time within the distance of 700 km between Nalchik and Novorossiysk (Krasnodarskiy Kray) there are only two traffic police checkpoints that you can pass unimpeded. Only vehicles with Chechen or Ingush state registration numbers are stopped.

14.9 Tutush Aduyev-Vokayev, an ethnic Chechen and a 72 year old journalist from Nalchik, testifies to the operation of the checkpoint system, and the effect that the recent history of serious human rights violations has upon those who may seek to travel (Ex. 2):

9. ...The cases when Chechen people disappear, are detained and tortured at checkpoints are very common and far from being a rare thing. This results not only from the fact that the police want to get money from the detainees, but such cases reflect the general tendency of discrimination of the Chechens in Russia.

10. I am absolutely sure that the checkpoint and search system are highly discriminatory against the Chechens. Why? Because you can rarely see, for example, ethnic Russians on the route Nalchik - Grozny. The majority of passengers are Chechen, they are those who suffer from this system.

11. The checkpoint system significantly limits ethnic Chechens' freedom of movement, it does not allow us to enter and leave Chechnya freely. In the rare instances when there are non-ethnic Chechens in a car passing through these checkpoints, I have witnessed that police attitudes towards those non-ethnic Chechens are completely different. The police and the military are deeply biased against the Chechens.

12. Being Chechen, I am truly offended by this system of checks, searches and extortions. All of us are considered criminals. During this period many people could not stand the humiliation. I know about the cases when people going to Nalchik from Grozny had heart attacks, infarctions, some even died.

14.10 There are substantial independent sources that document and establish that Chechens are victims of systemic discrimination not only in Chechnya itself but outside Chechnya all over the Russia.

14.11 The report "Discrimination of the Chechens in the Russian Federation" delivered in February 2006 and numerous others produced by human rights organizations demonstrate that with regards to the Chechens outside Chechnya a system of lawlessness has developed, upheld by the law-enforcement authorities and government bodies as well as by the judicial authorities.²

14.12 On 21 December 2005 the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe issued the Report "Human rights violations in the Chechen Republic: the Committee of Ministers' responsibility vis-a-vis the Assembly's concerns."³

² The applicant refers to the Annex to the Russian NGOs shadow report "On the Implementation of the Framework Convention for the Protection of National Minorities by the Russian Federation" – 'Discrimination of the Chechens in the Russian Federation' prepared on the basis of information compiled by the lawyers - members of the countrywide Network "Migration and Law" who participate in the project of the Human Rights Centre "Memorial". The Report was composed in February 2006. Most of the data has been already published in periodical reports "The Internally Displaced Persons from Chechnya in the Russian Federation" compiled since May 2002 by the Network "Migration and Law" together with the "Civic Assistance" Committee and edited by Svetlana Gannushkina. This annex was drafted by the Network "Migration and Law", the "Civic Assistance" Committee and the Center for Democracy and Human Rights. [hro.org/actions/nazi/2006/11/FCNM report appendix_chechens_eng.doc]

³ <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc05/EDOC10774.htm>

14.13 Mr. Rudolf Bindig, Rapporteur, in his Explanatory memorandum, *inter alia*, indicated “There is no end to gross human rights abuses in Chechnya, in the form of murder, enforced disappearance, torture, hostage-taking, and arbitrary detention. In addition, the climate of impunity is spreading further, beyond the Chechen and Ingush Republics, into other regions in the Northern Caucasus, including North Ossetia and more recently Kabardino-Balkaria.”

14.14 Amnesty International in its Statement on the situation of Chechen asylum-seekers issued on March 1 2004 stated “The levels of discrimination faced by Chechens in the Russian Federation render them at genuine risk of human rights violations. The ongoing application of the residence registration system (*propiska*) further exacerbates the problems faced by Chechens - *due to arbitrary identity checks, restrictions on movement and place of residence and the denial of a range of civil rights* – and further negates the possibility of an internal relocation alternative... Amnesty International considers that Chechens are fleeing the Chechen Republic, and the Russian Federation as a whole, not only because of the mass devastation and human rights violations associated with the armed conflict, *but also because of the discriminatory treatment and human rights violations they are subjected to because of their ethnicity.*” (Emphasis added).⁴

14.15 Research conducted by Amnesty International and Russian human rights groups has shown that discrimination towards Chechens is commonplace throughout the Russian Federation, with increased levels of harassment and ill-treatment. The prevailing attitude towards Chechens in the Russian Federation is summed up well by Yuri Kalinin, Deputy Justice Minister, speaking in a newspaper interview after the Moscow theatre siege of October 2002:

"The way to conquer our fear of Chechens is simply not to let them into Russia [sic] ... Our true target should be to restrict the rights and freedoms of Chechens as representatives of a people with whom we have been at war for a long time. Whichever way we look at it, they represent a potential threat to the safety of our children, and we should not close our eyes to this fact." Quoted in newspaper *Moskovskii Komsomolets*, 30 October 2002

14.16 The UN High Commission for Refugees has acknowledged the problem in a briefing paper on Chechen asylum-seekers from the Russian Federation from February 2003, finding that "a very strong anti-Chechen feeling has developed in many parts of the Russian Federation" and alluding to existing ethnic tensions and restrictive legislation concerning freedom of movement,

⁴ <http://web.amnesty.org/library/index/engneur460102004>

residence and sojourn including in republics of the North Caucasus.⁵

Testing

- 14.17 The Open Society Justice Initiative undertook scientific testing on the two roads from Nalchik to Grozny in order to determine whether or not those of Chechen ethnicity were treated differently from other ethnicities. Exhibits 13-18 contain the facts.
- 14.18 The testing was carried out from 23-26 September 2008 using three different vehicles, two containing individuals of Chechen and Ingush ethnicity and with Chechen license plates, and one containing individuals of Kabardian or Russian ethnicity with Kabardino-Balkarian license plates. The participants kept a log noting the details of their journey. In their statements they described how drivers, passengers and vehicles were treated differently depending on the vehicle registration place and drivers' and passengers' nationality as indicated on their identity documents.
- 14.19 From the testing it is clear that vehicles with Chechen license plates take longer to travel from Nalchik to Grozny than vehicles with license plates from Kabardino-Balkaria. The two Chechen vehicles were stopped by police more often (nine times and seven times, respectively) than the other vehicle (five times). Documents were only checked on three occasions out of the five stops for the Kabardian vehicle, but were checked on every occasion for the Chechen cars. The average stop took 13 minutes for the Kabardian vehicle, but 32 minutes and 41 minutes for the Chechen cars. The Chechen cars were searched more often than the other car.
- 14.20 The witness Albogachiyev states that the police extorted bribes from him in exchange for unhampered passage at least three times on Sept. 24 (Exh.14). According to Mr. Imagamaev, a Chechen, the police openly extorted bribes from him three times on Sept. 23 (Exh.17). The non-Chechen/Ingush testers were not subject to bribe extortion. Moreover, driver Kadzokov (Exh.15) and Mr. Vlasenko (Exh.16) did not face biased or a prejudiced attitude or treatment during the testing.
- 14.21 All Chechen/Ingush testers officially stated that the police had made ethnic remarks several times.
- 14.22 During the testing on Sept 24 the police searched and detained Mr. Albogachiyev for 30 minutes

⁵ UNHCR Paper on Asylum Seekers from the Russian Federation in the context of the situation in Chechnya, February 2003, para.55.

at Uruk checkpoint and released him without charge later. On Sept. 24 at Chermen checkpoint the police detained Mr. Arsamakov for 15 minutes and released him without charge later as well (Exh.14).

14.23 The facts contained in the statements have been analysed by an expert in ethnic profiling (Exhibit 18*bis*) who outlines the way in which the testing was conducted and undertakes a statistical analysis of the results. Even though the testing was on a limited scale, he is able to draw significant statistical conclusions from the process (at para.24). He concludes:

‘The variables that clearly distinguish between the Chechen and non Chechen cars/occupants are important in determining whether the police are targeting Chechen vehicles for further investigation. First, it is clear that the registration is visible to the police even before the vehicle is stopped.... Clearly, the decision is made to make the stop more often when it is a Chechen vehicle rather than when it is a non Chechen vehicle...the officers checked the documents of every driver/passenger in a Chechen car, but only two thirds of non-Chechen vehicles had their documents checked. Further only 40% of non Chechen cars had the documents of both the driver and the passenger checked while all of the Chechen cars had the documents checked for both driver and passenger... As in the other variables showing reliable differences, Chechen vehicles were searched more often than were non Chechen vehicles.... Occupants of Chechen cars were more often asked about the purpose of the trip than were non Chechen vehicles...these differences are consistent with officer’s attempts to investigate further but only if the driver/passenger are Chechen/Ingush.

All of these data strongly support the premise that officers are targeting Chechen vehicles for stopping and when stopped, further investigation. This, of course, is entirely consistent with ethnic profiling’.

B. Procedural history

14.24 On **April 19, 2007**, the applicant lodged a complaint with the Moscow District Court against the Russian Ministry of Internal Affairs arguing that the federal checkpoint system in the North Caucasus between the Republics of Kabardino-Balkaria and Chechnya constitutes a violation of his freedom of movement and that the existence and implementation of this system discriminate against people of Chechen and Ingush ethnic origin in contravention of the Russian Constitution. The applicant referred to an incident when he was detained for more than four hours as one example of a concrete violation (Ex. 8). In addition, in his oral submission before the court, the applicant complained that the entire system of federal checkpoints along the Nalchik-Grozny roads constitute discrimination against ethnic Chechens' and Ingush' freedom of movement.

14.25 On **July 11, 2007**, The Moscow District Court dismissed the applicant's complaint (Ex. 7).

14.26 On **August 13, 2007**, the applicant filed a cassational appeal against the July judgment with the Moscow City Court (Ex. 6). The applicant submitted that the restriction on his freedom of movement had operated against him in a discriminatory manner because it had been conditional on his ethnic origin.

14.27 From Ilyas Timishev's cassational complaint (Ex. 6):

During the court hearing I also tried to prove basing on the given written and other evidence that the checkpoint system introduced by the Russian Federation Ministry of Home Affairs (RF MHA) on the territory of the North-Caucasian Republics operated in accordance with the nationality principle, although there was no law on the state of emergency in those republics. For example, the RF MHA staff (traffic police) effect a general mandatory vehicles and passengers check only at checkpoints in the direction of Chechnya ("Uruh", "Tashkent-2" and "Nizhny Kurp"). At the border with Stavropolskiy kray the check is random, as everywhere else in Russia.

14.28 On **October 25, 2007**, The Civil Chamber of the Moscow City Court dismissed the appeal (Ex. 5).

C. Relevant domestic law

14.29 The Constitution of the Russian Federation of 12 December 1993

Article 19 of the Constitution provides for the equality of all before the law and courts of law, and equality of rights and liberties.

Article 27 provides that everyone lawfully within the territory of the Russian Federation has the right to move freely and choose his or her place of stay or residence.

Article 56 provides that, in a state of emergency, rights and freedoms may be restricted for the protection of national security and the constitutional foundations. A state of emergency may only be declared in accordance with a federal constitutional law.

14.30 The Police Act:

According to Article 11 of the Police Act, the police have, *inter alia*, the following rights:

"2) to check identification documents, if there are enough grounds to suspect the citizens of committing crimes or being on the wanted list, or if there is a reason to charge the citizens with an administrative offense;

to search people in accordance with the order set by the administrative law, search their belongings if there are enough grounds to suppose that the citizens might have weapon, ammunition, explosives, explosive devices, narcotic drugs or psychotropic substances; obtain necessary information, explanations, certificates, documents and

their copies from citizens and officials; conduct investigation according to the federal legislation; [...]

22) temporary restrict or prohibit movement of vehicles or passengers in the street and on the road, as well as prevent citizens from accessing certain locations and objects, make them stay or leave those places in order to ensure security and life safety, protect property of the citizens, organizations and enterprises, perform investigation.”

14.31 On the Fight Against Terrorism, Russian Federation Federal Law No. 130-FZ, 25 July 1998⁶

Article 10. Control of counterterrorist operations

An operational staff is set up for direct control of a counterterrorist operation by decision of the Russian Federation Government; the staff is headed by a representative of the Russian Federation Federal Security Service or Russian Federation Ministry of Internal Affairs depending on which federal organ of executive power will have predominant competence in the conduct of the specific counterterrorist operation.

Operational staffs may be set up in Russian Federation components and Russian Federation regions; their size and composition depend on specific local conditions and the nature of the possible terrorist actions on the territories of the Russian Federation components (regions).

The operational staff to control counterterrorist operations in a Russian Federation component (region) is headed by the leader of the territorial organ (component) of the department whose competence will be predominant in the conduct of the specific counterterrorist operation. If the nature of the terrorist action changes the leader of the counterterrorist operation may be replaced by decision of the chairman of the relevant interdepartmental antiterrorist commission.

The procedure for the activity of the operational staff to control the counterterrorist operation is defined by a statute approved by the chairman of the relevant interdepartmental antiterrorist commission. The statute on the operational staff to control the counterterrorist operation is elaborated on the basis of the model statute approved by the federal antiterrorist commission.

[...]

Article 13. Legal regime within the counterterrorist operation zone

Within the counterterrorist operation zone the persons conducting the operation have the right:

1) to take where necessary measures to temporarily restrict or prohibit the movement of vehicles and pedestrians on streets and highways, to prevent access by vehicles, including vehicles belonging to diplomatic missions and consular establishments, and citizens to particular areas and facilities, and also to tow away vehicles;

2) to check that citizens and officials are in possession of identity documents, and in the event of the absence of such documents to detain the persons in question in order to establish their identity;

⁶ http://fas.org/irp/world/russia/docs/law_980725.htm

3) to detain and deliver to Russian Federation internal affairs organs persons who have committed or are committing offenses or other actions aimed at impeding the legitimate demands of persons conducting the counterterrorist operation, and also actions connected with unauthorized entry or attempted entry into the counterterrorist operation zone;

4) to freely enter (effect entry into) housing and other premises belonging to citizens and land belonging to them, territory and premises belonging to organizations regardless of form of ownership, and vehicles in the course of the suppression of terrorist action or the pursuit of persons suspected of committing a terrorist action if delay may create a real threat to people's life and health;

5) to carry out upon entry on foot (by vehicle) into the counterterrorist operation zone and upon exit on foot (by vehicle) from the zone the personal inspection of citizens, inspection of items in their possession, and inspection of vehicles and items transported on them, including inspections employing technical facilities;

6) to use for official purposes means of communication, including special means, belonging to citizens and organizations regardless of forms of ownership;

7) to use for official purposes vehicles belonging to organizations regardless of forms of ownership, with the exception of vehicles belonging to diplomatic, consular, and other missions of foreign states and international organizations, and in urgent cases also belonging to citizens, in order to prevent terrorist action, pursue and detain persons who have committed a terrorist action, or deliver persons requiring urgent medical assistance to a medical establishment, and also to travel to the scene of an incident.

In the counterterrorist operation zone the activity of personnel of the mass media is regulated by the leader of the operational staff to control the counterterrorist operation unless otherwise provided by federal law.

14.32 Federal Law No. 35-FZ of March 6, 2006, "On Counteraction of Terrorism."⁷

Article 11. Legal Regime of an Antiterrorist Operation

1. For the purpose of suppressing and disclosing an act of terrorism, reducing to a minimum its consequences and protecting the vital interests of individuals, society and the State, the legal regime of a antiterrorist operation may be established for the period of conducting it and within the limits of the territory where it is to be conducted by decision of the official who has decided to conduct it in compliance with Part 2 of Article 12 of this Federal Law.

2. A decision to establish the legal regime of an antiterrorist operation (specifying, in particular the territory (a list of the objects) where such regime is to be established and a list of measures to be taken and of temporary restrictions) and a decision to cancel the legal regime of an antiterrorist operation shall be subject to immediate promulgation.

3. It shall be allowable to take the following measures and to establish the following temporary restrictions in the procedure provided for by the legislation of the Russian Federation, on the territory (objects) where the legal

⁷ <http://www.legislationline.org/legislation.php?tid=46&lid=6207>

regime of an antiterrorist operation is established, for the time period of conducting it:

1) checking the natural persons' documents certifying their identity and, if they do not have such documents, delivery of the said persons to the internal affairs bodies of the Russian Federation (to other competent authority) for their identification;

2) removal of natural persons from some areas and objects, as well as towage of transport vehicles therefrom;

3) improvement of public order maintenance, of guarding the objects subject to state protection and the objects ensuring the exercise of vital functions by the population and transport functioning, as well as the objects of special material, historical, scientific, artistic or cultural value;

4) exercising control over telephone communications and over other information transmitted over telecommunication channels, as well as searching in electric communication channels and in postal mailing for the purpose of detecting information concerning the circumstances of committing an act of terrorism and the persons who have prepared and committed it, as well as for the purpose of preventing other terrorist acts;

5) using transport vehicles possessed by organisations, regardless of their property forms (except for transport vehicles of diplomatic representative offices, consular offices and other institutions of foreign states and international organisations) and, in case of emergency, also the transport vehicles possessed by natural persons for delivering the individuals in need of urgent medical aid to medical institutions, as well as for following the persons suspected of committing an act of terrorism, if a delay can pose a real danger of the loss of life or health. A procedure for reimbursement of the expenses connected with such use of transport vehicles shall be determined by the Government of the Russian Federation.

6) suspending the operation of dangerous production facilities and organisations where explosive, radioactive, chemically or biologically active substances are used;

7) suspending provision of communication services to legal entities and natural persons or restricting the use of communication networks or means of communication;

8) temporary settling out the natural persons residing within the limits of the territory where the legal regime of an antiterrorist operation is established to safe regions providing such persons without fail with permanent or temporary residential premises;

9) introduction of a quarantine, taking sanitary-antiepidemic, veterinary and other quarantine measures;

10) restricting the traffic of transport vehicles and movement of pedestrians in the streets, along the roads, in some localities and at objects;

11) free access of the persons engaged in an antiterrorist operation to residential and other premises possessed by natural persons and onto the land plots in their ownership, to the territories and to the premises of organisations, regardless of their property forms, for taking measures aimed at combatting terrorism;

12) inspecting, upon their entry (driving) to the territory, where the legal regime of an antiterrorist operation is

established, and upon their exit (driving) from the said territory, of natural persons and the items they have with them, as well as inspecting transport vehicles and the items carried by them, in particular with the use of technical facilities;

13) restricting or banning the sale of weapons, explosives, special means and poisonous substances, establishment of a special procedure for circulation of the medicines and preparations containing narcotic substances, psychotropic or strong substances, ethyl alcohol, alcoholic and alcohol-containing products.

4. Both the whole set of the measures and temporary restrictions provided for by Part 3 of this Article, or individual measures and temporary restrictions may be taken (established) on some parts of the territory (at the objects) where the regime of an antiterrorist operation is established.

III. STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND/OR PROTOCOLS AND OF RELEVANT ARGUMENTS

A. Admissibility

1. Adoption of the Right to File an Individual Petition

The Government of the Russian Federation ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms on 5 May 1998, thereby recognizing the authority of the European Court to accept applications from individuals concerning alleged violations of the provisions of the European Convention by its agencies and authorities pursuant to Article 34 of the European Convention.

2. Victim Status

15.1 As a frequent traveler on the Nalchik-Grozny roads, the applicant is a victim of the restrictions on his freedom of movement and of the ethnic discrimination presented by the checkpoint system every time he travels along the road and will continue to be a victim whilst the system continues.

B. Merits of the case

FIRST GROUND: VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

15.3 Article 2, Protocol 4 of the Convention, states:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

15.4 It is submitted that the checkpoint system on the Nalchik-Grozny roads arbitrarily restricts freedom of movement as there is no clear legal basis for the regime which is applied in an arbitrary fashion, targeting individuals on the basis of their ethnicity. It is submitted that this violates the Convention on the basis that (i) the system is a restriction of movement, (ii) the system is not in accordance with the law, and (iii) the system has no legitimate aim.

(i) Restriction of Movement.

15.5 It is submitted that the checkpoint system constitutes a restriction of movement by subjecting individuals to arbitrary stops, lengthy and humiliating searches, attempts at extortion and other unlawful conduct. This takes place in the context of a history of serious human rights abuses including disappearances, resulting in a climate of fear that prevents all but the bravest from travelling at all.

15.6 In its case-law, the Court has developed and defined the concept of freedom of movement and what constitutes restrictions on this freedom.

15.7 In *Timishev v. Russia* (55762/00 and 55974/00) and *Gartukayev v. Russia* (71933/01), the Court held that the Russian authorities' refusal to allow the applicants to enter the territory of the Republic of Kabardino-Balkaria, constituted a restriction of their freedom of movement.

15.8 In *Denizci and Others v. Cyprus* (25316-25321/94 and 27207/95), the Court held that strict police surveillance and the requirement to obtain permission to leave one place for another, constituted interference with the applicants' freedom of movement.

15.9 In *Raimondo v. Italy* (12954/87), the Court held that sentencing the applicant to *de facto* house arrest constituted a restriction of his freedom of movement.

15.10 In *Phull v. France* (35753/03), the applicant, who was a Sikh, was required to remove his turban in order to comply with security checks at Strasbourg airport. He complained of a violation of Art.9 and of the right to freedom of movement. In rejecting the complaint as inadmissible, the Court decided that any interference with the right to religion was justified on the basis of public safety, and that, in themselves, "the security checks to which passengers are subject in airports prior to departure do not constitute a restriction on freedom of movement."

15.11 The applicant submits that the extensive and intrusive nature of the checkpoint system between Nalchik and Grozny sets the checkpoint system apart from security checks at airports, as

described in *Phull v. France*. The checkpoint system consists of eight and thirteen checkpoints along the two approximately 220 km long roads, respectively. At several of the checkpoints, inspection of documents and cars is mandatory. The checkpoints are not even limited to internal borders between federation subjects, but are also located within the federation subjects themselves.

- 15.12 The Court has frequently stated that the Convention is intended to provide practical and effective protection from arbitrary interference with rights, rather than protection which is merely theoretical or illusory. The effect of the discriminatory treatment of Chechens on the roads from Nalchik to Grozny is that they are not able to effectively take advantage of their freedom of movement.

Harassment, extortion of bribes and other unlawful conduct

- 15.13 Individuals travelling along the road between Nalchik and Grozny are subjected to lengthy delays, stops, un-necessary searches of their vehicles and humiliating strip searches. They are further subject to harassment and the extortion of bribes. From the evidence of the witnesses, it appears that no procedure is followed for the conduct of the stops.
- 15.14 On 10 October 2006, the applicant himself was traveling along the road from Nalchik to Grozny to attend the funeral of a relative. At around 12:30 pm, servicemen at the Tersky Hrebet checkpoint on the administrative border with Chechnya stopped the shared taxi in which the applicant was traveling and proceeded to inspect the passengers' identification documents. About ten minutes later the servicemen summoned the applicant to step out of the car. An officer from the Ivanovo (Central Russia) Traffic Police Department, Mr. Volodin, with the rank of senior police lieutenant, wearing combat uniform, a helmet and holding a machine-gun claimed that the applicant's passport contained errors. The officer pointed out that the applicant had signed the passport with red ink and that "it contained notes not provided for by the passport order." After about thirty minutes of argument, the serviceman detained the applicant. Some time later, the officer on duty did not find any violation in the applicant's actions and said that the behavior of his colleagues had been "stupid." At 17:10 the same day, after having spent 4 hours and 10 minutes in detention, the applicant was set free. The applicant reached Grozny by hitch-hiking only late at night on 10 October 2006 (Ex. 1).
- 15.15 On February 1, 2008 at 17:40 police stopped the car in which Mikhail Albogachiyev was traveling. The police proceeded to detain Albogachiyev without explaining the reasons for his

detention and brought him to the local police station. There, the police made him write an explanation of what he was doing in the village where he had been detained. The police took several pictures of him and filmed the interrogation. Albogachiyev was released only after three and a half hours (Ex.4).

- 15.16 Several international human rights missions and independent observers have reported on the existence of freedom of movement violations in the region since 1996. For instance, the third mission of the International Human Rights Society reported in the year 2000 that “All roads on the territory of Chechnya are also blocked by stationary checkpoints. Besides, there are also temporary checkpoints that are usually formed by means of putting an armoured personnel carrier across the road and exist only for a few hours. Very often these temporary checkpoints are situated some 200-300 meters away from the stationary ones, these “ambushes” operate as additional bribe extortion points and do not bear any other function... Their only practice is to extort money from people crossing the border. According to taxi-drivers working in Chechnya, and basing on personal experience of the mission members, the rate at such checkpoints varies from 50 to 500 rubles. During the trip the observers passed seven checkpoints unimpeded. The possibility to pass was connected to the possibility to pay.”⁸
- 15.17 Mr. Igor Kalyapin, Chairman of a well-known Russian human rights NGO “Committee against Torture,” who has traveled to the region many times since 2000, confirmed that inspection of documents, searches, detentions and arrests amount to excess of powers and are often conducted with procedural violations. Mr. Kalyapin was himself detained by the police at checkpoints in the region. He provides an example: “When returning to Ingushetia on March 31, 2000, our group was detained by the Ingush police near the checkpoint between Nesterovskaya (Ingushetia) and Assinovskaya (Chechnya)... During the check the police withdrew videotapes with videos we had filmed. After that the police told us that it would cost us \$500 to pass the check-point and \$1000 to take 1 videotape with us. When they found out that we had no money, the officers took Lila, our guide, to their office and started to bargain. As Lila told us later, the checkpoint head – his name was Isparyl - threatened her by saying that they would send her to a filtration camp, shoot the journalists on the spot as militants and sell the videotapes.”⁹

8 Short Review of Human Rights violations revealed on the territory of Chechnya and Ingushetia. Trip Report. <http://www.uic.nnov.ru/hrnnov/rus/nnsht/analyst/chechen.html>

9 Ibid.

- 15.18 On 7 April 2007 representatives of leading Russian NGOs adopted a resolution of the Conference on the situation in the North Caucasus Republics of Russia. They expressed their particular and great concern about freedom of movement violations and the checkpoint system: “Checks of all kinds take many hours and can be comparable to the foreign country entry condition.”¹⁰ The resolution also says that existence of the checkpoint system is profitable for corrupt authorities in the region.
- 15.19 The applicant also submits newspaper articles that describe police harassment of civilians, extortion of bribes and illegal denial of passage of people of Chechen ethnicity (Exs. 23-24). On 18 October, 2006, Prague Watchdog published the article “Practice of extortion returns to 'Kavkaz' checkpoint,” which describes a list of different violations at this checkpoint on the Federal highway between Nalchik and Grozny. Before this, on 25 October, 2004, Prague Watchdog published the article “Ossetian checkpoint demonstration against Chechen and Ingush travel.” Similar publications have been produced by North Caucasus Weekly from the Jamestown Foundation on its web-site. For instance, North Caucasus Weekly published the article “Extortion at Checkpoints: Fresh Details” on 7 July 2004 which describes how extortion of money from civilians is a regular occurrence at checkpoints in Chechnya.¹¹
- 15.20 The frequent harassment at the checkpoints discourages the population from traveling and therefore restricts their freedom of movement. In addition, as established in the testing outlined above, the numerous checkpoints and the sometimes lengthy inspections add significantly to the travel time between Nalchik and Grozny.

Disappearances and extra-judicial executions

- 15.21 The applicant submits that numerous incidents of disappearances and extra-judicial executions at checkpoints located throughout Russia and manned by police and military servicemen are well known among the population and that traveling through checkpoints constitutes a real and perceived risk, which further discourages people from traveling.
- 15.22 Victims of several such grave violations have submitted applications to the European Court of Human Rights:

10 Conclusions of the Conference of public organizations on the situation in the republics of the North Caucasus, 20 April 2007, <http://www.zaprava.ru/content/view/834/2/>, (last accessed 29 September 2008).

11 Uzzell, Lawrence, “Extortion at Checkpoints: Fresh Details,” Jamestown Weekly, Volume 5, Issue 27 (July 07, 2004), http://www.jamestown.org/publications_details.php?volume_id=396&issue_id=3009&article_id=2368210, (last accessed 29 September 2008).

- 15.23 In the case *Imakayeva v. Russia* (7615/02) the Court held that Russian servicemen illegally detained the applicant's son, Said-Khuseyn Imakayev, at a roadblock between the villages of Starye Atagi and Novye Atagi. Imakayev disappeared and the Court held the Russian authorities responsible for his death.
- 15.24 In the case *Akhmadova v. Russia* (3026/03) Russian servicemen illegally detained the applicant's husband at the permanent military checkpoint in the village of Kirov-Yurt in the Vedeno district. The applicant's husband has been missing since.
- 15.25 In the case *Mutsayeva and Tepsurkayev v. Russia* (24297/05) Russian servicemen detained the applicants' son at a military checkpoint in Urus-Martan. The applicants' son has been missing since.
- 15.26 In the case *Gaziyeva and Others v. Russia* (15439/05) Russian military servicemen illegally detained the applicant's husband at a military checkpoint on the road between the village of Chechen-Aul and Grozny-Shatoy auto route. The applicant's husband has been missing since.
- 15.27 In the case *Zakriyeva and Others v. Russia* (20583/04) Aslanbek Khamzayev was stopped by a group of armed men at a Russian military checkpoint near the village of Aldy. Khamzayev was ordered to leave his car and was put into one of several armoured personnel carriers. The carriers drove towards Grozny and entered the military commander's office in the Zavodsky District of Grozny. Khamzayev has not been seen since.
- 15.28 In the case *Khaydayeva and Others v. Russia* (1848/04) Suliman Malikov, Adlan Khatuyev, Sayd-Salu Akhmatov and Mansur Ismailov were stopped at a checkpoint manned by federal forces in Duba-Yurt, Chechnya. The men were detained and placed in a truck, which drove away escorted by an armored personnel carrier. The relatives of the detained men managed to establish that they had been detained by battalion no. 348 of the Ministry of the Interior. Over the next couple of years the authorities several times admitted that the five had been detained by federal forces, but nobody has been held responsible for the detention and the prosecutor's office responsible for the investigation denies that they were detained by federal forces.
- 15.29 In addition, there are a number of other well-documented examples of grave human rights violations that have taken place at checkpoints:
- 15.30 On November 1, 2002, twenty-five-year-old Bislan Shabazgeriev and his friend Aiub Ezerbiev traveled from the small village of Avtury, located in southern Chechnya, to the nearby town of

Shali to place a telephone call to his mother, who had recently been operated on in Rostov. On their way home, the taxi was stopped at a checkpoint near the entrance to Avtury, normally manned by a mixed group of Russian and pro-Moscow Chechen soldiers. The soldiers originally detained all five people in the taxi, but released three after a beating. Shabazgeriev and Ezerbiev were never seen again.¹²

15.31 Aпти Islamov (born 1977) and brother Said-Emin (born 1981), were detained and "disappeared" while driving home from work on October 14, 2000 together with Avdi Shapkhlov (born 1972) and Shamkhan Gadaev (born 1976). All four worked at the Ministry of Internal Affairs office in the Zavodskoi district of Grozny. Witnesses told a relative of the Islamovs' that the car was stopped by Russian soldiers at the Chernoreche checkpoint (No. 160) between 4:00 and 5:00 p.m. The soldiers reportedly contacted the Lenin district by walkie-talkie. Soldiers in masks arrived in an APC and a UAZ car soon after and took the four men away in the APC, while the Islamovs' car was driven away by other soldiers. Their whereabouts remain unknown.¹³

15.32 On the afternoon of March 24, 2001, Adam Makharbiev was detained while driving home from Grozny via Urus-Martan with his cousin Lema Makharbiev and another cousin. At the time of his "disappearance," twenty-eight-year old Makharbiev had recently found work with the Grozny District Department of Internal Affairs. His car was stopped at around 5:00 p.m. at a checkpoint located just outside Gekhi and near to the Makharbiev family home. At the time, the Yaroslavl OMON unit was based at the checkpoint. Relatives went by car to the checkpoint as soon they heard what had happened. When they arrived at the checkpoint, the three men were nowhere to be seen, but their Zhiguli Shesterka car was parked nearby, together with various military vehicles, including a Ural truck and a Tabletka. While the relatives were present, all the vehicles were driven away. They later learned from Adam Makharbiev's two cousins, who were released, that the vehicles had gone to Urus-Martan military commander's office. Adam Makharbiev remains missing.¹⁴

Denial of movement

15.33 Finally, the applicant submits that in several cases, people have been illegally denied passage through checkpoints along the Nalchik-Grozny road.

12 Human Rights Watch, "Into Harm's Way: Forced Return of Displaced People to Chechnya," January 2003, http://hrw.org/reports/2003/russia0103/#_Toc31432670 , (last accessed 29 September 2008).

13 Human Rights Watch, "Last Seen . . . : Continued "Disappearances" in Chechnya," April 2002, http://hrw.org/reports/2002/russchech02/chech0402-02.htm#P172_30022 , (last accessed 29 September 2008).

14 Ibid.

- 15.34 On 19 June, 1999, the applicant and his driver, were denied access to Kabardino-Balkaria through the Urukhs checkpoint located on the Federal highway by the traffic police manning the checkpoint, who acted on an oral instruction to refuse entry to Chechens traveling in private cars. In its judgment of 13 December, 2005, the European Court of Human Rights found that the traffic police at the Urukhs checkpoint had prevented the applicant from crossing the administrative border between Ingushetia and Kabardino-Balkaria and that the applicant's freedom of movement had been restricted in violation of Article 2 Protocol 4 to the Convention (*Timishev v. Russia*, Judgment of 13 December 2005, Para. 44).
- 15.35 On 27 January, 2000, Mr. Gartukayev, returned to Nalchik by car from a mission in the Chechen Republic. At about 5 pm the applicant's car was stopped at the checkpoint "Kurp-2" on the administrative border between Ingushetia and Kabardino-Balkaria. After three hours of checking the documents and identities of the applicant and his traveling companions, officers of the Kabardino-Balkaria State Inspectorate for Road Safety (ГИБДД МВД КБР) refused them entry to Kabardino-Balkaria on the ground of their Chechen ethnic origin. On 13 April 2001 the Nalchik Town Court found that on 28 September 1999 the Ministry of the Interior of Kabardino-Balkaria had issued Directive no. 1/220 (*Указание МВД КБР № 1/220*) on the procedure for crossing the administrative border of Kabardino-Balkaria by residents of the Chechen Republic. The regulation provided for stricter checks of vehicles and passengers of Chechen origin, as well as for the special registration of Chechens on the basis of migrants' cards. The Russian authorities acknowledged that the directive issued did not comply with the requirements for instituting such measures. The ECHR held on 13 December, 2005, that there had been a violation of Article 2, Protocol 4 (*Gartukayev v. Russia*).
- 15.36 Although the Court has already ruled in favor of the applicants in these cases, the systematic pattern of repeated arbitrary stops of ethnic Chechens and Ingush at checkpoints along the two roads at issue makes clear that the restriction of freedom of movement imposed by the checkpoint system continues unabated.

(ii) - In accordance with the Law : Arbitrary and Unlawful

- 15.37 It is submitted that the system of checkpoints has no proper legal basis. The text of Art.2, Prot.4 states any interference with or restriction of freedom of movement must be 'in accordance with the law'. If the actions of the authorities of the State fail to reach this standard then the interference will be arbitrary and a violation of the Convention.

- 15.38 The Court has explained that the phrase ‘in accordance with the law’ refers to the quality of the law. The object and purpose of the Convention require “that there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by [the Convention]”. *Malone v UK*, 1984, at para.67. The Court has held that this legal protection requires three elements.
- 15.39 Firstly, that the interference in question must have some basis in domestic law. *Sunday Times v UK* (1979) at paragraph 47. This can include primary legislation, secondary legislation or even professional rules. *Barthold v Germany* (1985) at para.46.
- 15.40 Secondly, that the law must be adequately accessible. “The citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case”. *Sunday Times v UK* (1979) at paragraph 49.
- 15.41 Thirdly, that the law must be “formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”. *Ibid*, At paragraph 49.
- 15.42 In the case of *Khan v UK* (2000) the Court found that there was no legal basis for covert police surveillance of the applicant. There was no statute giving the police authority to interfere with his Art.8 rights, and whilst there were guidelines from the Home Office, the Court concluded that they were ‘neither legally binding nor were they directly publicly accessible... There was, therefore, no domestic law regulating the use of covert listening devices at the relevant time.’ (at para.27).
- 15.43 Where the law permits the exercise of a discretion, the Court has held that the way in which that discretion is exercised must also be appropriately circumscribed. In *Silver v UK* (1983) the Court stated that: “A law which confers a discretion must indicate the scope of that discretion” (at para.88). In *Silver*, it was not necessary for the scope of the discretion to be outlined in primary legislation, but it had to be contained in other orders or instructions. In that case, the relevant government department had issued management guides and directives with which prison governors were obliged to comply.
- 15.44 In the previous case of *Timishev v Russia*, judgment of 13 December 2005, the government had sought to justify the actions of the police on the basis of Section 11(22) of the Police Act and

also by reference to an oral order given by the Deputy Head of the Public Safety Police of the Kabardino-Balkar Ministry of the Interior, which was never recorded in any traceable way. The Court considered that an oral order was not sufficient to satisfy the concept of legality in circumstances where it had not been formalized or recorded in such a way to enable the Court to undertake an analysis of it. In addition, the Russian government had given alternative reasons at a later stage. The Court concluded that the restriction was not in accordance with the law (at para.49).

- 15.45 In the instant matter, in the domestic courts, the government sought to argue that the legal basis for the stops was the Police Act. Article 11, paragraph 2 of The Police Act makes it clear that in order to check identification documents, search people or their vehicles, the police must have grounds to suspect that the person has committed a crime or that he or she is wanted by the authorities. Paragraph 22 of the same article, to which the authorities referred in the case of *Timishev v. Russia* and *Gartukayev v. Russia*, does not provide for permanent checkpoints of the nature of those along the Nalchik-Grozny roads. The paragraph refers to “temporary” restrictions on movement. A decision to restrict movement, with indication of concrete dates, should be issued by the Ministry of Transport of the Russian Federation, the authorities of the federal subject, or the local authorities depending on the importance of the road. It is obligatory to inform relevant organizations, officials and the public about such a decision.¹⁵
- 15.46 The Federal Law “On the Fight Against Terrorism” of 1998 grants the persons conducting a counter-terrorist operation the right “to take where necessary measures to temporarily restrict or prohibit the movement of vehicles and pedestrians on streets and highways, to prevent access by vehicles, including vehicles belonging to diplomatic missions and consular establishments, and citizens to particular areas and facilities, and also to tow away vehicles; to check that citizens and officials are in possession of identity documents, and in the event of the absence of such documents to detain the persons in question in order to establish their identity.”
- 15.47 These provisions only apply, however, in areas officially declared by a decree of the Russian Government as a zone of counter-terrorist operation. No such declaration has been made.
- 15.48 The Federal Law “On Counteraction of Terrorism,” which replaced the 1998 law “On the Fight Against Terrorism” and entered into force in March 2006, made clear that any declaration of a

15 See for example A.A. Rozhdestvina, “Commentary to the Law of the RF of 18 April 1991 No. 1026-1 'On Police',” 2007.

legal regime of an anti-terrorist operation, prompting *inter alia* the provisions mentioned above, must be immediately made public: “A decision to establish the legal regime of an antiterrorist operation (specifying, in particular the territory (a list of the objects) where such regime is to be established and a list of measures to be taken and of temporary restrictions) and a decision to cancel the legal regime of an antiterrorist operation shall be subject to immediate promulgation.” (Article 11, para 2).

- 15.49 The applicant submits that he is unaware of any decree or decision, whether under the Police Act, the law “On the Fight Against Terrorism” or the law “On Counteraction of Terrorism,” defining the geographical and/or temporal scope of the checkpoint system along the Nalchik-Grozny roads or any counter-terrorist operation in the North Caucasus, having been made public. The applicant therefore submits that there is no legal basis for the checkpoint system in the North Caucasus.
- 15.50 The applicant also submits that, as far as he knows, the authorities have not issued any administrative guidance to personnel manning the checkpoints or provided them with adequate training or orders to ensure that they carry out their responsibilities in strict compliance with Russian legislation. Individual officers do not know on what legal basis they can stop and search individuals. When they do stop and search individuals they fail to inform the people stopped of the reasons for the inspection and on what legal basis they are acting.
- 15.51 The law must be sufficiently clear in its terms to give individuals an adequate indication as to the circumstances and conditions in which public authorities are entitled to resort to stopping and searching vehicles on the road between Nalchik and Grozny. Neither the Russian Government, the police involved in the operation nor the citizens who were stopped appear to know the legal basis for the searches. Without such a clear legal basis, this has led to a situation where individuals are stopped and searched on a discriminatory basis rather than for any appropriate reason provided for within the Convention. Consequently, the process is not in accordance with any law, and is arbitrary in nature.

(iii) – Lack of Legitimate aim

- 15.52 Freedom of movement under the Convention is not absolute. Paragraph 3, Article 2 of Protocol 4 limits permissible restrictions to those that “are necessary in a democratic society in the interests of national security or public safety, for the maintenance of public order, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and

freedoms of others.”

- 15.53 In *Denizci and Others v. Cyprus* (25316-25321/94 and 27207/95), the Court held that interference with the freedom of movement “breaches Article 2 of Protocol No. 4 unless it pursues one of the legitimate aims set out in Article 2 §§ 3 and 4 of Protocol No. 4 and is, in addition, necessary in a democratic society to achieve the aim or aims in question.” para. 405.
- 15.54 The applicant admits that in certain circumstances, authorities might have legitimate grounds for establishing a temporary system of checkpoints. Such grounds might have been present during the initial active phase of the counter-terrorist operation in Chechnya.
- 15.55 The applicant submits, however, that the extensive and intrusive nature of the checkpoints in such a large territory as the North Caucasus, however, was not justified.
- 15.56 The applicant further submits that the security situation in Chechnya has changed significantly since that time. In assessing the security situation in the North Caucasus as of 2006 and thereafter, the applicant relies on statements by high-ranking Russian officials and statistics provided by official Russian institutions:
- 15.57 The Russian authorities have at no point since ratification of the European Convention of Human Rights declared a state of emergency or martial law in the North Caucasus.
- 15.58 During a press conference in the Kremlin on January 31, 2006, then President of Russia, Vladimir Putin stated that he believed that the anti-terrorist operation in Chechnya was coming to an end.¹⁶
- 15.59 In an interview with Interfax on October 5, 2006, then prime minister of Chechnya, Ramzan Kadyrov said: “You get the impression that the press and the so-called observers and analysts are starting to get bored with the lack of reports from Chechnya about new acts of terror, shooting and murders. But they will have to get used to the fact that Chechnya is a peaceful region. I can assure you that Chechnya is calmer than any other part of the Southern Federal District.”¹⁷
- 15.60 In an interview with Echo Moskvyy on December 31, 2006, President of the Republic of Ingushetia, Murat Zyazikov said: “It is impossible to withhold information, especially in this

16 Interfax, “Counter-terrorist operation in Chechnya almost complete – Putin,” 31 January ,2006.

17 BBC Monitoring Former Soviet Union, “Chechnya’s Kadyrov tells Interfax about successes, problems ,” 5 October, 2006.

century. I believe that Ingushetia today is indeed a region of national accord, political stability and economic dynamism. The situation in the south of our country is not easy, but this does not mean that bullets are whizzing by everywhere, that there is one big emergency there. This is absolutely not true. The south of our country is becoming attractive for investors, after all. I don't think that there is criminal underground in our republic."¹⁸

- 15.61 Speaker of the People's Assembly of the Chechen parliament, Dukuvakah Abdurakhmanov, stated on October 2, 2007 that “We can now certify that the operation has been completed. There are generals who would like to continue the counterterrorist operation in the Chechen Republic, but this would not be interesting or profitable for us.”¹⁹
- 15.62 According to data from the Ministry of Interior (MVD) of the Russian Federation, analyzed by the Krasnoyarsk-based think tank *Region*, the republics of Chechnya, Dagestan and Ingushetia had the lowest crime-rates in Russia in the period 2002-2007. MVD had recorded an average of 39 crimes per 10,000 residents for Ingushetia. In Chechnya and Dagestan there was an average of 55 and 52 crimes respectively.²⁰
- 15.63 Apparent changes in the security situation should at the very least have prompted a re-evaluation of the checkpoint system and its scope and the number of checkpoints should have been reduced to ensure that restriction of freedom of movement is not greater than what is absolutely necessary.
- 15.64 Particularly in light of the widespread abuses of human rights which take place when persons are stopped, there is no reasonable justification for maintaining the checkpoints in the absence of any evidence that they serve a legitimate purpose.

18 BBC Monitoring Former Soviet Union, “President of Russia's Ingushetia says no terrorist underground in republic,” 31 December, 2006.

19 BBC Monitoring Former Soviet Union, “Chechnya's counterterrorist operation completed – speaker,” 2 October, 2007.

20 The Moscow Times, “Caucasus Cities Called the Safest,” 27 August, 2008.

II. VIOLATION OF ARTICLE 14 IN CONNECTION WITH ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

15.65 The applicant contends that the checkpoint system in the North Caucasus constitutes a violation of Article 14 in conjunction with Article 2, Protocol 4, which states:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

15.66 It is submitted that the implementation of the checkpoint system discriminates against people of Chechen and Ingush ethnicity because these people are subjected to checks, searches, questioning and other conduct that is more extensive and intrusive than that to which people of other ethnicities or subjected. No justification is possible for such a difference in treatment on the basis of ethnicity.

15.67 The Court has interpreted Article 14 so that “discrimination means treating differently, without an objective and reasonable justification, persons in relatively similar situations.” *Willis v. the United Kingdom*, No. 36042/97, Para. 48 (11 June 2002). A difference of treatment has no “objective and reasonable justification if it does not pursue a ‘legitimate aim’ or if there is not a ‘reasonable relationship of proportionality between the means employed and the aim sought to be realized.’” *Willis* at Para. 39. The *Belgian Linguistics* Case established that “[a] difference in treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.” *Belgian Linguistics Case*, No. 2, Para. 10 (23 July 1968).

15.68 It is submitted that the restrictions upon freedom of movement clearly engage Art.2 of Protocol 4 such as to allow for consideration of a breach of Article 14.

15.69 In *DH v Czech Republic*, Judgment of 13 November 2007, the Grand Chamber reiterated that “The Court has already accepted in previous cases that a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group (*Hugh Jordan*, cited above, § 154; and *Hoogendijk*, cited above).” At paragraph 184.

15.70 The Court has also held that no difference in treatment which is based exclusively or to a

decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures (*Timishev v. Russia*, judgment of 13 December 2005 at paragraph 58).

15.71 It is submitted that the evidence cited above demonstrates a clear difference in treatment between (i) Chechens and Ingush, and (ii) those of a different ethnicity with regard to the operation of the system of checkpoints between Nalchik and Grozny. Such difference in treatment is rooted in the ethnic differences of the persons stopped. It cannot be objectively justified and is consequently unlawful. In particular, the following evidence is reiterated:

- The evidence of Angela Islamova as to police using racial slurs (above, at para.14.8).
- The evidence of Mikhail Albogachiev that only Chechen vehicles are stopped (above, at para. 14.9).
- The evidence of Tutush Aduyev-Vokayev that the police treat non-Chechen vehicles differently (above, at para.14.10).
- The independent third party evidence of discrimination against Chechens from non-governmental organisations, the Council of Europe and the United Nations (above, paras 14.11 to 14.17).
- The evidence of the testers as to how they were treated (above, paras 14.18 to 14.23).
- The conclusions of the expert witness (above, para.14.24).

15.72 The Court has held that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified:

“Where an applicant alleging indirect discrimination thus establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts to the respondent State, which must show that the difference in treatment is not discriminatory (see, *mutatis mutandis*, *Nachova and Others*, cited above, § 157). Regard being had in particular to the specificity of the facts and the nature of the allegations made in this type of case (*ibid.*, § 147), it would be extremely difficult in practice for applicants to prove indirect discrimination without such a shift in the burden of proof.” *DH v Czech Republic*, Grand Chamber judgment of 13 November 2007, at paragraph 189.

15.73 Consequently, there has been a violation of Art.14 of the Convention taken with Art.2 of the Fourth Protocol. The checkpoint system on the Nalchik-Grozny roads lacks a legal basis and a

legitimate aim. In the absence of any legitimate justification and proper legislation, the applicant submits that the checkpoint system is arbitrary and discriminatory.

IV. STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION

A. The applicant has exhausted all domestic remedies and this application has been filed within six months of the final decision

16.1 This application is submitted in compliance with Article 35 § 1 of the Convention, which provides:

The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.

16.2 On April 23, 2008, the applicant's representative sent an initial complaint letter by mail, which she also faxed to the Court on the same day. This initial complaint letter was filed within six months of the final decision issued by the Civil Chamber of the Moscow City Court dispensing with the domestic legal claims of the applicant.

16.3 The applicant has exhausted domestic remedies through his appeal to the Civil Chamber of the Moscow City Court. The date and nature of national legal proceedings are therefore listed below:

- a) Final Decision in the Freedom of movement Case, Cassational Ruling, Case No. 33-20600, the Civil Chamber of the Moscow City Court, issued on 25 October 2007. The Cassational Court decision dismissed Mr Timishev's appeal and upheld the District Court judgment;
- b) Judgment of the Zamoskvoretsky District Court of Moscow of 11 July 2007, Freedom of movement Case N 2-1904-2007/4

17.1 Other Decisions – See attached Index of Exhibits.

18.1 Is there or was there any appeal or other remedy available to you which you have not used? No.

V. STATEMENT OF THE OBJECT OF THE APPLICATION

The applicant seeks a declaration from the Court that he suffered a violation of Article 2, Protocol 4, and the aforementioned right taken together with Article 14. The applicant will also seek just satisfaction under Article 41 (pecuniary and non-pecuniary damages, plus legal costs and expenses) as well as general measures to dismantle or reduce the discriminatory checkpoint system and combat systematic ethnic profiling in the Northern Caucasus region.

The applicant will submit detailed claims in connection with their claim for just compensation at a later date.

VI. STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

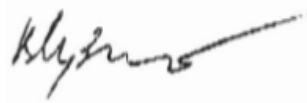
20.1 The applicant affirms that he has submitted no complaint to any other international procedure of investigation or settlement concerning the incidents which have given rise to this application.

VII. LIST OF DOCUMENTS

21. See attached Index of Exhibits

VIII. DECLARATION AND SIGNATURE

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.



Vladimir Luzin

Place: Nizhny Novgorod, Russia

Date: 22 October 2008