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

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

REQUÊTE  
*APPLICATION*

**Makhashev and Others 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*

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## SUMMARY OF THE CASE

This case is brought by three brothers, Ibragim, Adam, and Islam Makhachev, who are victims of racially-motivated detention, torture, and ill-treatment at the hands of Russian police officers in the City of Nalchik in the Republic of Kabardino-Balkaria. The Makhachev brothers are citizens of the Russian Federation and are ethnic Chechens. Although the Makhachev brothers filed complaints with the local authorities to investigate and prosecute these racist crimes, they have been denied any remedy before Russian courts.

On the night of 14-15 November 2004, Ibragim and Adam Makhachev were unlawfully stopped by Russian police officers outside the Forum Concert Hall in Nalchik, driven to a police station, and detained. A fight broke out earlier in the night club and Ibragim had been stabbed and wounded. In stopping the brothers, the officers neither inquired into the brothers' identities nor asked what happened that night. Rather, the officers detained the Makhachev brothers solely on account of their Chechen ethnicity. At the station, the police subjected Ibragim and Adam Makhachev to repeated beatings and kickings over several hours and even struck them with rifle butts in the face and vital organs. Both Ibragim and Adam lost consciousness and bled profusely from their wounds. Their brother Islam Makhachev came to the police station in search of them. Without cause, the police detained Islam and subjected him to torture and ill-treatment.

The police officers unlawfully detained and tortured the Makhachev brothers solely because of their Chechen ethnicity. The officers had no other reason to detain the brothers, whom they did not question, and they released the brothers without charge. But throughout the Makhachev brothers' detention and torture, the police shouted racist comments at them and threatened the brothers not to complain about what happened that night.

The police released Adam, then Ibragim and Islam Makhachev in the middle of the night of 14-15 November 2004. Despite the police threats, the brothers went to the City Prosecutor's Office that night and lodged complaints to prompt investigation and prosecution of the racist violence they had suffered. The brothers underwent expert forensic medical examinations on 15 November 2004, documenting their torture and ill-treatment at the hands of the police.

The City Prosecutor's Office conducted a biased and delayed investigation into the complaints filed by the Makhachev brothers. On 13 April 2006, nearly one and a half years after the incident, the Nalchik City Prosecutor's Office closed the investigation and decided not to initiate criminal proceedings against the police officers who had unlawfully detained, tortured, and maltreated the brothers motivated by discriminatory ethnic hatred. The Makhachev brothers appealed this decision until the Criminal Chamber of the Supreme Court of the Republic of Kabardino-Balkaria issued a final order dismissing their appeals on 3 November 2006.

Through these events, the Russian Government has violated the Makhachev brothers' Convention rights motivated by racial animus towards their Chechen ethnicity. The Respondent State is therefore in breach of Articles 3, 5, and 13 of the European Convention of Human Rights. Furthermore, the Respondent State has breached Article 14 taken in conjunction with substantive protections of Article 3, with the procedural protections of Articles 3 and 13, and with Article 5.

## I. THE PARTIES

### A. THE APPLICANTS

#### *Applicant 1*

1. **Surname: Makhachev**
2. *First name(s):* Ibragim Magamedovich  
*Sex:* male
3. *Nationality:* Citizen of the Russian Federation of Chechen ethnicity
4. *Occupation:* Not employed
5. *Date and place of birth:* 19.07.1972, USSR
6. *Permanent Address:* 19 – 24 Balkarskaya St., Nalchik, Russia.
7. *Tel. No.:* +7-928-895-7105.
8. *Present address (if different from 6.):* as above
9. *Name of Representatives:*<sup>1</sup>
  - (1) James A. Goldston, Julia Harrington, Mirna Adjami, Open Society Justice Initiative;
  - (2) Vladimir Luzin
  - (3) Ilyas Timishev
10. *Occupation of Representatives:*
  - (1) Executive Director,<sup>2</sup> Senior Legal Officer, Legal Officer and Attorneys-at-Law;
  - (2) Attorney; Lawyer, Nizhny Novgorod Committee Against Torture
  - (3) Lawyer, Nalchik
11. *Address of Representatives:*
  - (1) Open Society Justice Initiative, Oktober 6.u. 12. 7th Floor, H-1051 Budapest, Hungary
  - (2) NN Committee Against Torture Office 303, 11 Kozhevnaya St. Nizhny Novgorod, 603001 Russia
  - (3) P. O. Box 58, Nalchik, 360051 Russia
12. *Tel No.*
  - (1) +1-212-548-0347
  - (2) +7-831-433-1404
  - (3) +7-903-492-3282

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#### *Applicant 2*

1. **Surname: Makhachev**
2. *First name(s):* Adam Magamedovich  
*Sex:* male
3. *Nationality:* Citizen of the Russian Federation of Chechen ethnicity
4. *Occupation:* Food seller
5. *Date and place of birth:* 30.10.1974, USSR

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<sup>1</sup> Letters of authority for the three applicants indicating James A. Goldston, Julia Harrington, Mirna Adjami, Vladimir Luzin and Ilyas Timishev as their legal representatives have already been submitted to the Court. The contact information concerning the legal representatives, indicating their occupation, address, and telephone numbers, pertains to each of the three applicants.

<sup>2</sup> Mr. James A. Goldston is on temporary leave as Executive Director of the Open Society Justice Initiative from August 2007 – August 2008.

6. *Permanent Address:* 19 – 24 Balkarskaya St., Nalchik, Russia.
  7. *Tel. No.:* +7-918-722-2417.
  8. *Present address (if different from 6.):* as above
- 

*Applicant 3*

1. **Surname:** Makhashev
2. *First name(s):* Islam Magamedovich  
*Sex:* male
3. *Nationality:* Citizen of the Russian Federation of Chechen ethnicity
4. *Occupation:* Not employed
5. *Date and place of birth:* 12.04.1979, USSR
6. *Permanent Address:* 19 – 24 Balkarskaya St., Nalchik, Russia.
7. *Tel. No.:* +7-928-691-2017.
8. *Present address (if different from 6.):* as above

**B. THE HIGH CONTRACTING PARTY**

13. The Russian Federation

**II. STATEMENT OF THE FACTS**

This case is brought by three applicants: Ibragim Makhashev (first applicant), Adam Makhashev (second applicant) and Islam Makhashev (third applicant).

Ibragim, Adam, and Islam Makhashev are brothers who were born in Grozny, the Republic of Chechnya, in the former Union of Soviet Socialist Republics in 1972, 1974, and 1979 respectively. They are citizens of the Russian Federation and are ethnic Chechens. They lived in Grozny until the outbreak of the armed hostilities destroyed their family's house in October 1996. This forced them to move to Nalchik, Republic of Kabardino-Balkaria, where they have lived continuously since 1996. Of the three brothers, only Adam Makhashev is married. Adam Makhashev and his wife, Salihat (Sonya) Huseevna Gazaeva, have a six-year-old son.

**A. RUSSIAN POLICE OFFICERS DETAIN AND VIOLENTLY ASSAULT THE MAKHASHEV BROTHERS ON 14-15 NOVEMBER 2004**

On the evening of 14 November 2004, Ibragim and Adam Makhashev went to a night club at the State Concert Hall in Nalchik. Some of the patrons of this establishment were intoxicated, including Mr. Shavlakhov, an acquaintance of Ibragim and Adam Makhashev, who is an ethnic Chechen. Mr. Shavlakhov provoked an argument with Ibragim Makhashev and they began to quarrel verbally and physically. Other patrons separated the two and Ibragim believed that their confrontation was over. But Mr. Shavlakhov turned and stabbed Ibragim Makhashev with a knife in Ibragim's buttocks. Mr. Kuzhev, a security guard of the night club who is ethnically Kabardinian, was also lightly wounded by a knife either by Mr. Shavlakhov or by one of Mr. Shavlakhov's friends. (Ex. 1, § 6; Ex. 2, § 6).

Neither Ibragim nor Adam Makhashev was ever in possession of a knife during the altercation. (Ex. 1, § 6; Ex. 2, § 6). Although Ibragim Makhashev was wounded himself, he helped the security guard, Mr. Kuzhev. Mr. Kuzhev later testified to the police that Ibragim and Adam Makhashev were not responsible for either provoking the fight or wounding anyone that evening. (Ex. 1, § 6).

Ibragim and Adam Makhashev exited the night club after 19:00. Local police officers, presumably on the scene in response to the stabbing perpetrated by Mr. Shavlakhov and his associates at the night club, stopped them several blocks away from the night club. The police officers did not ask to see Ibragim or Adam's identification documents and did not inquire into their involvement in the incident in the night club. Believing that the police must have stopped them in relation to the night club incident, the Makhashev brothers explained that they were not responsible for any fighting at the night club, but the police officers did not listen to them. Ibragim Makhashev told the police officers that he was wounded and implored them to allow him to seek medical attention, but to no avail. The police officers took Ibragim and Adam Makhashev to the second city police station of Nalchik (GOM) at Nogmov Street, where they arrived at around 20:00. (Ex. 1, § 9; Ex. 2, § 8). Adam Makhashev called his brother Islam Makhashev to inform Islam that he and Ibragim were being detained by the police. (Ex. 1, § 8; Ex. 2, § 8).

Police officers began to beat Ibragim and Adam Makhashev as they escorted the two brothers to different rooms on the third floor of the police station. (Ex. 1, § 9, Ex. 2, § 8). For over three hours, the police subjected Ibragim and Adam Makhashev to repeated beatings and kickings, striking them with rifle butts in the face and vital organs. Both Ibragim and Adam Makhashev lost consciousness several times and bled profusely from the wounds inflicted upon them by the police at the station that evening. Throughout the unlawful detention, torture, and ill-treatment of the Makhashev brothers, the police officers shouted racist remarks, revealing that the police were motivated by racial animus towards the brothers because of their Chechen ethnicity.

### ***Ibragim Makhashev***

When Ibragim Makhashev was in a room on the third floor of the police station without his brother, police officers pulled his jacket over his head, knocked him off his feet, and started to kick him. (Ex. 1, § 10). An officer struck Ibragim with a rifle butt, injuring his face. Ibragim lost consciousness. When Ibragim regained consciousness, the police officers were yelling racist remarks, insulting and disparaging him on account of his Chechen ethnicity. (Ex. 1, § 10).

Ibragim recognized some of the criminal investigation officers who were beating him, including Officers Alchagirov, Arakhov, and Boliev. (Ex. 1, § 11). These officers were all ethnic Balkarians and Kabardinians. The officers brought Ibragim to a neighbouring room, where Ibragim saw Adam covered with blood lying on the floor. Ibragim then witnessed Officers Boliev and Alchagirov kicking Adam. The officers took Ibragim back to a separate room and continued to beat him.

Mr. Apti Ratsuev, a policeman of the Northern Caucasus Department for Combating Organized Crime, came to the police station on the night of 14-15 November 2004. There, he met and spoke with Ibragim Makhashev. (Ex. 24). Ibragim pleaded with

Mr. Ratsuev to help him and his brother Adam, explaining that they were being brutally beaten by the police even though they were innocent. Mr. Ratsuev is an ethnic Chechen and he and Ibragim spoke to each other in the Chechen language so that the other police officers were not able understand what they were saying. Mr. Ratsuev later testified to the prosecutorial investigators confirming that he had seen Ibragim Makhachev at the police station that night and that Ibragim Makhachev pleaded with him for help because he and his brother had been detained and were being subjected to torture and violent abuse by the police. Upon exiting the police station, Mr. Ratsuev saw Islam Makhachev waiting outside and recommended that he go to the Prosecutor's Office to help Ibragim and Adam. This shows that Mr. Ratsuev could not do anything to help the Makhachev brothers and that he was aware that illegal conduct was taking place in the police station. (Ex. 24).

At around 23:00, Ibragim was brought to the office of Officer Alchagirov, who showed Ibragim the affidavits of the night club staff, who testified that neither Ibragim nor his brother Adam was an accessory responsible for the wounding of Mr. Kuzhev, the security guard of the club. (Ex. 1, §§ 11, 13). Even though the officers knew Ibragim and Adam Makhachev were innocent, they continued to beat them. Ibragim Makhachev warned the officers that he would complain of their abusive treatment. The officers threatened him in response. Mr. Alchagirov told Ibragim: "If you or your brother tries to complain. . . we will kill you here. They won't do anything to us for Chechens." (Ex. 1, § 13).

In Officer Alchagirov's office, a police officer in a camouflage uniform struck Ibragim Makhachev with a rifle butt on his spine and Ibragim again lost consciousness. (Ex. 1, § 13). When he regained consciousness, Ibragim felt like he was choking from blood and pleaded with the officers to get him urgent medical care. A woman doctor saw Ibragim and stated that he needed to be brought to the hospital, but the police refused to let him go to the hospital and the doctor left the room. (Ex. 1, § 14).

### ***Adam Makhachev***

In the meantime, police officers had taken Adam Makhachev to a separate room on the third floor of the police station and began beating him and shouting racist insults at him. (Ex. 2, § 8). Adam lost his consciousness as he was beaten by 5 or 6 police officers who kicked him and beat him with truncheons. (Ex. 2, § 10). Adam pleaded with the officers not to hit him in his stomach because he has an ulcer. In response, the officers began to hit Adam deliberately in his stomach. (Ex. 2, § 11).

The officers beat Adam Makhachev repeatedly for about three hours. Then, after returning only some of Adam Makhachev's belongings to him, the officers released him. (Ex. 2, §12). Upon his release at the police station, Adam Makhachev saw that his brother Islam was there waiting for him, along with Adam's wife Sonya Gazeeva, and her sister Askerhan Kadyrova.

After Islam Makhachev had received a call from his brother Adam telling him that Adam and Ibragim were being detained, Islam picked up Adam's wife Sonya (Salihat) Gazeeva, and her sister, Askerhan Kadyrova, and drove to the police station. (Ex. 3, § 7). Askerhan Kadyrova had earlier received a phone call from a friend who is a police officer informing her that her sister's husband and his brother were detained at the police station. (Ex. 5, § 8).



When Islam Makhachev, Sonya Gazeeva, and Askerhan Kadyrova arrived at the police station, they inquired about Ibragim and Adam Makhachev, but the police refused to give any information about the brothers. Sonya Gazeeva pleaded that she was concerned for the health of Adam because of his stomach ulcer and asked that the police officers provide him medical care. (Ex. 4, § 10; Ex. 5, § 13). The police officers threatened to break Sonya Gazeeva's arm if she did not leave the police station. Sonya Gazeeva and Askerhan Kadyrova left the building and waited outside. (Ex. 4, § 11; Ex. 5, § 12).

#### ***Doctor's Visit to the Police Station***

An ambulance arrived at the police station and a doctor entered the building. Mr. Apti Ratsuev, the policeman of the Northern Caucasus Department for combating Organized Crime who saw and spoke with Ibragim Makhachev at the police station on the night of 14-15 November 2004, observed the ambulance arrive, as well as the detention, torture and beating that the Makhachev brothers were subjected to that night at the police station. (Ex. 24). Sonya Gazeeva and Askerhan Kadyrova also witnessed the arrival of the doctor and the doctor's entry and exit from the police station. (Ex. 4, § 12; Ex. 5, § 14).

When the doctor emerged from the building about 30 minutes later, Sonya Gazeeva and Askerhan Kadyrova approached her and asked about Ibragim and Adam Makhachev. The doctor explained that she had examined Ibragim Makhachev only and that he was in a critical state and needed urgent medical care at the hospital, but that the police officers would not release him. Sonya Gazeeva pleaded with the doctor to examine Adam. The doctor returned inside the police station, but exited about ten minutes later, explaining that the police refused to allow her to examine Adam. (Ex. 4, § 13-14; Ex. 5, § 15-16). The doctor warned that she could not be professionally responsible for the consequences of not putting Ibragim in the hospital: "I had no right to leave him without medical care," the doctor explained, "but he was not given over to me." (Ex. 4, § 14, Ex. 5, § 16, Ex. 23, §§ 2-3).

#### ***Islam Makhachev***

Upon seeing Adam Makhachev leave the police station bloodied and beaten, Islam asked the police officers why they had harmed Adam: "For what have you beaten him so cruelly?" (Ex. 3, § 8). This angered the police officers, who shouted racist remarks at Islam and then kicked him with their feet and struck him with a rifle butt outside the police station. (Ex. 3, § 8). Sonya Gazeeva ran to help Islam and one of the officers of medium height who wore a mask and camouflage clothing kicked her in her stomach. Sonya Gazeeva lost consciousness and fell down the stairs of the police station. (Ex. 4, § 18).

The officers then pulled Islam Makhachev into the police station. (Ex. 3, § 8). The police officers beat Islam and dragged him up the stairs. Islam saw his brother Ibragim wounded on the floor in a room on the third floor. The officers brought Islam to a room and at least five police officers shouted racist remarks at him and continued to beat him by kicking, punching, and slapping him. (Ex. 3, § 9).

#### ***Prosecutor's Office the Night of 14-15 November 2004***

Adam Makhachev witnessed the police officers assault his brother Islam and take Islam into the police station. (Ex. 2, § 14). Upon his release from the police station,

Adam also witnessed the police officers hitting his wife Sonya Gazaeva, who fell down the stairs unconscious. (Ex. 2, § 14).

When Sonya Gazaeva regained consciousness, she went with Adam Makhachev and Askerhan Kadyrova from the police station directly to the Prosecutor's Office. Adam felt so humiliated that he wanted to file a complaint against the police officers immediately and have the Prosecutor see the terrible state of the abuse that he had suffered at the hands of the police that night. (Ex. 4, § 14).

Later, Ibragim and Islam Makhachev were released from the police station and they joined Adam Makhachev, Sonya Gazaeva, and Askerhan Kadyrova at the Prosecutor's Office in the middle of the night. (Ex. 1, § 16; Ex. 3, § 14). Although Islam had arrived at the police station healthy and unhurt, he exited the police station severely beaten and bruised. Mr. Vadim Dyshekov, a policeman of the second police station of Nalchik who allegedly did not take part in the mistreatment that night, testified that he saw Islam Makhachev on the night of 14 November 2004 outside the police station, confirming that he had observed Islam to be "without any injuries" prior to his detention at the station. (Ex. 25, § 3). Later that night when Sonya Gazaeva and Askerhan Kadyrova saw Islam at the Prosecutor's Office, Askerhan Kadyrova observed that Islam was mutilated and covered with blood: "I remember it well that Islam was all the time spitting out blood and running to the toilet." (Ex. 5, § 22; Ex. 39).

The prosecutor on duty that night was Mr. Emkuzhev. (Ex. 1, § 16). The deputy City Prosecutor, Mr. Tkhakahov, came to the Prosecutor's Office that night as well, as did Mr. Boliev, the head of the Nalchik City Police Criminal Investigation Department, who had participated in the beating of the Makhachev brothers at the police station. (Ex. 2, § 16). Mr. Tkhakahov had approached Sonya Gazaeva, Adam Makhachev's wife, at the Prosecutor's Office that night and tried to convince her that the Makhachev brothers should not file a complaint against the police. (Ex. 4, § 22). Sonya Gazaeva pleaded with the Makhachev brothers not to file a complaint, but the brothers insisted on proceeding with filing complaints about the arbitrary detention, torture, and mistreatment they suffered at the hands of police officers. (Ex. 4, § 23).

On 15 November 2004, Ibragim, Adam, and Islam Makhachev went to a forensic medical expert to have their wounds examined and documented. (Ex. 1, § 18, Ex. 2, § 15, Ex. 3, § 15). The doctor documented that all of them had multiple wounds and bruises all over their bodies from kicks and blows. The Makhachev brothers took blood tests for alcohol to prove that they had not been drinking the previous night. (Exs. 28, 30, 32).

The Makhachev brothers took pictures of the injuries that they had suffered on the night of 14-15 November 2004. (Exs. 37, 38, 39).

On 15 November 2004, Ibragim Makhachev lost consciousness and went to the Neurosurgical Department of the Central Hospital of the Republic of Nalchik for emergency care. The tomography showed that Ibragim Makhachev had a fracture on his left malar (cheek) bone. Ibragim was operated on for five hours and received implants of two titanium plates. Ibragim Makhachev also had a cerebral concussion, multiple wounds, bruises, and abrasions. He stayed for a total of 23 days in the hospital for comprehensive treatment. Ibragim Makhachev still continues his out-patient treatment in the hospital as a consequence of the wounds inflicted upon him by the police officers during the night of 14-15 November 2004. (Exs. 35, 51-53).

In sum, all three of the brothers were detained, tortured, and mistreated at the police station on the night of 14-15 November 2004 and were released that same night without any charges being brought against them. They all suffered severe abuse for no reason other than the police officers' desire to harm them because of their Chechen ethnicity.

The Makhashev brothers pursued their complaints against the police officers for the arbitrary detention, torture, and mistreatment that they suffered on the night of 14-15 November 2004. Their pursuit of a criminal investigation and charge is detailed below in Section II.B at §§ 14.34-14.53 on their exhaustion of domestic remedies while pursuing their case. During the investigation, Mr. Tkhakahov made insulting comments to the Makhashev brothers, disparaging them because they are Chechen, and threatened them for trying to obtain justice. (Ex. 2, § 20).

Throughout their abuse at the hands of the police officers stemming from the events of the night of 14-15 November 2004, the Makhashev brothers have been the victims of racist insults by the police officers based on their Chechen ethnicity. Excerpts of the racist comments directed against the Makhashev brothers throughout the incident are detailed separately in Section II.C on evidence of discrimination below at §§ 14.54-14.85. Sonya Gazaeva and Askerhan Kadyrova are witnesses to the racist insults that the police officers shouted at the Makhashev brothers.

#### ***Related events after 14 November 2004***

On 1 June 2005, over six months after the events of 14-15 November 2004, Adam Makhashev was summoned to the Prosecutor's Office. The police arrested Adam Makhashev at 12:05 on 1 June 2005 and detained him until 17:00 on 2 June 2005. (Exs. 18, 20). The Russian authorities have instituted a criminal charge before the courts against Adam Makhashev, alleging that he struck Mr. Boliev, one of the officers involved in the racist detention and ill-treatment of the Makhashev brothers, in the head on the night of 14-15 November 2004. Adam Makhashev maintains his innocence. The timing of the charge suggests that the authorities fabricated these charges against Adam because he and his brothers pursued their criminal complaints against the police for the abuse they suffered on the night of 14-15 November 2004. In the words of Adam Makhashev:

I was detained from 12:00 of 1 June to 17:00 of 2 June 2005. Then I was unexpectedly released. I believe that they tried to intimidate, degrade and break me to drop pursuing charges against the police. The fabricated case against me, which was based only on the testimonies of Mr. Boliev's subordinates who tortured us, has been transferred to court. And even if there is no evidence, the case remains pending. I do not know what will happen to me as a result of these pending charges, which are causing me and my family additional stress.

(Ex. 2, § 18).

Ibragim Makhashev agrees that the charges against Adam were belatedly brought against him as a result of the brothers' pursuit of the criminal complaint against the police for the abuse they suffered on the night of 14-15 November 2004:

This case was fabricated in order to pressure us to stop complaining about our abuse to

different agencies. Nothing about this charge makes sense. They would never have released Adam on 14 November 2004 if he had actually tried to harm Mr. Boliev, the head of the criminal investigation department in his own office in the presence of witnesses. How could Mr. Boliev have kept silent for so long if this were true. Why did his subordinates wait so long to give statements against my brother? Everything indicates that these charges were trumped up against Adam by those who were in fact responsible for torturing us and whom we were trying to get prosecuted for the harm they inflicted on us.

(Ex. 1, § 23).

Adam Makhachev's stomach ulcer worsened in June 2005 as a result of the stress he suffered from his arrest. On 3 June 2005, Adam started bleeding extensively and was hospitalized. Adam spent a month and a half in the Republican Hospital in Nalchik. (Ex. 19, 36).

The court proceedings in connection with the charge brought against Adam Makhachev remain pending before the court in Nalchik.

## **B. PROCEDURAL HISTORY OF THE MAKHASHEV BROTHERS' PURSUIT OF CRIMINAL INVESTIGATION AND PROSECUTION AND EXHAUSTION OF DOMESTIC REMEDIES**

On 25 November 2004, the Nalchik City Prosecutor's Office opened a criminal investigation, case number 21/223-04, based on the complaints filed by the three Makhachev brothers on the night of 14-15 November 2004. (Ex. 22). In their testimony given at the Prosecutor's Office on that night, when they were visibly suffering from fresh blood and bruises from the abuse they had just endured, Ibragim, Adam, and Islam Makhachev identified Officers Boliev, Arahov, and Alchagirov as some of the perpetrators of their assault.

The Makhachev brothers tenaciously pursued their case before the prosecutorial authorities and the Russian courts for two years. They did so despite the fact that on numerous occasions throughout their abuse on the night of 14-15 November 2004, Russian authorities warned them that it would be pointless for them, as ethnic Chechens, to attempt to pursue a criminal complaint against the officers. As Ibragim states:

I warned Officer Boliev and the other policemen that I would complain about their treatment and abuse of the Makhachev brothers on the night of 14 November 2004]. But Mr. Boliev replied that he was a relative of the Minister of the Interior of Kabardino-Balkaria Mr. Khachim Shogenov, and even if he killed me or Adam, they would do nothing to him "for the Chechens." (Ex. 1, § 12).

Mr. Boliev similarly warned Adam Makhachev not to pursue a criminal complaint. (Ex. 2, § 13). Mr. Tkhakachov, the Deputy Prosecutor, tried to persuade Adam's wife Sonya Gazaeva to convince her husband and his brothers not to pursue a criminal complaint. As Sonya Gazaeva has testified, Mr. Tkhakachov told her: "I know that the Makhachev brothers are going to file a complaint, so make them reject this idea. It will be only worse for them. They won't get anything. . . Take away your guys and take care of

them.” (Ex. 4, § 22). Revealing his bias against ethnic Chechens, Mr. Tkhakahov disparaged Sonya Gazaeva, an ethnic Balkarian, for marrying Adam: “Why did you, a Balkarian, get connected with these Chechens? They won’t get anything here.” (Ex. 4, § 25).

Russian authorities continued to threaten and taunt the Makhashev brothers to dissuade them from pursuing their criminal complaint throughout the two years of the investigation. According to Adam Makhashev: “The Deputy Prosecutor of Nalchik, Murat Tkhakahov, made insulting comments towards me and my brothers during the course of the investigation, disparaging us because we are Chechens and threatening us for trying to obtain justice.” (Ex. 2, § 20).

After opening criminal complaint case number 21/223-04 on 25 November 2004, the Prosecutor’s Office did not take any effective action on this case for several months. As a result, the Makhashev brothers filed a complaint before the General Prosecutor of the Russian Federation, Mr. V.V. Ustinov, on 21 February 2005, challenging the criminal investigation as inadequate and ineffective. (Ex. 21). The Makhashev brothers had previously filed a complaint before the Nalchik local court challenging the independence of the Prosecutor’s Office. This complaint alleged that as a result of ethnic prejudice against Chechens, the Prosecutor’s Office had failed properly to investigate their complaints against police officers who are ethnic Kabardinians and Balkarians. (Ex. 21).

The Makhashev brothers lodged a second complaint with the Nalchik City Court in March 2005. In this, they argued that the investigator had not yet taken a decision recognizing the brothers as victims under Russian law, had not yet ordered cross-questioning of the victims and the alleged police officer perpetrators, and had not yet passed a bill of indictment. This complaint prompted a favourable decision of the Nalchik City Court on 2 June 2005, declaring the inaction of the investigators of the Makhashev brothers’ complaint a violation of investigative procedures. The decision ordered the investigator to take appropriate action on the Makhashev brothers’ case. (Ex. 19).

Despite the Nalchik City Court’s ruling, on 12 June 2005 the senior investigator of the Nalchik City Prosecutor’s Office issued a decision closing the investigation against the named police officers for lack of evidence of a crime. The senior investigator, A. Kagazezhev, concluded that the Makhashev brothers had been beaten by unknown persons on 14 November 2004 outside of the police station. The Makhashev brothers appealed. (Ex. 16).

On 24 July 2005, the Deputy Nalchik City Prosecutor quashed the decision of the senior investigator of the Nalchik City Prosecutor’s Office. This decision formally ordered that the investigation into the Makhashev brothers’ complaint be reopened and ordered that additional investigative measures be taken. (Ex. 16). For example, the Deputy Prosecutor asked the investigator to explain why he had only taken the police officers’ testimony into evidence. The Deputy Nalchik City Prosecutor ordered that the investigator take into account the Makhashev brothers’ testimony and evidence.

After this remand, the Prosecutor’s Office suspended the investigation again on 30 November 2005 because the alleged perpetrators of the assault against the Makhashev brothers on the night of 14-15 November 2004 could not be identified. (Ex. 15). The investigator, Mr. Z. Shibzuhov, reached this conclusion even though the Makhashev brothers had clearly identified and described at least three named officers, namely Officers Boliev,

Arakhov, and Alchagirov, as perpetrators of the assaults against them. Mr. Shibzuhov's investigation reached two conclusions. First, Mr. Shibzuhov confirmed that Ibragim Makhachev had been stabbed in the Forum Concert Hall by Mr. Shavlahov. This was consistent with the conclusion of the investigation of the Prosecutor's Office into the separate criminal case regarding the stabbing and fight at the night club earlier in the evening of 14 November 2004. Mr. Shibzuhov also determined that the Makhachev brothers had been beaten sometime around 19:00 outside the police station by unknown perpetrators. The investigator relied exclusively upon the testimony of the Russian police officers, who asserted their non-involvement in any matters related to the Makhachev brothers on the night of 14-15 November 2004. The investigator's decision was conclusory in accepting the police officers' testimony at their word and failed to address the Makhachev brothers' and other witness's testimony, and was devoid of analysis. (Ex. 15).

On 5 December 2005, the First Deputy Nalchik City Prosecutor quashed the decision of 30 November 2005 suspending the investigation, ordered that the suspended preliminary investigation be resumed and identified specific investigatory measures that the Prosecutor's Office was required to undertake. (Ex. 15). The additional measures ordered by the First Deputy Nalchik City Prosecutor included the cross-questioning of Officers Alchagirov, Boliev, and Kadyrova, the cross-questioning of Mr. Tkhakachov and A. Kadyrova, and other measures to support a legally sufficient and reasonable decision.

On 21 February 2006, the Prosecutor's Office again suspended the investigation based on the same reasoning set forth in its decision of 30 November 2005, namely that Ibragim had been stabbed at the Forum Concert Hall by Mr. Shavlahov and that the Makhachev brothers were then beaten outside the police station at about 19:00 by unidentified persons on the night of 14 November 2004. The Makhachev brothers appealed this decision.

On 2 March 2006, the Deputy Prosecutor of the Republic of Kabardino-Balkaria quashed the decision of 21 February 2006, resumed the suspended preliminary investigation, and ordered additional investigative measures. (Ex. 14). The additional measures that were ordered included undertaking additional cross-questioning of witnesses involved in the events that evening, including the Makhachev brothers and the police officers; providing a legal analysis of the activity of the police officers identified by the Makhachev brothers as the perpetrators of their assault; and confirming which officers were on duty at the police station on the night of 14-15 November 2004. Additionally, the Deputy Prosecutor noted that of the additional measures that the investigator had previously been ordered to carry out, some had not been undertaken at all while others had been undertaken only partially. The Deputy Prosecutor therefore issued an order on 2 March 2006 that all prior investigation measures that had been previously requested be undertaken effectively by the investigator. (Ex. 14).

On 13 April 2006, the investigator, Mr. Shibzuhov, discontinued the proceedings, again reaching the conclusion that Ibragim had been stabbed by Mr. Shavlahov at the Forum Concert Hall and that Ibragim and Adam Makhachev had then been beaten by unknown people outside the police station. (Ex. 13). The investigator explicitly found that no criminal offence had been committed by the police officers who had been identified by the Makhachev brothers as the perpetrators of their torture and ill-treatment.

In sum, one and a half years after the incident, the Prosecutor's Office decided not to initiate criminal proceedings against the police officers who had unlawfully detained, tortured, and mistreated the applicants. This determination was motivated by discriminatory ethnic bias against the Makhachev brothers. Furthermore, the investigators failed to carry out an effective investigation. Despite substantial evidence that the Makhachev brothers were beaten by police officers, three of whom the victims were able to identify by name, the Prosecutor's Office suspended its investigation on the ground that the perpetrators of the Makhachev brothers' torture and ill-treatment could not be identified. The Makhachev brothers appealed this decision.

On 19 April 2006, the First Deputy Nalchik City Prosecutor rejected the Makhachev brothers' appeal, upheld the investigator's decision of 13 April 2006, and refused to initiate criminal proceedings against the identified police officers. The First Deputy Nalchik City Prosecutor also determined, like his subordinate investigator, that there was no evidence against the identified Officers Boliev, Arakhov, and Alchagirov. The First Deputy Nalchik City Prosecutor also agreed with the investigator that Mr. Shavlahov had provoked a fight, during which he stabbed Ibragim Makhachev, on the evening of 14 November 2004 at the Forum State Concert Hall night club. (Ex. 6, 10).

The Makhachev brothers filed a complaint on 28 April 2006 before the Deputy General Prosecutor of the Russian Federation, Mr. N. Shepel. (Ex. 12).

On 20 May 2006, the Prosecution Office of the Republic of Kabardino-Balkaria adopted its official and final decision rejecting the Makhachev brothers' appeal. The Head of the Investigation Department of the Prosecution Office of the Republic of Kabardino-Balkaria concluded that there was no evidence of mistreatment of the Makhachev brothers by the identified police officers. Thus no charges were brought against the police officers who perpetrated the unlawful detention, torture, and mistreatment of the Makhachev brothers at the police station on the night of 14-15 November 2004. (Ex. 11).

The Makhachev brothers filed another complaint on 9 August 2006 before the Deputy General Prosecutor of the Russian Federation, Mr. I.I. Sydoruk, but it was rejected. (Ex. 10).

Having exhausted all means of recourse within the prosecutorial structures, the Makhachev brothers filed a complaint on 5 June 2006 before the Nalchik City Court pursuant to Russian law. (Ex. 9). On 4 July 2006, the Nalchik City Court dismissed their complaint. (Ex. 8). Although preceding investigations were ineffective, substantial evidence, including detailed testimony as to the police's racist and violent mistreatment of the Makhachev brothers on the night of 14-15 November 2004, had been generated and this was presented to the Nalchik City Court. That court nonetheless dismissed the Makhachev brothers' complaint and upheld the Prosecutor's decision not to bring charges against the alleged perpetrators. Noting the limited scope of review afforded to Russian courts to oversee decisions of Prosecutors, the Court stated that it was satisfied that the Prosecutor had articulated sufficient reasons for dismissing the Makhachev brothers' complaints. The Makhachev brothers appealed this decision. (Ex. 7).

On 3 November 2006, the Criminal Chamber of the Supreme Court of the Republic of Kabardino-Balkaria issued a final order upholding the decision of the Nalchik City Court of 4 July 2006. Thus, both courts upheld the Prosecutor's failure to bring charges

against the identified police officers who were involved in the unlawful detention, torture, and mistreatment of Ibragim, Adam, and Islam Makhachev on the night of 14-15 November 2004. (Ex. 6).

### **C. EVIDENCE OF DISCRIMINATION**

The Makhachev brothers contend that the Russian Government has violated several of their Convention rights and, in doing so, were motivated by racial animus towards ethnic Chechens. Accordingly, the Respondent State has violated Article 14 in conjunction with Article 3, Article 14 in conjunction with Articles 3 and 13, and Article 14 in conjunction with Article 5. As Article 14 provides an “accessory right,” this section identifies the facts which give rise to the applicants’ claims of discrimination.

This section sets forth evidence in the instant case establishing that the Russian Government subjected the applicants to differential treatment without an objective or reasonable justification. It then summarizes relevant independent evidence confirming that Chechens outside Chechnya are the subject of systemic discrimination in Russia.

#### **1. Evidence from the Record that the Russian Authorities were Motivated by Discriminatory Animus towards the Makhachev Brothers’ Chechen Ethnicity**

The record in the present case contains overwhelming evidence of racist remarks toward the Makhachev brothers, establishing that the Russian police officers and authorities were motivated to detain, torture, and mistreat the Makhachev brothers on account of their Chechen ethnicity and expected to do so with impunity. The Russian authorities were ethnic Kabardinians and Balkarians.

The applicants explain that they were detained and beaten solely because they were Chechen. As Ibragim Makhachev testified, the police stopped him and his brother Adam outside the Forum Concert Hall because they are Chechen, without asking for their identification or inquiring as to their involvement in the violent incident that had just transpired in the night club: “They never explained why they were stopping us. The only reason for our detention was that we were Chechens and according to the staff of the club, a Chechen had wounded the security guard who was a Kabardinian. I tried to explain to the police that I was a victim of a squabble and needed urgent medical aid, but the policemen did not pay any attention to me.” (Ex. 1, § 8).

All three of the brothers have testified that the police officers and authorities shouted racist insults while the officers were beating them.

According to Ibragim Makhachev, after the officers began to beat him, he fell unconsciousness; when he regained consciousness, the officers were shouting racist remarks at him:

When I came to, the police continued to beat me saying, ‘You, the Chechens, are fucking sons of a bitch. Why did you come here? Fuck out of here to Chechnya. Why aren’t you fighting for Basaev against federal forces? We’ve fucked and will always be fucking your mothers. They degraded my honour, human and ethnic dignity. I can’t retell all the dirty and insulting words they said. (Ex. 1, § 10).

...



As the door was half open I saw three police officers pulling along Islam doubled up in pain. I was trying to protect him and implored the police officers not to beat Islam. But the police continued to beat me and insult us, calling us ‘fucking sons of a bitch Chechens,’ and even threatening to rape me if I continued protecting my brother. (Ex. 1, § 15).

According to Adam Makhashev, when the officers first separated him from Ibragim at the police station, they started to beat him and shouted racist remarks, such as the following:

[W]ithout any explanations, the police officers began to beat me mercilessly. Different police officers came into the room. They asked only one question, ‘A Chechen?’ and then joined those who were beating me. (Ex. 2, § 8). When the police officers beat me, they degraded my human dignity by insulting my ethnicity in the most outrageous ways. They said, “you are fucked Chechens. We’ll lower [disgrace] [*onyctum*] you all. We’ll fuck you all.” It is clear that the only reason for their violence and cruelty was to punish us because we are Chechens. They beat us even though they knew we were innocent, that my brother was a victim himself and needed medical aid, and that we were not responsible for injuring the Kabardinian security guard at the night club. (Ex. 2, § 9).

According to Islam Makhashev, the police also shouted racist remarks when they began to beat him while dragging him into the police station after he inquired why the police had beaten his brother Adam:

I asked the police officers what my brother had done to receive such brutal treatment. One of the policemen got infuriated at the question. He turned to me and said: “Ain’t you another Chechen? Fuck out of here.” (Ex. 3, § 8).

...

They brought me to the neighbouring room where at least 5 policemen were present. They assaulted me with insulting words: “You, the Chechens, are fucking sons of a bitch. Why ain’t you fighting for Basaev? Fuck out of here to Chechnya.” They continued to beat me by kicking and punching and slapping me. (Ex. 3, § 9).

Furthermore, all three Makhashev brothers have testified that the police officers and authorities said that they could torture them with impunity, as they would not be brought to justice for torturing ethnic Chechens. For example, Ibragim Makhashev has testified that when he warned Officer Boliev and the other police that he would complain about their assault, “Mr. Boliev replied that he was a relative of the Minister of the Interior of Kabardino-Balkaria Mr. Khachim Shogenov, and even if he killed me or Adam, they would do nothing to him ‘for the Chechens’.” (Ex. 1, § 12). Ibragim also testified that Mr. Alchagirov, another officer, said: “If you or your brother tries to complain . . . we will kill you here. They won’t do anything to us for Chechens.” (Ex. 1, § 13). Officer Boliev made the same threat to Adam and Islam Makhashev when they were being beaten. (Ex. 2, § 13, Ex. 3, § 12).

Throughout the Makhashev brothers’ efforts to get the Prosecutor’s Office to investigate and charge the officers who had attacked them, officials in that office warned the

Makhashev brothers that their pursuit was in vain because they are ethnic Chechens. For example, Adam Makhashev has testified:

The Deputy Prosecutor of Nalchik, Murat Tkhakahov, made insulting comments towards me and my brothers during the course of the investigation, disparaging us because we are Chechens and threatening us for trying to obtain justice. I have written complaints to the court, the Prosecutor's Office, even to the President Mr. Putin, the Russian Parliament, and the Chechen government. But it all has been in vain. (Ex. 2, § 20).

Islam Makhashev testified to similar comments by police officers:

When the prosecution service was investigating the facts submitted in our applications, I was most offended by the defiance of the police officers who showed off their impunity before prosecution investigators. In a private talk with me, police officers admitted that they had tortured me and insulted me because I am Chechen. But the investigators closed their eyes to this truth. Indeed, it was clear that the investigators with the Nalchik City Prosecutor's Office were also biased against us because we were Chechen and therefore failed to prosecute the injustices done against us. (Ex. 3, § 18).

In addition to the Makhashev brothers' testimony, Adam Makhashev's wife Sonya Gazaeva and her sister Askerhan Kadyrova, who were at the police station on the night of 14-15 November 2004, confirm that the officers shouted racist comments while beating Islam Makhashev. Sonya Gazaeva "heard the abusive language of the policemen about Islam's ethnicity. I personally remember the words of a policeman who said to Islam: 'You are a Chechen too, get out...'. I cannot reproduce the whole utterance, but it concerned his ethnicity and was abusive in essence." (Ex. 4, § 19). Askerhan Kadyrova also confirms that the officers shouted racist remarks while beating Islam: "I also want to state that I heard abusive language of the policemen in respect of Islam's ethnicity. I heard it myself how they spoke to Islam," 'you are a Chechen too, get out...'. I, being a mother and a woman, can not repeat their utterances in full. The Chechen ethnicity of Islam and his brothers was slandered in all of these comments." (Ex. 4, § 19).

Sonya Gazaeva also observed the following at the police station:

From time to time, police came out of the police station to have a smoke. Islam, Asya [Askerhan] and I heard some fragments of what they said. They spoke the Kabardinian, Balkarian and Russian languages. From what they had said, it was clear to each of us that torture and degrading treatment were going on all that time. Some officers were shocked by what was going on, but they made offensive and insulting statements about Adam and Ibragim for being Chechen. (Ex. 4, § 15).

During the course of the protracted and ineffective investigation, Sonya Gazaeva tried to give a statement to the investigators testifying that she heard these racist remarks on the night of 14-15 November 2004, but the prosecuting investigators refused to write down her comments:

Whenever I analyse what happened I come to a conclusion that the cruel actions and degrading treatment by the police officers of the Makhashev brothers were motivated

by their hatred for them because of their Chechen ethnicity. I stated that at the outset of the criminal investigation. I said that to the face of prosecution officials, in particular to Mr. Tkhakahov during the confrontation with him. But the investigators refused to record these elements of my evidence as part of the protocol of my witness testimony to what happened. The low-level prosecution investigator who was forced to follow the directions of his superior begged my pardon for not taking down my witness testimony in full as he had been directed to ignore my evidence. (Ex. 4, § 24).

In sum, the record is replete with evidence that the Russian police tortured and mistreated the Makhashev brothers motivated by their invidious racial animus towards ethnic Chechens. Furthermore, the comments of the Russian police reveal that they were convinced they could commit these acts with impunity as the prosecuting investigators and reviewing courts would also be biased against the Makhashev brothers on account of their Chechen ethnicity.

## **2. Evidence from the Record of Systemic Discrimination against Chechens in Nalchik, Kabardino-Balkaria**

The record also confirms that the racially-motivated detention, torture, and mistreatment of the Makhashev brothers, and the perpetrators' impunity for these acts, occurred in the context of systemic discrimination in Nalchik and Kabardino-Balkaria against ethnic Chechens. The three brothers have testified to the ongoing injustices they face on account of their ethnicity.

For example, Ibragim attests to the following:

I am convinced that the police officers assaulted and harassed us because of their intolerance and hatred towards Chechens. The police beat me and my brother without identifying us or ascertaining whether we were involved in the incident at the night club. They simply knew we were ethnic Chechens and insulted our ethnicity throughout the ordeal. Russian mass media work against us, describing all Chechens only as bandits. We suffer intolerance and hatred towards us in daily life. This incident is typical: here, an ethnic Kabardinian was a victim of a crime, albeit by a Chechen. But rather than ascertain the facts of the incident, the police instead acted on their hateful prejudices towards all of us Chechens, who were at the scene of the offence but not responsible for the assault of the security guard. (Ex. 1, § 17).

...

I have lived in Nalchik since 1996 and can assert that there is no rule of law or justice where Chechens are concerned. We, the Chechens, are afraid of trumped-up cases. This is why many of us are afraid to appeal to police and judicial agencies for assistance or help when we are victims of crimes. Here in Nalchik, young Kabardinians repeatedly beat Chechens and vandalize our cars and property but do so with impunity. (Ex. 1, § 25).

Adam has experienced similar discrimination:

Throughout the time that I have lived in Kabardino-Balkaria, I have been subjected to biased attitudes and discrimination towards me because I am Chechen. The local government has never allowed me or my family members to register our residence in Nalchik, which is the source of many problems I face. For example, I bought a car but

I cannot register it in my name and legalize it as my private ownership. I dispose of it by power of attorney. Police officers check registration and exact bribes if they find that we don't have even a temporary registration. They never take into account our explanations that the Chechens are not registered here. My son does not have such problems because his mother – my wife – is a native of Kabardino-Balkaria and a Balkarian by ethnicity. (Ex. 2, § 21).

But I know in this Republic that there are certain pricelists, or bribes, that Chechens must pay to get a place in a kindergarten and school or get higher education or medical treatment. In some cases they exact bribes even if one has a local registration only because he or she is a Chechen. I am sure that this prejudice exists only against the Chechen people. Chechens also cannot buy real estate on the territory of the Republic because of our ongoing problems obtaining residence registration and all other paperwork. The existing discrimination against Chechens has only intensified since the armed conflict in Chechnya began. (Ex. 2, § 22).

Even Sonya Gazaeva, an ethnic Balkarian, has encountered hostile racism on account of her marrying Adam Makhashev, an ethnic Chechen. Indeed, as she testified: “During a private interview, Mr. Tkhakahov, the Deputy Prosecutor, straightforwardly told me in a scornful and abusive manner: ‘Why did you, a Balkarian, get connected with these Chechens? They won't get anything here.’” (Ex. 4, § 25).

Finally, the record in the instant case includes the text of the Resolution of the Parliament of the Republic of Kabardino-Balkaria of 22 November 2001 No. 410-P-P, “On Temporary Measures to Restrict Registration of Citizens Coming to the Republic of Kabardino-Balkaria for Permanent Residence.” (Ex. 54). This resolution confirms that it is official local government policy explicitly to restrict registration of new citizens in the Republic of Kabardino-Balkaria under conditions that are intended to and in fact affect Chechens in particular.

This Resolution states the following:

In order to ensure public security, constitutional rights and freedoms of citizens of Kabardino-Balkaria as well as in view of overpopulation of the Republic, acute housing, ecological and other problems, taking into account the fact that the Republic forms the border of the Russian Federation and is very close to areas of local and international conflicts ... the Parliament of the Republic of Kabardino-Balkaria resolves: to restrict temporarily registration of citizens coming to the Republic of Kabardino-Balkaria for permanent residence until the criminal environment in the Northern Caucasus is stabilized and changed for the better. (Ex. 54).

In the context of mass displacement of ethnic Chechens caused by the armed conflict in Chechnya and their resettlement in the Northern Caucasus, the disproportionate effect of this restriction is to deny legal temporary registration to Chechens in Kabardino-Balkaria. Moreover, according to the Regulation, Registry offices of the Republic shall no longer perform and register civil marriages if a bride or a bridegroom do not have permanent registration on the territory of the Republic or register the birth of a child if its parents do not have permanent registration on the territory of the Republic, among other measures. The impact of these restrictions clearly affects displaced ethnic Chechens in Kabardino-Balkaria.

In sum, the racially-motivated detention, torture, and mistreatment of the Makhashev brothers with impunity occurred in the context of systemic discrimination in Nalchik and Kabardino-Balkaria against ethnic Chechens.

### **3. Independent Evidence of Systemic Discrimination against Chechens outside Chechnya within the Russian Federation**

Independent sources also document and establish that Russian authorities subject ethnic Chechens to arrest, detention, torture, and mistreatment on a massive scale. Additionally, Russian authorities subject ethnic Chechens to systemic discrimination in all aspects of daily life not only in Chechnya, but outside of Chechnya throughout the Russian Federation. The abuse that the Makhashev brothers suffered at the hands of Russian authorities falls squarely within this pattern.

The armed conflict in Chechnya, which began in the late 1990s, continues to be characterized by widespread violations of human rights and humanitarian law. As such, the conflict has led to the forced displacement of hundreds of thousands of ethnic Chechens, who have resettled throughout the Northern Caucasus region, including Kabardino-Balkaria, and the rest of the Russian Federation. Discrimination against ethnic Chechens has followed them wherever they have resettled. In its Third Report on the Russian Federation, the Council of Europe's European Commission against Racism and Intolerance (ECRI) noted its concern that discriminatory human rights abuses inflicted upon ethnic Chechens were spreading outside of Chechnya and becoming more commonplace within the Northern Caucasus region:

ECRI notes that, according to many sources, including the Commissioner for Human Rights and the Parliamentary Assembly of the Council of Europe, the situation as regards human rights is very far from satisfactory in the Chechen Republic, as gross human rights abuses in the form of murder, forced disappearance, torture, hostage-taking, rape and arbitrary detention, continue to occur on a daily basis and in a climate of impunity. ECRI is even more concerned to learn that such human rights abuses are apparently spreading to neighbouring regions and particularly Ingushetia and Dagestan, as well as to the whole Caucasian area.<sup>3</sup>

14.79 The ECRI report concluded as follows:

As concerns Chechens living outside the Chechen Republic, ECRI expresses its deep concern at many reports alleging that Chechens have been the target of discriminatory measures on the part of the authorities. Such discrimination is reported to occur particularly as regards policing and the administration of justice.<sup>4</sup>

14.80 Mr. Rudolf Bindig, Rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe, has confirmed that discriminatory human rights abuses inflicted upon ethnic Chechens in the Northern Caucasus were spreading:

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<sup>3</sup> See European Commission against Racism and Intolerance, *Third Report on the Russian Federation*, § 82 (16 December 2005), available at [http://www.coe.int/t/e/human\\_rights/ecri/1-ecri/2-country-by-country\\_approach/russian\\_federation/Russian%20Federation%20third%20report%20-%20cri06-21.pdf](http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/russian_federation/Russian%20Federation%20third%20report%20-%20cri06-21.pdf).

<sup>4</sup> See *id.* at § 84.

The human rights situation in the Chechen Republic has unfortunately not improved significantly since the adoption of my last report in October 2004. The conclusions made by the Assembly one year ago remain valid. 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. During the past months a number of abuses took place in these republics that are reminiscent of those taking place in the Chechen Republic, and which have also remained largely unpunished. As I had warned in my previous report, the conflict in the Chechen Republic appears to be spreading like an epidemic, threatening the rule of law throughout the Russian Federation.<sup>5</sup>

14.81 United Nations human rights mechanisms have voiced concern over the increase in racially-motivated human rights abuses occurring in the Russian Federation. For example, the United Nations Human Rights Committee condemned “the increase of racially motivated violent attacks against ethnic and religious minorities . . . and note[d] with concern reports of xenophobic statements made by public officials.”<sup>6</sup> The United Nations Committee on the Elimination of Racial Discrimination has also condemned discriminatory human rights abuses against displaced ethnic Chechens in the Russian Federation.<sup>7</sup> Most recently, the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Mr. Doudou Diène, noted the following with regards to systemic discrimination against ethnic Chechens in the Russian Federation:

With the situation in Chechnya, the attribution of several attacks in the territory of the Russian Federation to Chechen groups, the generalization of the association between Caucasians and terrorism and extremism – particularly by extreme right political parties, the media and to a certain extent the Russian authorities – and a general trend of Islamophobia, Caucasians and Central Asians have, according to civil society organisations, become major victims of manifestations of racism, discrimination and xenophobia. . . In the view of civil society organisations, these manifestations are particularly acute in the fields of law enforcement and administration of justice.<sup>8</sup>

14.82 Independent Russian human rights organisations have also documented widespread discriminatory human rights abuses suffered by ethnic Chechens. An information bank of human rights abuses against ethnic Chechens in the Russian Federation has been compiled since 2002.<sup>9</sup> Reports confirm that displaced ethnic Chechens within the Northern

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<sup>5</sup> Mr. Rudolf Bindig, *Explanatory Memorandum* to a report of 21 December 2005 entitled *Human Rights violations in the Chechen Republic: the Committee of Ministers’ responsibility vis-à-vis the Assembly’s Concerns*, available at <http://www.assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc05/EDOC10774.htm>.

<sup>6</sup> See United Nation Human Rights Committee, *Concluding Observations: Russian Federation*, UN Doc. CCPR/CP/79/RUS § 24 (6 November 2003).

<sup>7</sup> See United Nations Committee on the Elimination of Racial Discrimination, *Concluding Observations: Russian Federation*, UN Doc CERD/C/62/CO/7 § 13, 17-18 (21 March 2003).

<sup>8</sup> United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance, *Report of the Special Rapporteur on his Mission to the Russian Federation*, UN Doc. A/HRC/4/19/Add.3 §§ 48-49 (30 May 2007).

<sup>9</sup> Svetlana Gannushkina, “Migration and Law” and “Civic Assistance” Committee Network, *The Internally Displaced Persons from Chechnya in the Russian Federation*, available at: [http://hro.org/actions/nazi/2006/11/FCNM\\_report\\_appendix\\_chechens\\_eng.doc](http://hro.org/actions/nazi/2006/11/FCNM_report_appendix_chechens_eng.doc).

Caucasus and throughout the Russian Federation remain the most vulnerable population.<sup>10</sup> These reports also confirm the widespread impunity of those who commit discriminatory human rights abuses against ethnic Chechens, itself a manifestation of racism within the Russian justice system:

Russia's legal system lacks effective mechanisms to counteract racial discrimination. In many cases, authorities practice racial discrimination against certain groups (such as Roma, Chechens outside Chechnya, and some ethnicities in Krasnodar Krai . . . . Massive ethnic xenophobia fuels political ethno-nationalist movements and hate crime. Nationalist propaganda is increasingly explicit, racist offences are more numerous and cruel, and their geography expands . . . . [T]he State's inability to counteract these catastrophic trends is not due to the absence of tough legislation, but rather to poor performance of police, who often share the racial prejudice.<sup>11</sup>

14.83 Independent international non-governmental organizations have confirmed that displaced ethnic Chechens experience widespread discrimination and persecution outside Chechnya in the Northern Caucasus and throughout the Russian Federation, causing them to seek asylum and protection as refugees. According to Amnesty International:

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.*<sup>12</sup>

14.84 The United Nations High Commissioner for Refugees has also concluded that ethnic Chechens face discrimination and systemic human rights abuses in a context of strong anti-Chechen sentiments in the Russian Federation, and has documented existing ethnic tensions, restrictive legislation concerning freedom of movement, residence and sojourn in the Northern Caucasus, including Kabardino-Balkaria.<sup>13</sup>

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<sup>10</sup> See, e.g., 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* (February 2006), available at [http://www.minelres.lv/reports/russia/FCNM%20report%20appendix\\_chechens\\_eng\\_28mar06.doc](http://www.minelres.lv/reports/russia/FCNM%20report%20appendix_chechens_eng_28mar06.doc); Human Rights Centre Memorial, On the situation of Chechens outside Chechnya July 2005 – February 2006, available at <http://www.memo.ru/eng/memhrc/texts/2006chechinrussia1.shtml>.

<sup>11</sup> See Address of the Conference ‘Human Rights in Russia in the Year of Her G8 Presidency and Council of Europe Chairmanship’ to the Leaders of the G8 Nations,” (5 July 2006), available at <http://www.memo.ru/eng/memhrc/texts/6july5summary.shtml>.

<sup>12</sup> See Amnesty International, *Russian Federation: Amnesty International Statement on the Situation of Chechen Asylum Seekers*, AI Index: EUR 46/010/2004 (1 March 2004), available at: <http://web.amnesty.org/library/index/engeur460102004> (emphasis added).

<sup>13</sup> See UNHCR, *Paper on Asylum Seekers from the Russian Federation in the Context of the Situation in Chechnya*, § 76 (February 2003), available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=3ea7bbd34>.

14.85 In sum, independent human rights observers have consistently documented and confirmed a pattern of systemic discriminatory human rights abuses committed by Russian authorities against ethnic Chechens in the Northern Caucasus and the Russian Federation. The abuses suffered by the Makhashev brothers are consistent with the patterns they have consistently documented.

## **D. RELEVANT DOMESTIC LAW<sup>14</sup>**

### **1. Arrest and detention**

14.86 The Constitution of the Russian Federation adopted by referendum on 12 December 1993 provides in pertinent part:

#### **Article 22**

1. Everyone has the right to liberty and personal security.
2. Arrest, detention and placement in custody shall be subject to a court decision. No one may be detained longer than 48 hours before the court decision is taken.

14.87 The Code of Criminal Procedure, which entered into force on 1 July 2002, provides as follows:

#### **Section IV. Measures of Procedural Coercion**

##### **Chapter 12. Detention of the Suspect**

##### **Article 91. Grounds for the Detention of the Suspect**

1. The body of inquiry (inquest), the inquirer, the investigator or the Prosecutor shall have the right to detain a person on suspicion of committing a crime, for which may be administered the punishment in the form of the deprivation of freedom, if one of the following grounds exists:

- 1) this person is caught red-handed when committing the crime, or immediately after committing it;
- 2) the victims or the witnesses point to the given person as the perpetrator of the crime;
- 3) reliable traces of the crime are found on this person or his clothes, near him or in his dwelling.

2. If other data exists providing grounds for suspecting the person of perpetrating a crime, he may be detained if he has made an attempt to flee, or if he does not have a permanent place of residence, or if the name of the suspected person has not been identified, or if the public Prosecutor, or the investigator or the inquirer with the consent of the Prosecutor, has directed a petition to the court on selecting with respect to the said person a measure of restriction in the form of taking into custody.

##### **Article 92. Procedure for the Detention of the Suspect**

1. After the suspect is brought to the body of inquiry, to the investigator or to the public Prosecutor, a custody report shall be compiled within a term of not over three hours, in which shall be made a note that the rights stipulated by Article 46 of the present Code have been explained to the suspect.

2. In the report shall be pointed out the date and time of compiling it, the date, time and the place of and the grounds and the motives for the detention, the results of his personal search and other

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<sup>14</sup> The English text of relevant domestic law in this section represents an unofficial translation of the original Russian text by the representatives of the applicants.



circumstances of his detention. The custody report shall be signed by the person who has compiled it and by the suspect.

3. The body of inquiry, the inquirer or the investigator shall be obliged to report to the public Prosecutor about the detention in writing within twelve hours from the moment of detaining the suspect.

4. The suspect shall be interrogated in conformity with the demands of the second part of Article 46 and of Articles 189 and 190 of the present Code. Before the interrogation starts the suspect at his request shall be provided with an opportunity to meet his defence counsel in private and confidentially. Where it is necessary to commit procedural actions with the participation of the suspect, the duration of a meeting exceeding two hours may be limited by the inquirer, investigator and Prosecutor with obligatory preliminary notification of the suspect and his/her defence counsel of it. In any case the duration of the meeting may not be less than 2 hours.

#### **Article 94. Grounds for the Release of the Suspect**

1. The suspect shall be released by the decision of the inquirer, of the investigator or of the public Prosecutor, if:

- 1) the suspicion of his committing a crime has not been confirmed;
- 2) there are no grounds to apply towards him a measure of restriction in the form of taking into custody;
- 3) the detention was made with a violation of the demands of Article 91 of the present Code.

2. After 48 hours from the moment of detention have expired, the suspect shall be released, unless with respect to him is selected a measure of restriction in the form of taking into custody or the court has extended the term of detention in the order, established by Item 3 of the part 7 of Article 108 of the present Code.

3. If the resolution of the judge on the application towards the suspect of the measure of restriction in the form of taking into custody or on an extension of the term of detention does not arrive within 48 hours as from the moment of detention, the suspect shall be immediately set free, about which the head of the place where the suspect was held in custody shall notify the body of inquiry or the investigator under whose jurisdiction the criminal case is placed and the public Prosecutor.

4. If there exists a ruling or a resolution of the court on the refusal to satisfy the petition of the inquirer, of the investigator or of the public Prosecutor for selecting towards the suspect the measure of restriction in the form of taking into custody, a copy of this ruling or resolution shall be handed over to the suspect upon his release.

5. Upon the release of the suspect from custody he shall be issued a reference note, in which it shall be pointed out by whom he was detained, the date, time and the place of, and the grounds for the detention, as well as the date, time of and the grounds for his release.

## **2. Petitions and Complaints**

14.88 The Code of Criminal Procedure sets forth the following procedures for appealing or filing a complaint petition regarding a criminal investigation:

#### **Article 123. The Right to Appeal**

The actions (the lack of action) and the decisions of the body of inquiry, of the inquirer, the investigator, the public Prosecutor and of the court may be appealed against in the procedure established by the present Code, by the participants in the criminal court proceedings, as well as by the other persons in that part, in which the performed procedural actions and the adopted procedural decisions infringe upon their interests.

#### **Article 124. Procedure for the Consideration of a Complaint by the Public Prosecutor**

1. The public Prosecutor shall consider the complaint in the course of three days from the day of its receipt. In exceptional cases, when it is necessary to demand that additional materials shall be supplied or other measures taken for checking it, it shall be admissible to consider the complaint within a term of up to ten days, about which the applicant shall be duly informed.

2. At the conclusion of considering the complaint, the public Prosecutor shall pass a resolution on the complete or on a partial satisfaction of the complaint, or on the refusal to satisfy it.

3. The applicant shall be immediately notified about the decision taken on the complaint, and about the further procedure for filing appeals against it.

4. In the cases stipulated by the present Code, the inquirer, the investigator or the public Prosecutor shall have the right to file appeals against the actions (lack of action) and decisions of the public Prosecutor with a higher-placed Prosecutor.

#### **Article 125. Court Procedure for Considering Complaints**

1. The resolutions of the inquirer, the investigator and the public Prosecutor on the refusal for the institution of a criminal case or in the termination of the criminal case and their other decisions and actions (lack of action), which may inflict a damage upon the constitutional rights and freedoms of the participants in the criminal court proceedings or may interfere with the citizens' access to the administration of justice, may be appealed against with the district court at the place of conducting the preliminary inquisition.

2. The complaint may be filed with the court by the applicant, by his counsel for the defence, by his legal representative or by his representative, either directly or through the inquirer, the investigator or the public Prosecutor.

3. The judge shall check the legality and substantiation of the actions (the lack of action) and decisions of the inquirer, the investigator and the public Prosecutor not later than five days after the day of arrival of the complaint at a court session with the participation of the applicant and of his counsel for the defence, of his legal representative or his representative if they are taking part in the criminal case, as well as of the other persons whose interests are directly infringed upon by the action (lack of action) or by the decision against which the appeal is filed, as well as with the participation of the public Prosecutor. The failure of the persons, duly informed about the time of considering the complaint and not insisting on its consideration with their participation, shall not be seen as an obstacle to the consideration of the complaint by the court. Complaints to be considered by the court shall be considered in a public hearing unless stipulated otherwise by the second part of Article 241 of this Code.

4. At the start of the court session, the judge shall announce what complaint is subject to consideration, shall introduce himself to the persons who have come to the court session, and shall explain their rights and liabilities. Then the applicant, if he is taking part in the court session, shall disclose the ground for the complaint, after which the other persons in attendance at the court session shall be heard. The applicant shall be granted the right to issue a reply.

5. At the conclusion of considering the complaint, the judge shall pass one of the following decisions:

1) on recognizing the action (lack of action) or the decision of the corresponding official to be illegal or unsubstantiated, and on his liability to eliminate the committed violation;

2) on leaving the complaint without satisfaction.

6. Copies of the judge's resolution shall be directed to the applicant and to the public Prosecutor.

7. The filing of a complaint shall not suspend the performance of the action and the decision appealed against unless the body of inquiry, the inquirer, the investigator, the public Prosecutor or the judge finds it necessary.

### **3. General Terms for the Preliminary Inquisition**

14.89 The Code of Criminal Procedure requires that the following minimum measures be undertaken in a preliminary criminal investigation:

#### **Article 162. Term of the Preliminary Investigation**

1. The preliminary investigation on a criminal case shall be completed within two months from the day of institution of the criminal case.

2. Within the term of the preliminary investigation shall be included the period of time from the day of institution of the criminal case until the day of forwarding it to the public Prosecutor with the conclusion of guilt or with the resolution of handing over the criminal case to the court for examining the question about the application of forcible measures of a medical character, or until the day of adopting the resolution on the termination of the proceedings on the criminal case.

3. Within the term of the preliminary investigation shall not be included the time during which the preliminary investigation was suspended on the grounds envisaged by the present Code.

4. The term of the preliminary investigation stipulated by the first part of this Article may be extended by up to six months by the public Prosecutor of the district or the city and by the military Prosecutor equated with him, as well as by their deputies.

5. The term of the preliminary investigation on a criminal case the inquisition of which is particularly complicated may be extended by the procurator of the subject of the Russian Federation or by the military Prosecutor equated with him and also the deputies thereof by up to twelve months. A further extension of the term of the preliminary investigation may be effected only in exceptional cases by the Procurator General of the Russian Federation or by his Deputies.

6. If the public Prosecutor returns the criminal case for conducting an additional investigation, and also if the suspended or the terminated criminal case is resumed, the term of an additional investigation, established by the public Prosecutor, cannot exceed one month from the day when the given criminal case came to the investigator. A further extension of the term of the preliminary investigation shall be performed on general grounds in accordance with the order established by this Article.

7. If it is necessary to extend the term of the preliminary investigation, the investigator shall pass the corresponding resolution and shall submit it to the public Prosecutor not later than five days prior to an expiry of the term of the preliminary investigation.

8. The investigator shall notify in writing the accused and his counsel for the defence, as well as the victim and the representative thereof about the extension of the term of the preliminary investigation.

### **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***

15.1 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 European Convention by its agencies and authorities pursuant to Article 34.

##### ***2. Victim Status***

15.2 Ibragim, Adam, and Islam Makhashev are victims of violations of the European Convention as that concept is understood in Article 34 in that they are “directly affected” by the acts or omissions at issue. *See Doğan and Others v. Turkey*, nos. 8803-8811/02, 8813/02 and 8815-8819/02, § 93 (29 June 2004); *Groppera Radio AG and Others v. Switzerland*, no. 10890/84, § 47 (28 March 1990).

#### **B. MERITS OF THE CASE**

##### ***1. The Russian Authorities’ Racially-Motivated Ill-Treatment of the Makhashev Brothers Constitutes Torture and Inhuman and Degrading Treatment in Violation of Article 3***

15.3 The Russian authorities’ racially-motivated and violent physical abuse and treatment of the Makhashev brothers and the ensuing suffering the applicants endured constitute substantive breaches of the prohibition enshrined in Article 3 of the Convention, which guarantees that “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.” This prohibition has no limitations or exceptions and is not subject to derogation under Article 15 of the Convention.

15.4 For treatment to constitute a breach of Article 3, it must entail a minimum level of severity. The Court assesses the level of severity according to the circumstances of each case, including elements such as the duration of the treatment, its physical or mental effects, and also the sex, age, and state of health of the victim. *See, e.g., Ireland v. the United Kingdom*, no. 5310/71, § 162 (18 January 1978).

15.5 In the present case, the abuse and suffering the Makhashev brothers endured at the hands of Russian authorities constitute multiple substantive violations of Article 3. First, the racially-motivated and violent physical abuse that inflicted severe physical and mental suffering on Ibragim, Adam, and Islam Makhashev constitute both inhuman and degrading treatment and torture. Second, the discriminatory nature of the police attacks on the Makhashev brothers constitutes an independent element of inhuman and degrading treatment under Article 3. Third, the denial by the police of medical attention to Ibragim and Adam Makhashev, who were suffering from severe wounds that had been inflicted upon them by the police, particularly after a doctor expressed her opinion that Ibragim Makhashev required

urgent hospitalisation and medical attention, constitutes another independent violation of Article 3's substantive protections.

***a. The Makhashev Brothers Proffer Substantial, Detailed, and Corroborated Evidence of Racially-Motivated and Violent Physical Abuse in Official Custody Constituting Inhuman and Degrading Treatment in Violation of Article 3***

15.6 The violence, force, and discriminatory and racial animus with which the authorities treated the applicants on the night of 14-15 November 2004 constitute inhuman and degrading treatment and torture in violation of Article 3 in accordance with the jurisprudence of this Court. *See e.g., Ribitsch v. Austria*, no. 18896/91, § 34 (4 December 1995); *see also Salman v. Turkey* [GC], no. 21986/93, (27 June 2000).

15.7 The Court has held on many occasions that authorities have an obligation to protect the physical integrity of persons in detention. In *Ribitsch v. Austria* the Court ruled that when an individual is injured while detained in official custody, the Government has the obligation to provide a plausible explanation of how the individual's injuries were caused. *See Ribitsch, supra* at § 34. The Court has further ruled that where "events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control and custody, strong presumptions of fact will arise in respect of injuries and death occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation." *Salman v. Turkey, supra* at § 100.

***(i) Evidence of Violent Ill-Treatment of the Makhashev Brothers in Official Custody***

15.8 The evidence in the record confirms that Ibragim, Adam, and Islam Makhashev were taken into police custody at the Second Police Station in Nalchik on the night of 14 November 2004. The applicants emerged from detention several hours later, in the middle of the night, brutally beaten, bloodied, and bruised.

15.9 Throughout all stages of the delayed and ineffective investigation into their allegations, Ibragim, Adam, and Islam Makhashev have provided consistent and detailed accounts of the progression of events that occurred on the night of 14-15 November 2004. Their testimony details the severe physical beatings, kickings, and assaults with rifle butts they sustained that evening and identifies several of the official perpetrators at the police station that night. (Exs. 1-3). Upon their release from the police station in the middle of the night of 14-15 November, Ibragim, Adam, and Islam Makhashev immediately filed complaints with the Prosecutor's Office and testified to the brutal racially-discriminatory assaults that they suffered at the hands of the police. Even the local court that reviewed the Makhashev brothers' case acknowledged that the brothers maintained a detailed and consistent account of the events of the night of 14-15 November 2006. (Ex. 19).

15.10 In addition to the applicants' testimony, two independent witnesses, Salihat Gazaeva and Askerhan Kadyrova, have also presented detailed and consistent testimony that confirms the severe nature of the injuries the Makhashev brothers sustained at the hands of the police on the evening of 14-15 November 2004. The women have consistently described their

observations of the brothers after their release from the police station and while they filed complaints at the Prosecutor's Office that night. As Salihat Gazaeva observed:

Late at night the policemen took Adam out of the police station. I could hardly recognize him: he was without some teeth. He was mutilated and covered with blood. He almost had no clothes apart from some torn pieces of his jacket and trousers. One could imagine it only in a horrible dream or film. (Ex. 4, § 16).

15.11 Askerhan Kadyrova confirmed Adam's severe injuries upon leaving the police station as follows:

Late at night we saw two policemen taking Adam Makhachev out of the building. I am not a young woman but I have never in my life seen anything like that. Adam was beaten black and blue, he was all covered with clots of blood, his clothes were torn and bloody in colour. (Ex. 5, § 17).

15.12 Sonya (Salihat) Gazaeva and Askerhan Kadyrova also testify to the severe injuries that Islam Makhachev suffered while in police custody. Islam was in good health and uninjured when he arrived at the police station with Sonya Gazaeva and Askerhan Kadyrova to inquire about Ibragim and Adam Makhachev. Sonya Gazaeva and Askerhan Kadyrova witnessed the police kick and hit Islam with a rifle butt, then drag him into the police station. They next saw Islam several hours later at the Prosecutor's Office and were shocked to see how much harm Islam had suffered at the hands of the police in such short time. In Salihat Gazaeva's words: "I had seen Islam some hours before and he had been an absolutely sound man. When I saw him again in the Prosecutor's Office, he was mutilated. I can hardly forget it." (Ex. 4, § 21).

15.13 Similarly, Askerhan Kadyrova describes the severely wounded state of the Makhachev brothers at the Prosecutor's Office that night as follows:

Still later, Ibragim and Islam were brought to the Prosecutor's Office. I remember that prosecution officials, before offering them to sit down, had to cover the chairs with oilcloths so that they would not be stained; Ibragim and Islam were covered with blood. I remember it well that Islam was all the time spitting out blood and running to the toilet. Probably, they had injured his kidneys in the police station. Early in the morning I returned home from the Prosecutor's Office. (Ex. 5, § 21).

15.14 The testimony of Mr. Aпти Ratsuev, a policeman of the Northern Caucasus Department for Combating Organized Crime who was questioned as part of the official investigation, corroborates key elements of the applicants' account of what occurred on the night of 14-15 November 2004. For example, Mr. Ratsuev confirms that the Makhachev brothers were in police custody the night of 14-15 November 2004. Mr. Ratsuev spoke with Ibragim Makhachev on the third floor of the police station sometime after 23:00. Mr. Ratsuev witnessed the arrival of the ambulance at the police station and saw that a doctor entered the station. He testified that his police colleagues told him that they had already gathered evidence of what had happened at the Forum Concert Hall that evening prior to the Makhachev brothers' being brought to the police station. As Mr. Ratsuev was not on duty, he did not get involved in the situation and left the police station. Mr. Ratsuev has confirmed that, upon leaving the station, he saw the youngest Makhachev brother, Islam, outside the police station unharmed. (Ex. 24). Mr. Ratsuev saw Islam, therefore, before Islam was taken

into police custody; eyewitnesses later confirmed that Islam emerged from the police station brutally beaten and bloodied.

***(ii) Medical and Documentary Evidence***

15.15 The Makhashev brothers also took pictures to document the injuries on their faces that they suffered on the night of 14-15 November 2004. (Exs. 37-39).

15.16 Finally, six expert medical forensic reports of the Makhashev brothers taken both on 15 November 2004 and 24 February 2005 confirm that all three brothers were victims of multiple wounds, injuries, bruises, fractures and abrasions. For example, the official report of the forensic medical examination of Ibragim Makhashev composed by forensic medical expert Ms. F. Dottueva on 15 November 2004 confirms that the applicant had been inhumanly treated. This report and the report of 24 February 2005 document the following conditions suffered by Ibragim Makhashev: his entire face was covered in bruises, there were multiple wounds, injuries and abrasions of different sizes (8x9 cm, 6x4 cm, 5x4 cm, 5x3 cm, 9x4 cm, 29x19 cm, 16x15 cm, 10x4 cm, 6x6 cm and so on) on his body and legs, there were haemorrhages in both eyes, among other injuries. The report of 24 February 2005 also documents that Ibragim Makhashev lost his consciousness and was hospitalized on 16 November 2004 due to a fracture of his left malar bone and a cerebral concussion. The official report of the forensic medical examination of Adam Makhashev prepared by a forensic medical expert, Ms. F. Dottueva, on 15 November 2004 documents that besides multiple wounds and bruises there were a right kidney contusion, a closed (subcutaneous) nose fracture with a displacement of splinters, two teeth extractions, soft tissue bruising, a face haematoma and a cerebral concussion. (Exs. 28, 29).

15.17 Ibragim Makhashev suffered the most severe injuries and medical consequences from his injuries. The official notice of the Central Hospital of the Republic dated 11 December 2004 confirms that Ibragim was treated at the hospital from 16 November through 11 December 2004. On 15 November 2004, the morning following the torture and ill-treatment that he suffered the night of 14-15 November 2004, Ibragim Makhashev lost consciousness and was delivered to the Neurosurgical Department of the Central Hospital of the Republic. The tomography showed that Mr. Ibragim Makhashev had a fracture of his left malar bone and a cerebral concussion. He underwent surgery and received two titanic plates. Ibragim spent a total of 23 of days in the Hospital for comprehensive treatment. (Ex. 35). All of the applicants have required ongoing medical treatment as a result of the torture they suffered on the night of 14-15 November 2004.

***(iii) The Totality of the Evidence Establishes that Officials Subjected the Makhashev Brothers to Inhuman and Degrading Treatment in Violation of Article 3***

15.18 In sum, through abundant, detailed, consistent and corroborated evidence, the Makhashev brothers have established that the Russian police subjected them to violent physical abuse while in official police custody on the night of 14-15 November 2004, which far surpassed the minimum level of severity to constitute an Article 3 breach. *See Ireland v. the United Kingdom*, no. 5310/71, § 162 (18 January 1978). The abuse inflicted by the Russian police on the Makhashev brothers was applied over several hours and caused proven bodily injury and intense physical suffering. Under the Court's consistent case law, it is clear that this treatment constitutes inhuman and degrading treatment in breach of Article 3 of the

European Convention. *See, e.g., V. v. the United Kingdom* [GC], no. 24888/94, § 69-71 (16 December 1999); *Soering v. the United Kingdom*, no. 14038/88, § 100 (7 July 1989); *Tyrer v. the United Kingdom*, no. 5856/72, § 30 (25 April 1978).

***b. The Racist and Discriminatory Nature of the Police Attacks Constitutes Torture and Inhuman and Degrading Treatment in Violation of Article 3***

***(i) The Racist and Discriminatory Nature of the Treatment Constitutes Torture***

15.19 Further, the racist and discriminatory abuse that the Makhashev brothers suffered constitutes torture pursuant to the jurisprudence of this Court. While Article 3 prohibits both torture and “inhuman and degrading” treatment, particularly severe instances of the latter constitute torture. Torture as understood in Article 3 of the Convention attaches “a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.” *Ireland v. the United Kingdom*, no. 5310/71, § 167 (18 January 1978).

15.20 The Court has further relied upon the definition of torture in the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to determine that torture as prohibited by Article 3 of the European Convention contains a “purposive element.” *See, e.g., Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 115 (10 October 2000). The United Nations Convention defines torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, *or for any reason based on discrimination of any kind*, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The intentionally degrading, dehumanizing, discriminatory and racist insults that the Russian police directed at the Makhashev brothers on account of their Chechen ethnicity satisfy the purposive element of Article 3 of the Convention as inspired by the United Nations definition.

15.21 The testimony of the Makhashev brothers and two independent witnesses establishes that the Russian Government harboured animus toward the applicants on account of their Chechen ethnicity before, during, and after their ill-treatment on the night of 14-15 November 2004 so as to debase the human dignity of the applicants in breach of Article 3. The range of discriminatory and abusive statements is set forth in Section II.C.1 above at §§ 14.56 – 14.68, but the following excerpts recall the manifestly racist nature of the attacks:

15.22 Ibragim Makhashev describes what happened after he lost consciousness from the beatings inflicted on him:

When I came to, the police continued to beat me saying, “You, the Chechens, are fucking sons of a bitch. Why did you come here? Fuck out of here to Chechnya. Why ain’t you fighting for Basaev against federal forces? We’ve fucked and will always be fucking your mothers”. They degraded my honour, human and ethnic dignity. I can’t retell all the dirty and insulting words they said. . . I ran out and implored the police



officers not to beat Islam. But the police continued to insult us, calling us “fucking sons of a bitch Chechens,” and even threatening to rape me if I continued protecting my brother. (Ex. 1, §§ 10, 13, 15).

15.23 From Adam Makhashev:

After that, without any explanations, the police officers began to beat me mercilessly. . . . They asked only one question, “A Chechen?” and then joined those who were beating me . . . . When the police officers beat me, they degraded my human dignity by insulting my ethnicity in the most outrageous ways. They said, “You are fucked Chechens. We’ll lower [disgrace] you all. We’ll fuck you all”. It is clear that the only reason for their violence and cruelty was to punish us because we are Chechens. (Ex. 2, §§ 8-9).

15.24 From Islam Makhashev:

One of the policemen got infuriated at the question. He turned to me and said: “Ain’t you another Chechen? Fuck out of here”. . . . They kicked me several times with their feet and struck me with a rifle butt outside the police station in front of Adam’s wife and her sister and pulled me into the police station. . . . In the police station they beat and insulted me because of my ethnicity. . . . They assaulted me with insulting words: “You, the Chechens, are fucking sons of a bitch. Why ain’t you fighting for Basaev? Fuck out of here to Chechnya”. . . . The police officers assaulted me only because I was a Chechen who tried to learn about what they were doing to my brothers. . . . We were tortured because we are Chechens. They hate us in Russia and this hatred towards the Chechens is spread by authorities and mass media. . . . Mr. Boliev and other police officers said: “We hate you, Chechens. We won’t let you live here. We’ll fuck you one by one. You are bastards. Be off to your Chechnya and go fighting with Russia”. They were very hostile and their words were full of savage hatred towards us. (Ex. 3, §§ 8-9, 11-12, 14).

15.25 From Salihat Gazaeva:

Some officers were shocked by what was going on, but they made offensive and insulting statements about Adam and Ibragim for being Chechen. . . . Before I lost my consciousness, I heard the abusive language of the policemen about Islam’s ethnicity. I personally remember the words of a policeman who said to Islam: “You are a Chechen too, get out...” I cannot reproduce the whole utterance, but it concerned his ethnicity and was abusive in essence. . . . During a private interview, Mr. Thakahov [a Deputy Prosecutor of the city] straightforwardly told me in a scornful and abusive manner: “Why did you, a Balkarian, get connected with these Chechens? They won’t get anything here.” (Ex. 4, §§ 15, 19, 23).

15.26 From Askerhan Kadyrova:

I also want to state that I heard abusive language of the policemen in respect of Islam’s ethnicity. I heard it myself how they spoke to Islam, “You are a Chechen too, get out ...” I, being a mother and a woman, can not repeat their utterances in full. The Chechen ethnicity of Islam and his brothers was slandered in all of these comments. . . . I am an ethnic Balkarian and I am convinced that such an attitude of the policemen to

the Makhachev brothers was connected with their ethnicity. I cannot find another explanation to that cruelty. (Ex. 5, §§ 19-20).

15.27 The evidence is clear that the Russian police harboured invidious racist attitudes towards the Makhachev brothers as demonstrated by the barrage of racist slurs shouted at the brothers during their physical assault and throughout the investigation. The officials' aggression towards the applicants was therefore motivated by their will to punish the applicants on account of their Chechen ethnicity. As such, the clear discriminatory and racist context of the police assault on the Makhachev brothers confirms that the police actions constitute torture in violation of Article 3 of the Convention.

***(ii) The Racist Violence Towards the Makhachev Brothers Constitutes Inhuman and Degrading Treatment***

15.28 Furthermore, the severe racially-motivated violent and physical abuse by the Russian police against the Makhachev brothers on the night of 14-15 November 2004 constitutes inhuman and degrading treatment under the Court's Article 3 jurisprudence as it debased the applicants' essence of human dignity. The Court has found that discriminatory treatment on grounds of race or ethnicity can amount to degrading treatment in and of itself if it meets the minimum level of severity under Article 3. In *Cyprus v. Turkey*, the Court found that the systemic discriminatory treatment by the Turkish authorities of the Karpas Greek Cypriot community in northern Cyprus constituted degrading treatment in violation of Article 3. See *Cyprus v. Turkey*, no. 25781/94, §§ 302-11 (10 May 2001). In the Court's view, the discriminatory conditions in which this community lived were "debasing and violate the very notion of respect for human dignity of its members." See *id.* at § 309. See also *East African Asians Case*, Nos. 4403/70-4419/70, 4422/70, 4434/70, 4443/70, 4476/70-4478/70, 4486/70, 4501/70 and 4526/70-4530/70, § 207 (14 December 1973) (finding of the European Commission of Human Rights that the act of singling out a group of persons based on race for differential treatment can constitute a special form of affront to human dignity, amounting to degrading treatment in violation of Article 3).

15.29 As elaborated above, the weight of the evidence in the record demonstrates that the Russian authorities were motivated by racial animus towards the Chechen applicants as they meted out continuous violent torture and mistreatment. Furthermore, the applicants include in the Annex to this application many articles published in local newspapers and some independent federal newspapers in the Northern Caucasus that depict consistent images of discriminatory policies in respect of ethnic Chechens who are living in Kabardino-Balkaria. (Exs. 37-47). Particularly striking and symbolic of the official nature of discrimination towards ethnic Chechens is the Resolution of the parliament of the Republic of Kabardino-Balkaria of 22 November 2001 No. 410-P-P, *On temporary Measures to Restrict Registration of Citizens Coming to the Republic of Kabardino-Balkaria*, which has the disproportionate effect of refusing to grant resident permits to Chechens on the basis of their Chechen origin. (Ex. 54).

15.30 In sum, the Makhachev brothers have established that the Russian officials subjected them to racist and discriminatory violence during their detention in official custody. This occurred in the context of systemic discrimination against ethnic Chechens throughout the Russian Federation, especially in the northern Caucasus. Consequently, the racist and discriminatory affront to the applicants' human dignity constitutes an independent element of inhuman and degrading treatment in violation of Article 3 of the Convention.

***c. The Russian Police's Denial of Medical Attention to Ibragim and Adam Makhashev Constitutes an Independent Breach of Article 3***

15.31 That the Russian police denied Ibragim and Adam access to medical care while the brothers were in official custody and clearly suffering from extreme injuries from the torture and mistreatment they were receiving from the Russian police constitutes a third independent violation of Article 3 in the present case. The detention of persons who are physically injured or unwell may rise to an Article 3 breach when access to medical care is denied. *See Hurtado v. Switzerland*, no. 17549/90, § 13 (28 January 1994); *Ilhan v. Turkey*, no. 22277/93, § 87 (27 June 2000). In assessing whether Respondent States violate Article 3 in such cases, the Court examines whether they have followed and respected expert medical advice regarding prisoners' needs for treatment or hospitalization.

15.32 While Islam Makhashev, Salihat Gazaeva and Askerhan Kadyrova were waiting for Adam and Ibragim outside the police station an ambulance came to the station. After the doctor exited the police station, Salihat Gazaeva and Askerhan Kadyrova approached her, introduced themselves, and talked to her. According to these witnesses, the doctor explained that she had not been admitted to examine Adam Makhashev. But she told them that she had examined Ibragim Makhashev, who had been wounded by a knife; she explained that he was in very poor condition and that his body and face bore traces of beatings. "I should have taken him to hospital in such a condition", explained the doctor, "but the policemen did not let me take him. His condition is just terrible", reiterated the doctor. (Ex. 4, § 13; Ex. 5, § 15, Ex. 23, and Ex. 24).

15.33 Salihat Gazaeva told the doctor about Adam Makhashev's stomach ulcer and bleedings and then asked the doctor to go back to the police station and give Adam necessary medical care. She also asked her to take Ibragim Makhashev to the hospital. The doctor returned to the police station. In some 10 or 15 minutes she exited and said that the policemen had not allowed her to examine Adam Makhashev and that they had also refused to take Ibragim Makhashev to hospital. The doctor indicated that she had warned the police that she would not be responsible for the consequences of not putting Ibragim Makhashev to hospital. "I had no right leave him without medical care", she reiterated, "but he was not given over to me". (Ex. 4, § 14, Ex. 5, § 16, Ex. 23).

15.34 Ibragim Makhashev also attests to the officers' refusal to release him for medical care. At around 23:00, Ibragim was taken to the office of Mr. Alchagirov and explained: "When I was talking with Mr. Alchagirov, a policeman in a camouflage uniform struck me with a rifle butt on my spine and I lost my consciousness again. When I recovered, I felt I was choking with blood. I asked for a doctor. I pleaded that I was not responsible for the wounding of the Kabardinian security guard at the gambling house... They proceeded to beat me." (Ex. 1, § 13). Several minutes later, Mr. Alchagirov invited a woman, "who seemed to be a doctor, to his office. She refused to examine me and said that I should be taken urgently to the hospital. I was scared for the life of my brother Adam, who suffers from an ulcer, and did not want to leave him alone at the station. But I was also hurting so much. It did not matter because the police refused to let the Doctor take me to the hospital." (Ex. 1, § 14).

15.35 The Russian officials also mistreated Adam Makhashev by intentionally aggravating his medical vulnerability. During his torture and abuse, Adam pleaded with the

officers not to hit him in his stomach so as not to aggravate his ulcer. Rather than heed Adam's warning, however, the police deliberately and maliciously proceeded to beat him further precisely where he had indicated he was the weakest. (Ex. 2, § 11).

15.36 In sum, the Russian police's failure to provide Ibragim and Adam Makhashev with access to medical care during their detention constitutes an independent element of inhuman and degrading treatment in violation of Article 3 of the Convention. In Ibragim Makhashev's case, not only did the officers detain him after he had been stabbed and was in need of medical attention, but the police beat him further. The police did allow a doctor to examine Ibragim, but once the doctor pronounced her professional opinion that Ibragim required urgent hospitalisation and medical attention, the police refused to release him and prohibited the doctor from taking him to receive medical care at the hospital. Consequently, Ibragim Makhashev suffered severe long-term medical problems, necessitating a one-month hospitalisation after he was released from police custody. Not only did the police fail to allow Adam Makhashev to be examined by the doctor, they deliberately and maliciously beat him in the stomach knowing of his ulcer. These actions establish that the Russian police's failure to provide access to medical care and their wanton disregard of the critical health of both Ibragim and Adam Makhashev constitute inhuman and degrading treatment in violation of Article 3 of the Convention.

***2. The Ineffective Investigation into the Abuse of the Makhashev Brothers and the Lack of Effective Remedy Constitute a Violation of the Applicants' Rights under the Procedural Limb of Article 3, as well as a Separate Violation of Article 13 Taken Together with Article 3***

15.37 The failure of the Nalchik City Prosecutor to conduct an effective official investigation into the Makhashev brothers' complaints of torture and mistreatment at the hands of identified Russian police officers on the night of 14-15 November 2004 constitutes an independent violation of the Respondent Government's positive obligation under the procedural limb of Article 3 in the present case. Furthermore, the lack of an effective remedy within the Russian judicial system to correct the deeply flawed investigation into the Makhashev brothers' abuse constitutes an independent violation of Article 13 of the Convention.

***a. Article 3 Procedural Standard Requiring an Effective Investigation for Claims of Torture and Ill-Treatment***

15.38 The Court has recognized that Article 3, read in conjunction with Article 1, requires States to undertake a number of positive obligations in order to prevent and provide effective redress for torture and inhuman and degrading treatment. One such positive obligation is that States must carry out effective official investigations into allegations of ill-treatment that give rise to violations of the substantive protections of article 3. *See, e.g., Assenov and Others v. Bulgaria*, no. 24760/94, § 102 (28 October 1998); *see also Satik and Others v. Turkey*, No. 31866/96, § 62 (10 October 2000). As the Court explained in *Assenov v. Bulgaria*, § 102 (citations omitted):

This investigation [into an allegation of ill-treatment under Article 3], as with that under Article 2, should be capable of leading to the identification and punishment of those responsible. . . If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental

importance. . . would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.

15.39 The first step that triggers a State's obligation to conduct an effective investigation is that a victim must raise an arguable claim that he or she has been seriously ill-treated by the police or other such State agents.

15.40 Once victims pass the threshold for stating an arguable claim for ill-treatment, the Court has elaborated a number of general principles of what subsequently constitutes elements of an effective investigation. Three clear principles were enunciated in the Court's decision of *Mikheyev v. Russia*, no. 77617/01 (26 January 2006).

15.41 First, an effective investigation into allegations of breaches of Article 3 must be "thorough. That means that authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions." *Id.* at § 108 (citing *Assenov*, § 103 et seq.). The Court has further warned: "Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard." *See id.*

15.42 Second, an effective investigation must be expedient. *See id.* at § 109. To determine whether this standard is satisfied, the Court will consider whether investigations are started promptly or have been delayed, particularly with regards to taking statements, and will examine the overall length of time taken to conduct an initial investigation. *See, e.g., Mikheyev* at § 109; *see also Labita v. Italy* [GC], no. 26772/95, § 133-136 (6 April 2000); *Timurtas v. Turkey*, no. 23531/94, § 879 (13 June 2000).

15.43 Third, the Court has recognized that for an investigation to be effective, the Court recognizes that it must be conducted independently and without any undue influence from other branches of Government. For example, in the context of evaluating the effectiveness of an investigation of a breach of Article 2 (right to life), the Court has concluded that an investigation that relies heavily on information provided by a branch of gendarmes that were alleged to be the perpetrators of an incident did not demonstrate sufficient independence to constitute an effective investigation. *See, e.g., Ergi v. Turkey*, no. 23818/94, §§ 83-86 (28 July 1998).

***b. Article 13 Standard Requiring an Effective Investigation and Remedy for Article 3 Claims of Torture and Ill-Treatment***

15.44 While Article 3 read in conjunction with Article 1 imposes a positive obligation on States to conduct effective investigations into alleged ill-treatment, Article 13 read in conjunction with Article 3 separately imposes procedural protections. Article 13 provides:

Everyone whose rights and freedoms as set forth in this 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.

15.45 Article 13 thus requires Contracting Parties to provide a domestic remedy to deal with the substance of an arguable complaint under the Convention and to grant appropriate relief. The remedy required by Article 13 must be effective in practice as well as in law, particularly in the sense that its exercise “must not be unjustifiably hindered by the acts or omissions by the authorities of the respondent State.” *See Aydin v. Turkey*, no. 23178/94, § 103 (25 September 1997).

15.46 When read in conjunction with Article 3, Article 13 not only requires that States ensure that victims have recourse to an effective remedy, but also imposes “an obligation on States to carry out a thorough and effective investigation of incidents of torture.” *Aksoy v. Turkey*, no. 100/1995/606/694, § 98 (18 December 1996). As under the procedural limb of Article 3, Article 13 requires that an effective investigation be “capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.” *Id.*; *see also Aydin v. Turkey*, no. 23178/94, § 103 (25 September 1997).

***c. Elements of the Flawed and Ineffective Investigation and Lack of Remedy in the Makhashev Brothers’ Case***

15.47 The Makhashev brothers’ allegations of torture and mistreatment on the night of 14-15 November 2004 amount, at the very least, to an arguable claim under Article 3 of the Convention. In the present case, the burden of proof lies with the Russian authorities to provide a satisfactory and convincing explanation as to how the Makhashev brothers sustained severe injuries while in official custody. *See Salman v. Turkey*, [GC], no. 21986/93, § 100 (27 June 2000). In the absence of such an explanation the Court can draw inferences, which may be unfavourable for the respondent State. *See Orhan v. Turkey*, no. 25656/94, § 274 (18 June 2002).

15.48 In the present case, the applicants lodged their complaints with the Nalchik City Prosecutor’s office in the middle of the night of 14-15 November 2004, when they were visibly injured and bloodied. Ibragim Makhashev identified the names of at least three of the perpetrators of his torture and inhuman and degrading treatment. The applicants therefore raised an arguable claim of a breach of Article 3, thereby triggering the Respondent State’s obligation to conduct an effective investigation under the procedural limb of Article 3 as well as under Article 13.

15.49 In light of the standards enunciated by this Court, the record of the present case makes clear that the investigation into the Makhashev brothers’ complaints was deeply flawed and ineffective, and therefore in breach of the Convention. Despite the brothers’ having lodged their complaint in the middle of the night immediately after they had been detained, tortured, and mistreated on 14-15 November 2004, the Nalchik City Prosecutor’s Office only ordered their official examination as part of the official investigation into the Makhashev brothers’ complaint on 24 February 2005, that is, more than three months after the torture occurred. (Exs. 29, 31 and 33). It was only at that time that the Prosecutor ordered an official forensic examination of the Makhashev brothers to evaluate their victim status. Taking into account that some visual signs of torture disappear quickly, the medical examination ordered at that time was belated and could not reasonably be expected to reveal fully the cause of earlier injuries.

15.50 Further, the investigator failed to conduct an identity parade and a cross-questioning among the applicants and the police officers who had ill-treated them immediately after the incident. Thus the police officers identified by the Makhashev brothers were never treated as suspects by the Prosecutor's Office, despite the fact that the Makhashev brothers identified three of the perpetrators by name when they filed their initial complaint and gathered further evidence regarding the perpetrators of the torture and mistreatment they received.

15.51 This omission is particularly egregious because Ibragim Makhashev recognized at least three officers who tortured him on the night of 14-15 November 2004, namely Officers Alchagirov, Arakhov, and Boliev (Ex. 1, § 11) and subsequently was able to identify additional officers who perpetrated his torture and ill-treatment on that night:

I can affirm that at least 10 police officers took part in the torture and degrading treatment inflicted upon me on the night of 14 November 2004. Later after the incident, I hid in my car to observe the officers at the police station and recognized most of those who had taken part in my cruel treatment. I included this information in my complaint to the Prosecutor's Office, submitting the number plates of their cars. In particular I identified the police officer who had struck me with a rifle butt. But the prosecution service did nothing to investigate these facts. (Ex. 1, § 21).

15.52 The few official investigative measures that were undertaken were initiated only after a long delay. Apart from the forensic medical examination of the applicants dated 24 February 2005, it was only on 20 July 2005, that is, more than eight months after the incident, that the investigator issued his decision recognizing the applicants as victims. Tellingly, the investigator issued this opinion only after the Makhashev brothers had filed numerous complaints to jumpstart the investigation.

15.53 The written official decisions of the Nalchik City Prosecutor's office reveal a number of significant omissions in the official pre-trial investigation. On 13 April 2006 that office issued its decision refusing to initiate criminal proceedings against the police officers named by the victims and discontinued the investigation based on the conclusion that the applicants had been beaten "by unidentified persons." (Ex. 13). According to Article 91 of the Russian Federation Criminal Procedure Code, a ground for detention of a suspect is when victims or witnesses point at this individual as a person who has committed a crime. All the applicants pointed at the police officers Mr. Arakhov, Mr. Boliev and Mr. Alchagirov and identified them as some of their aggressors and perpetrators of their ill-treatment. But these individuals were never treated as suspects in accordance with the law, as, for example, no formal identity parade was organized by the Prosecutor's Office just as other basic investigatory measures were not taken.

15.54 That the investigation lacked independence is further evidenced by the way in which evidence was collected and the manner of its assessment, in particular the investigator's selective and unjustified reliance on testimony by the police officers who were identified as perpetrators of the abuse. The investigator disregarded the uncontroverted evidence of the objective forensic medical examinations that the applicants obtained in the aftermath of their ill-treatment, which accounts for extensive, multiple bodily injuries. The investigator also disregarded the testimonies of Salihat Gazaeva and Askerhan Kadyrova, which corroborated the applicants' account of their torture. He gave no weight to the testimonies of Vadim Dyshekov, a policeman of the Second Police Station of Nalchik, who

confirmed that he saw Islam Makhashev inside the Second Police Station on the night of 14-15 November 2004 and that Islam Makhashev appeared then to be a sound man, i.e. uninjured at that time he arrived at the police station. This establishes that Islam Makhashev was under the control of Nalchik police officers when he sustained injuries that were documented at the Nalchik City Prosecutor's office and by the forensic medical expert on 15 November 2004 (Ex. 25).

15.55 Further, the investigator did not give any weight to the testimony of Apti Ratsuev, a policeman of the Northern Caucasus Department for Combating Organized Crime, who confirmed that he visited the Second Police Station of Nalchik on the night of 14-15 November 2004 and that he heard from Ibragim Makhashev that he and his brother Adam had been beaten that night. The Official Record of Apti Ratsuev's questioning from 3 August 2005 states as follows:

As far as I remember on 14 November 2004 around 11 p.m. I got a phone call from my acquaintance Ms. Kameta Shavlahova who asked me to arrive at the building of the second police station of Nalchik... At that time Ibragim Makhashev, who was there and who I had got acquainted with several years before, asked me for help in the Chechen language. To my question: "What happened?" Ibragim answered that he had been beaten by policemen who had seized from them their money, documents and a mobile phone. He added that his brother Adam was being kept in the neighbouring room. (Ex. 24).

15.56 Later, Mr. Ratsuev met the youngest of the Makhashev brothers, namely Islam Makhashev, and advised him to report the case to the Prosecutor's Office instead of waiting near the police station. That clearly indicates that Mr. Ratsuev was aware that something wrong and illegal had happened to Ibragim and Adam Makhashev. (Ex. 24).

15.57 The record of the investigation reveals that no serious effort was made by the authorities to discover what really occurred while the applicants were in detention. On the contrary, the investigative officials tended more towards obscuring the wrongs that had been committed and protecting the police officials who were responsible. For example, on an unspecified date in March 2005 the applicants lodged a second complaint with the Nalchik City Court in which they complained of ineffectiveness and inadequacy of the criminal investigation. The applicants pointed out, *inter alia*, that the investigator had not yet issued a decision whether to recognize the applicants as victims, had not ordered any cross-questioning among the applicants and the police officers involved in the alleged torture and mistreatment, and had not yet even issued a bill of indictment. Reviewing the Makhashev brothers' appeal, the Nalchik City Court issued a decision on 2 June 2006 declaring the investigators' inaction to be illegal, ordering the Prosecutor's Office to rectify its inaction in respect of the alleged complaints. (Ex. 19). Despite the Court's decision of 12 June 2005 the senior investigator of the Nalchik City Prosecutor's Office discontinued the criminal proceedings against the police officers for lack of evidence of a crime. Instead, the investigator concluded that the applicants had been beaten by unknown people on 14 November 2004 outside the police station.

15.58 Furthermore, in the few instances in which the Nalchik City Court ordered specific investigative measures for the Prosecutor's Office to undertake to render the investigation more effective, the Prosecutor's Office ignored those orders and did not fulfil its obligations. The Prosecutor's Office reluctantly reopened the proceedings by decision dated 2 March 2006 (Ex. 14) only as a result of the Nalchik City Court's order. The Prosecutor's



decision of 21 February 2006 to suspend the proceedings was based on almost the identical reasoning of the decision of 11 November 2005 that the alleged perpetrators of the assault against the Makhachev brothers could not be identified. Precious time had been lost having serious ramifications on the process and any hope for an effective investigation.

15.59 For nearly one and a half years after the applicants' torture, the city Prosecutor's Office conducted a biased and delayed investigation into the complaint filed by the Makhachev brothers. On 13 April 2006, the Prosecutor's Office of Nalchik decided not to initiate criminal proceedings against the police officers who had unlawfully detained and tortured the Makhachev brothers motivated by ethnic bias against Chechens.

15.60 Thus the Prosecutor's decision of 13 April 2006 to discontinue the proceedings against the police officers was based mainly on the testimonies of the very police officers who had been involved in ill-treatment on the night of 14-15 November 2004 and who, therefore, could not be regarded as impartial witnesses. *See Mikheyev v. Russia, supra* at § 117.

15.61 In light of the very serious investigative shortcomings identified above, it is clear that the applicants were denied an effective investigation and lacked access to any remedy in violation of the procedural limb of Article 3 and Article 13. The investigation was neither thorough nor expedient. Furthermore, the Nalchik City Prosecutor's Office, which denied the applicants' right to an effective investigation, does not "meet the requisite standards of independence needed to constitute sufficient protection against the abuse of authority and thus provide an effective remedy within the meaning of Article 13." *Khan v. the United Kingdom*, no. 35394/97, § 47 (12 May 2000). The applicants respectfully request that the Court find the Russian Federation in breach of the procedural limb of Article 3 in addition to Article 13.

### **3. *The Makhachev Brothers' Detention was in Breach of Article 5 of the Convention***

15.62 The Russian authorities' detention of the Makhachev brothers on the night of 14-15 November 2004 was unlawful and therefore breached Article 5(1)(c) of the Convention, which guarantees the following in pertinent part:

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 the 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;

15.63 The Court has stated that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5(1) "refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the 'lawfulness' of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of [Article 5(1)] of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion." *See, e.g., Fedotov v. Russia*, no.

5140/02, § 74 (25 October 2005); *see also Baranowski v. Poland*, no. 28358/95, § 51 (28 February 2000).

15.64 On the evening of 14 November 2004 at about 19:00, police officers detained Ibragim and Adam Makhashev. They did not ask to see the Makhashev brothers' identity cards and did not inquire into their involvement in the fight that had occurred in the night club they had recently left, the Forum Concert Hall.

15.65 Given the outbreak of the fight at the Forum Concert Hall that night, Ibragim and Adam Makhashev could expect that the police might question them as to what happened that evening. They acknowledge that the perpetrator of the fight at the Forum Concert Hall who was responsible for stabbing Ibragim Makhashev and the security guard was an ethnic Chechen. The staff of the night club had given this information to the police when they reported the outbreak of the fight. (Ex. 1, § 8). But the police who detained Ibragim and Adam Makhashev outside the night club did not ask to see the brothers' identification or question them; the officers also did not enter the night club to question eyewitnesses to the fight that had just occurred there. To the contrary, upon encountering the police, Ibragim Makhashev identified himself as a victim of the criminal assault that took place within the night club, showed the police his stab wounds and requested urgent medical care. But the police did not pay any attention to his clarification of events or his request for assistance.

15.66 Adam Makhashev explained the sequence of events that led to his and his brother Ibragim's detention by the police officers outside the night club as follows:

When I left the night club with my brother, the police arrested the two of us several streets away from the house after 19:00 because we are Chechens. The staff of the house had called the police and complained that Chechens were responsible for the brawl without providing any evidence. The police did not ask us any questions and were not interested in finding out about our involvement in the incident in which the security guard had been wounded. We tried to explain that we were not responsible for the brawl, but they arrested us simply because we were Chechens. All the police officers who stopped us were Kabardinians, as I could detect by their accents. (Ex. 2, § 7).

15.67 Ibragim and Adam Makhashev contend that their arrest by the police outside the night club, their transfer to the police station and their subsequent detention amounts to an unlawful deprivation of their liberty within the meaning of Article 5(1) of the Convention. *See, e.g., Menesheva v. Russia*, no. 59261/00, §§ 85-89 (9 March 2006).

15.68 The deprivation of the Makhashev brothers' liberty on the night of 14-15 November 2004 is not covered by any of the permitted grounds for detention of liberty listed in Article 5(1). The officers gave no reason for arresting and detaining the Makhashev brothers and did not bring any charges against them in connection with any criminal activity that occurred at the night club on that evening. Rather, the Makhashev brothers have proffered extensive evidence that the police officers were motivated not only to detain them, but also to subject them to violent torture and ill-treatment solely on account of the racial animus that the officers harboured towards ethnic Chechens.

15.69 Article 5(1)(c) of the Convention requires that the purpose of the arrest or detention be to bring the person concerned before a competent legal authority based on

reasonable suspicion of the commission of an offence. No such intention to bring the Makhachev brothers before a competent legal authority was present in this case. The police never questioned them about their involvement in the incident at the night club. Rather, the police immediately began violently assaulting Ibragim and Adam Makhachev, acting upon a racially discriminatory animus towards ethnic Chechens. This indicates that the police never intended to obtain evidence related to the crime that occurred at the night club. From the outset of the detention, therefore, there was a complete absence of intent on the part of the police officers to detain the Makhachev brothers under their official powers of detention for the purpose of gathering information for an investigation under Russian criminal procedure as set forth in Section II.D above. *See Brogan and Others v. United Kingdom*, nos. 11209/84, 11234/84, 11266/84, 11386/85, § 52 (29 November 1989).

15.70 The unlawfulness of the detention of Ibragim and Adam Makhachev by the police who arrested them is underscored by the contrasting behaviour of other police officers, who collected evidence at the scene of the fight at the Forum Concert Hall while the Makhachev brothers were being unlawfully detained. The police who questioned witnesses to the night club fight obtained statements attesting that Ibragim and Adam Makhachev were not accessories to any crime at the night club that night. The police at the station were aware of the Makhachev brothers' innocence, as they had received the witness statements attesting to the Makhachev brothers' innocence while the brothers were still detained. Yet the officers continued to detain, torture, and ill-treat the applicants. The police did not have reasonable suspicion or any other objective justification to believe that the Makhachev brothers were involved in any offence; they also had no reason to believe that the detention of the Makhachev brothers was necessary to prevent their committing an offence or fleeing. On the contrary, the police never ascertained the Makhachev brothers' identities and never informed the brothers of any reason for their detention. This, when viewed in light of the racist remarks shouted by the police officers at the Makhachev brothers during their detention, makes clear that the only reason for their detention was ethnic hatred.

15.71 Furthermore, it is clear that the detaining officers had no reasonable suspicion on the basis of which they could detain Islam Makhachev on the night of 14-15 November 2004. Islam was wholly unconnected to the events that occurred at the Forum Concert Hall that night or any other possible offence. Islam arrived at the police station to inquire why his brothers were being detained. This simple inquiry resulted in the officers detaining Islam Makhachev and subjecting him to racist and abusive torture and ill-treatment.

15.72 The record therefore establishes that none of the permissible factors for detention listed in Article 5(1) apply in the present case. *See Menesheva v. Russia*, no. 59261/00, §§ 86-87 (9 March 2006). Indeed, during the Makhachev brothers' detention, no record was made as to who the applicants are, or of the reasons for or the expected duration of their detention. Even if the police intended to bring charges for the crime committed at the night club on the evening of 14 November 2004, this does not absolve them of their duty to comply with basic requirements set forth in Russian law.

15.73 That the police officers made no official record of the arrest and detention of the Makhachev brothers in itself is a serious failing, as it has been this Court's view that "the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of

the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention.” *Anguelova v. Bulgaria*, no. 38361/97, § 154 (13 June 2002) (citing *Kurt v. Turkey*, no. 24276/94, § 125 (25 May 1998)).

15.74 In sum, the Makhashev brothers have established a violation of Article 5 of the Convention by virtue of the failure of the police officers who detained them to ask Ibragim and Adam Makhashev their identities upon their arrest; the officers’ detention of Ibragim and Adam Makhashev without articulating any reasons for doing so; the officers’ subsequent arrest of Islam Makhashev also without stating any reason; the officers’ failure to document any record of the arrest of the three brothers; and the officers’ brutal torture and ill-treatment of the three brothers while shouting racially discriminatory remarks at them.

**4. *The Invidious Racist Treatment of the Makhashev Brothers Constitutes Unlawful Discrimination in Breach of Article 14 in Conjunction with Article 3, Articles 3 and 13, and Article 5***

15.75 The Russian police’s unlawful detention, torture, and inhuman and degrading treatment of the Makhashev brothers and the Russian officials’ denial of an effective investigation and remedy for these acts were motivated by invidious racist discrimination towards the Makhashev brothers on account of their Chechen ethnicity. The facts of the present case contain overwhelming evidence that the Russian officials harboured invidious racial animus towards the Makhashev brothers. As such, the Russian Government has unlawfully discriminated against the Makhashev brothers in violation of Article 14 in conjunction with the applicants’ rights protected under Article 3, Articles 3 and 13, and Article 5.

15.76 Article 14 guarantees the following:

**Article 14. Prohibition of discrimination**

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.

15.77 This Court has interpreted “discrimination” within the meaning of Article 14 as “treating differently, without an objective and reasonable justification, persons in relevantly similar situations.” *Willis v. the United Kingdom*, No. 36042/97, § 48 (11 June 2002). “A difference of treatment is discriminatory for the purposes of Article 14 of the Convention if it has no objective and reasonable justification, that is 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 § 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, § 10 (23 July 1968).

15.78 This section will establish that the Russian Government is in breach of Article 14 with respect to the violation of the applicants’ rights under Article 3, Article 3 and 13, and Article 5 of the Convention.

***a. Violation of Article 14 in Conjunction with the Substantive Protections of Article 3***

15.79 The applicants maintain that the Russian officials' racial prejudice towards them on account of their Chechen ethnicity was the primary factor behind their torture and inhuman and degrading treatment in violation of Article 3. The Court has upheld the Convention's important role in protecting individuals from the type of racist violence they endured. As explained in *Nachova and Others v. Bulgaria*, nos. 43577/98 and 43579/98, § 145 (6 July 2005): "Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction."

15.80 Given the overwhelming weight of the evidence of racist motivation in the present case, the applicants have established that racial prejudice was the causal factor behind the Russian officials' torture and inhuman and degrading treatment of the applicants. The facts revealing this racist motivation are set forth in Section II.C.1 in §§ 14.56-14.68 and repeated in Section III.B.1.b(i) at §§ 15.19-15.27. The Makhachev brothers have provided detailed, consistent, abundant and corroborated evidence that establishes beyond a reasonable doubt that the police officers subjected them to a barrage of racist verbal attacks while they were being tortured and ill-treated. This case is similar, therefore, to that of *Moldovan and Others v. Romania*, nos. 41138/98 and 64320/01, § 139-140 (12 July 2005), in which the Court found a violation of Article 14 in conjunction with Articles 6 and 8 where the record was replete with repeated discriminatory remarks on the part of the Romanian officials implicated in that case. This case is, moreover, distinguished from *Nachova*, in which the Court did not find a violation of Article 14 in conjunction with Article 2 because it could only speculate about police officers' perceptions of the victims. In *Nachova*, the record contained reference to only one racial slur articulated throughout the course of the circumstances under examination in that case. *See Nachova and Others, supra* at § 152-53.

15.81 In sum, the Makhachev brothers have established that racial prejudice was the causal factor behind the torture and ill-treatment they received on the night of 14-15 November 2004 and that the Russian Federation is therefore in breach of Article 14 in conjunction with the substantive protections under Article 3.

***b. Violation of Article 14 in Conjunction with the Procedural Protections of Article 3 and Article 13***

***(i) The Russian Officials Did not Conduct an Effective Investigation and Denied the Makhachev Brothers an Effective Remedy Due to Racial Prejudice towards the Applicants***

15.82 The Russian Federation is also in breach of Article 14 taken together with the procedural protections of Article 3 and Article 13 in two respects.

15.83 First, the evidentiary record makes clear that Russian officials failed to provide an effective investigation into the Makhachev brothers' torture and ill-treatment because of their Chechen ethnicity. The Prosecutor's Office did very little to investigate the Makhachev brothers' case and the measures taken were inadequate and ineffective. Substantial evidence of the racist attitudes towards the Makhachev brothers is set forth above. Here, it is sufficient

to recall one of many examples, which comes from Adam Makhachev's testimony: "The Deputy Prosecutor of Nalchik, Murat Tkhakachov, made insulting comments towards me and my brothers during the course of the investigation, disparaging us because we are Chechens and threatening us for trying to obtain justice." (Ex. 2, § 20).

15.84 Furthermore, the local court structure tasked with reviewing the Prosecutor's decision to close the investigation lacked independence and rubber-stamped the prosecution office's decision, aggravating the violation of the Respondent State's obligation to conduct an effective investigation and provide an effective remedy. In addition to the testimonial evidence provided in this case, there is overwhelming evidence from independent observers that the judicial system in Russia is prejudiced against members of ethnic minorities, including in particular ethnic Chechens outside of Chechnya. *See above evidence* in Section II.C.3 at §§ 14.77-14.85.

15.85 Prosecutor's Offices in Russia lack independence in conducting investigations, given the dual responsibility of the State Prosecutors' Offices to both prosecute cases and oversee the proper conduct of investigations. This structural problem is compounded by racism when Russian Prosecutors are asked to investigate racist crimes in the Northern Caucasus. Since 1996, there has been no case in which an ethnic Kabardinian or Balkarian was charged and brought to trial for any crime committed against ethnic Chechens (Ex. 21). In so far as the Russian police tortured and mistreated the Makhachev brothers because of ethnic hatred towards Chechens, the applicants knew that their efforts were futile given the lack of independence of the Prosecutor's Office in Kabardino-Balkaria. They therefore sought to move their case from Kabardino-Balkaria to the Federal Prosecutor's Office of the Russian Federation, but these efforts were in vain. (Ex. 21).

15.86 In sum, the Makhachev brothers have established that the Russian authorities failed to conduct an effective investigation and that they had no access to an effective remedy as a result of the racial prejudice of relevant Russian officials, from the investigators to the court officers reviewing the prosecution's decisions, thus constituting one element of a breach of Article 14 taken together with the procedural limb of Article 3 and Article 13.

***(ii) The Russian Officials Failed to Investigate any Racist Motivation behind the Torture and Ill-Treatment of the Makhachev Brothers***

15.87 In filing a complaint with the Prosecutor's Office in the immediate aftermath of their unlawful detention, torture, and inhuman and degrading treatment on the night of 14-15 November 2004, the Makhachev brothers informed the Prosecutor's Office of the racist nature of the rights violations they suffered that night. This triggered the obligation of Russian officials to investigate the racial motivation behind the torture and ill-treatment the applicants suffered on that night. Acknowledging that racial violence is an affront to human dignity, this Court has found that the Convention requires that "authorities must use all available means to combat racism and racist violence, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of its enrichment." *Nachova and Others, supra* at § 145.

15.88 The applicants refer to the evidence that the Russian officials harboured racist attitudes towards them and shouted repeated racist remarks to them as set forth above. Consequently, the applicants contend that the failure of the Russian officials to investigate racial motives behind their torture and ill-treatment, combined with their prejudiced attitude

during the investigation, constitutes discrimination with regards to their rights contrary to Article 14 in conjunction with the procedural limb of Article 3 and Article 13 of the Convention. This case is therefore like *Cobzaru v. Romania*, no. 48254/99, § 100 (26 July 2007), in which the Court found “that the tendentious remarks made by the prosecutors in relation to the applicant’s Roma origin disclose a general discriminatory attitude of the authorities, which reinforced the applicant’s belief that any remedy in his case was purely illusory.”

*c. Violation of Article 14 in conjunction with Article 5*

15.89 Finally, the evidence is clear that the police detained Ibragim and Adam Makhashev first, and Islam Makhashev later, solely on account of invidious racist animus towards the brothers. This constitutes discrimination in violation of Article 14 taken in conjunction with Article 5. At the scene of the applicants’ arrest, the police officers did not state any reasons for their arrest. The police drove Ibragim and Adam Makhashev to the Second Police Station (OVD) of the City of Nalchik, where the police officers did not write up any police report or compose any other official papers concerning the arrest of the Makhashev brothers.

15.90 At the police station, the Russian police began beating Ibragim and Adam Makhashev and separated the two brothers. For over three hours, groups of police officers subjected Ibragim and Adam Makhashev to repeated beatings and kickings, even striking them with rifle butts in the face and vital organs. Both Ibragim and Adam Makhashev lost consciousness several times and bled profusely from the wounds inflicted upon them by the police. Islam Makhashev came to the police station in search of his brothers. Without any reason other than racial animus, the police then dragged Islam Makhashev into the police station and violently assaulted him.

15.91 Throughout the unlawful arrest and torture of the three Makhashev brothers, the police officers shouted racist remarks, revealing that the police were motivated by invidious racial animus towards the brothers based upon their Chechen ethnic origins. The police released Adam, then Ibragim and Islam Makhashev in the middle of the night of 14-15 November 2004 without charging any of them with a crime. These facts confirm that the Makhashev brothers were subjected to discriminatory arrest in breach of Article 14 taken in conjunction with Article 5.

**IV. STATEMENT RELATIVE TO ARTICLE 35(1) OF THE CONVENTION**

**A. EACH 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 requires:

Article 35 Admissibility Criteria

1. 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 30 April 2007 the applicants' undersigned legal representatives sent an initial complaint letter by fax and DHL courier. This initial complaint letter was filed within six months of the final decision issued by the Criminal Chamber of the Supreme Court of the Republic of Kabardino-Balkaria dispensing with the domestic legal claims of the applicants. On 18 May 2007 the Registry of the European Court of Human Rights replied. The Registry informed that the file had been given the number 20546/07 and the name *Makhashev and Others v. Russia*.

16.3 The applicants have exhausted domestic remedies through their appeals to the Criminal Chamber of the Supreme Court of the Republic of Kabardino-Balkaria. The date and nature of national legal proceedings are therefore listed below:

- a. Final Decision in *Makhashev Brothers Case*, Cassational Ruling, Case No. 22k-150-2006, the Supreme Court (Criminal Department) of the Republic of Kabardino-Balkaria, issued on 3 November 2006. (Ex. 6). (Cassational Court decision dismissing Makhashev Brothers' appeal and upholding the Nalchik City Court's judgment).
- b. Judgment of the Nalchik City Court of 4 July 2006, *Makhashev Brothers Case* N 21/223-04. (Ex. 8). The Court upheld the Prosecutor's decision not to initiate criminal proceedings against the police officers responsible for the torture and abuse of the Makhashev brothers.

**B. THE APPLICANTS RESPECTFULLY REQUEST THAT THE COURT EXPEDITE REVIEW OF THEIR APPLICATION PURSUANT TO RULE 40 OF THE RULES OF THE COURT**

16.4 The applicants respectfully request that the Court consider their claims in the most expeditious manner possible pursuant to Rule 40 of the Rules of the Court given the urgency of their situation and the gravity of the violations they endure. The applicants request the Court to make use of urgent notification of an application under Rule 40 of the Rules of Court, taking into account the gravity of the violations they have been subjected to. In this regard, the applicants call the Court's attention to the fact that the Russian authorities forged a criminal case in respect of one of the applicants (Mr. Adam Makhashev) which has been referred to a court. The absurd charge brought against Mr. Adam Makhashev is that on 14 November 2004 he allegedly struck the head Mr. Boliev, the head of the criminal investigation department, in his office and tried to kill him. This case, as the applicants believe, was forged to exert more pressure on them.

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**

15.92 19.1 The object of this application is a holding by the European Court of Human Rights that the Russian Government has violated the applicants' rights under Articles 3, 5, and 13; Article 14 in conjunction with the applicants' rights protected under Article 3, Articles 3 and 13, and Article 5. In connection with Article 41 of the Convention, the Applicants request just compensation for pecuniary and non-pecuniary damages. The applicants 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 applicants affirm that they have 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**

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

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Mirna Adjami  
Place: New York  
Date: 14 November 2007



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Vladimir Luzin  
Place: Nizhny Novgorod, Russian Federation  
Date: 14 November 2007

## INDEX

### LIST OF DOCUMENTS – EXHIBITS

#### Affidavits

- Ex.1 Affidavit of Ibragim Magamedovich Makhachev (in Russian and English)
- Ex.2 Affidavit of Adam Magamedovich Makhachev (in Russian and English)
- Ex.3 Affidavit of Islam Magamedovich Makhachev (in Russian and English)
- Ex.4 Affidavit of Salihat Huseevna Gazaeva (in Russian and English)
- Ex.5 Affidavit of Askerhan Huseevna Kadyrova (in Russian and English)

#### Official Court Documents Concerning Procedural History of the Makhachev Brothers Case

- Ex.6 Final Decision in *Makhachev Brothers Case*, Cassational Ruling, Case No. 22k-150-2006, the Supreme Court (Criminal Department) of the Republic of Kabardino-Balkaria, issued on 3 November 2006 (in Russian and English)
- Ex.7 Appeal of the Judgment of the Nalchik City Court of 4 July 2006 filed by Ibragim, Islam and Adam Makhachev before the Supreme Court (Criminal Department) of the Republic of Kabardino-Balkaria on 7 July 2006 (in Russian)
- Ex.8 Judgment of the Nalchik City Court of 4 July 2006, *Makhachev Brothers Case N 21/223-04* (in Russian)
- Ex.9 Complaint of 5 June 2006 filed by Ibragim, Islam and Adam Makhachev before the Nalchik City Court (in Russian). The applicants appealed against the decision to discontinue the investigation. The applicants required an effective investigation of cases of torture and ill-treatment committed by the police officers because ethnic hatred.

#### Other Official Prosecution Investigation Documents Concerning Procedural History of the Makhachev Brothers Case

- Ex.10 Complaint of 9 August 2006 filed by Ibragim, Adam and Islam Makhachev before the Deputy General Prosecutor of the Russian Federation, Mr. Sydoruk I.I. The applicants appealed the prosecution's decision to discontinue the investigation, arguing that the prosecution's investigation of their case of torture and ill-treatment by the police on

the basis of ethnic hatred was not effective (in Russian and English).

- Ex.11 Official rejection by the Prosecution Office of the Republic of Kabardino-Balkaria on 20 May 2006 of the Makhachev Brothers' complaint filed on 28 April 2006.
- Ex. 12 Complaint of 28 April 2006 filed by Ibragim, Adam and Islam Makhachev before the Deputy General Prosecutor of the Russian Federation, Mr. Shepel N. The applicants appealed the prosecution's decision to discontinue the investigation. The applicants required an effective investigation of their cases of torture committed by the police officers because of ethnic hatred.
- Ex. 13 Official final decision by the Nalchik City Prosecutor's Office refusing to initiate criminal proceedings against the police officers for lack of evidence of a crime issued on 13 April 2006. The Prosecution service discontinued the investigation, finding that no criminal offence had been committed by the police officers.
- Ex. 14 Decision of 2 March 2006 of the deputy Prosecutor of the Republic of Kabardino-Balkaria to quash the decision of 21 February 2006 to suspend the preliminary investigation for the second time. The decision of 2 March 2006 resumed the suspended preliminary investigation for the second time and ordered certain additional investigative measures.
- Ex. 15 Decision of 5 December 2005 of the first deputy Nalchik City Prosecutor to quash the decision of 30 November 2005 to suspend the preliminary investigation for the first time. The decision of 5 December 2005 resumed the suspended preliminary investigation for the first time and ordered certain additional investigative measures.
- Ex.16 Official order by the deputy Nalchik City Prosecutor to reopen a criminal investigation into torture and ill-treatment of the Makhachev brothers by police officers issued on 24 July 2005.
- Ex.17 Official ruling by the Nalchik City Prosecutor's Office of 10 June 2005 opening a criminal investigation against Mr. Adam Makhachev in relation to a charge that Adam Makhachev had struck Mr. Boliev, the head of the criminal investigation department, on 14 November 2004.
- Ex. 18 Official order by the Nalchik City Prosecutor's Office to release Adam Makhachev from custody on 2 June 2005.
- Ex. 19 Decision of 2 June 2005 of the Nalchik City Court on recognizing that the lack of action of the investigator was illegal, and his liability to eliminate the committed violation.
- Ex.20 Official record by the Nalchik City Prosecutor's Office of Adam Makhachev's detention issued at 12:05 on 1 June 2005. Mr. Adam Makhachev denied any involvement in any offence.

- Ex.21 Complaint of 21 February 2005 filed by Ibragim, Adam and Islam Makhachev before the General Prosecutor of the Russian Federation Mr. Ustinov V.V. The applicants alleged ineffectiveness and inadequacy of the criminal investigation conducted by the Nalchik City Prosecutor's Office.
- Ex.22 Official ruling by the Nalchik City Prosecutor's Office on 25 November 2005 to open a criminal investigation into the Makhachev Brothers' complaints of inhuman treatment by police officers on the night of 14-15 November 2004.

**Other Official Documents Concerning Procedural History of the Makhachev Brothers Case from the Case-file**

- Ex.23 Official Record of Askerhan Kadyrova's questioning from 22 February 2005. Ms. Askerhan Kadyrova is Adam Makhachev's sister-in-law.
- Ex.24 Official Record of Apti Ratsuev's questioning from 3 August 2005, confirming that he visited the Second Police Station of Nalchik on the night of 14 November 2004 and that he heard from Ibragim Makhachev that he and his brother Adam had been tortured, beaten, and assaulted on that night. Mr. Apti Ratsuev is a policeman of the Northern Caucasus Department for Combating Organized Crime. (in Russian and English)
- Ex. 25 Official record of Vadim Dyshekov's questioning from 15 March 2005. Mr. Vadim Dyshekov is a policeman of the Second Police Station of Nalchik. Mr. Dyshekov confirms that he saw Islam Makhachev inside the Second Police Station on the night of 14 November 2004 and that Islam was a sound man, i.e. uninjured at that time. This proves that Islam Makhachev was under the control of Nalchik police officers when he sustained injuries that night that were documented at the Nalchik City Prosecutor's Office and by the forensic medical expert on 15 November 2004.
- Ex. 26 Official record of the cross-questioning by an investigator named Shibzuhov of Mr. Thakachov, Deputy Nalchik City Prosecutor and Ms. Salihat Gazaeva, Adam Makhachev's wife, as part of the official investigation conducted on 30 November 2005. (Mr. Thakachov was being questioned for his conversation with Ms. Gazaeva on the evening of 14-15 November 2004, when Ms. Gazaeva went with Adam and the Makhachev brothers to lodge a complaint with the Nalchik City Prosecutor). This transcript of the official cross-questioning confirms Ms. Gazaeva's statement that Mr. Thakachov tried to persuade her not to file a complaint: "I know that the Makhachev brothers are going to file a complaint, so make them reject this idea. It will be only worse for them. They won't get anything", Mr. Thakachov told Ms. Gazaeva.

According to Ms. Gazaeva, Mr. Thakahov said “Take away your guys and take care of them. Look at their terrible conditions”.

Ex.27 Official Record of Salihat Gazaeva’s questioning from 3 August 2005.

**Medical Papers and Other Official Documents Concerning Torture and Inhuman Treatment by the Nalchik Police**

- Ex.28 Official Report of the Forensic Medical Examination of Ibragim Makhashev by a forensic medical expert on 15 November 2004, confirming that Ibragim Makhashev has been tortured and inhumanly treated. The Report documents the following conditions suffered by Ibragim Makhashev: “multiple wounds, bruises, injuries and abrasions”, “there are haemorrhages in both eyes.” At the end of the Report there is the following conclusion: “[Mr. I. Makhashev] was hospitalized.”
- Ex.29 Official Additional Report of the Forensic Medical Examination of Ibragim Makhashev by a forensic medical expert on 24 February 2005, confirming that Ibragim Makhashev has been tortured and inhumanly treated. This examination was ordered by the Nalchik City Prosecutor’s Office as part of that office’s investigation into the Makhashev Brothers’ complaint.
- Ex.30 Official Report of the Forensic Medical Examination of Adam Makhashev by a forensic medical expert on 15 November 2004, confirming that Adam Makhashev has been tortured and inhumanly treated.
- Ex.31 Official Additional Report of the Forensic Medical Examination of Adam Makhashev by a forensic medical expert on 24 February 2005, confirming that Adam Makhashev has been tortured and inhumanly treated.
- Ex.32 Official Report of the Forensic Medical Examination of Islam Makhashev by a forensic medical expert on 15 November 15 2004, confirming that Islam Makhashev has been tortured and inhumanly treated.
- Ex.33 Additional Report of the Forensic Medical Examination of Islam Makhashev by a forensic medical expert on 24 February 2005, confirming that Islam Makhashev has been tortured and inhumanly treated.
- Ex.34 Official Notice issued by the Nalchik City Hospital N 1 on 6 June 2005, confirming that Adam Makhashev has been treated in the City Hospital N 1 since 4 June 2005.
- Ex.35 Official Notice issued by the Central Hospital of the Republic on 11

December 2004, confirming that Ibragim Makhashev has been treated in the Hospital from 16 November 2004 through 12 December 2004 and was operated on and received implants of two titanic plates.

- Ex.36 Official Notice issued by the Nalchik City Hospital N 2 on 13 July 2005, confirming that Adam Makhashev received treatment in the City Hospital N 2 from 16 June through 13 July 2005 for stomach bleeding and a stomach ulcer.

### **Photographs**

- Ex.37 Photograph of Ibragim Makhashev to witness evident injuries on his face, from 15 November 2004.
- Ex.38 Photograph of Adam Makhashev to witness evident injuries on his face, from 15 November 2004.
- Ex.39 Photograph of Islam Makhashev to witness evident injuries on his face, from 15 November 2004.

### **Newspaper Articles**

- Ex.40 Article from "Gazeta Yuga", "A skirmish between local and Chechen young people" (September 2005).
- Ex.41 Article from "Gazeta Yuga" N 39, "What reasons for conflicts with the Chechens in Nalchik are?" (23 September 2003).
- Ex.42 Article from "Sovetskaya Molodezh", "Chechen students have been assaulted" (24 September 2003)
- Ex.43 Article written by Anna Politkovskaya from "Novaya Gazeta" N 11 (582), "Walkers to Putin" (20-26 March 2000)
- Ex.44 Article from "Gazeta Yuga", "Prosecutors said their word" (20 April 2000)
- Ex.45 Article written by Anna Politkovskaya from "Novaya Gazeta" N 47 (569), "Kabardino-Balkaria separated from Russia" (13-19 December 1999)
- Ex.46 Article from "Gazeta Yuga", "At the border" (14 October 1999)
- Ex.47 Article from "The Northern Caucasus" N 34, "Don't trust the Russian citizen" (August 1999)
- Ex.48 Article from "Gazeta Yuga", "The Migration must be strictly regulated" (4 September 1997)

- Ex.49 Article from “Obshaya Gazeta”, “Refugees become a new matter of import” (from June, 1997)
- Ex.50 Article from “The Northern Caucasus” N 49, “Chechen Refugees are asked to go home” (from December 1996)

**Miscellaneous**

- Ex.51-53 Receipts NN 293,308, 320 for Ibragim Makhashev’s treatment issued by the Central Hospital of the Republic on November 16 2004 and December 3, 12 2004,

**Other Relevant Russian Legal Documents**

- Ex.54 Resolution of the Parliament of the Republic of Kabardino-Balkaria of 22 November 2001 No. 410-P-P , “On Temporary Measures to Restrict Registration of Citizens Coming to the Republic of Kabardino-Balkaria for Permanent Residence (in Russian and English)