



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

FIRST SECTION

CASE OF ELDAR IMANOV AND AZHDAR IMANOV v. RUSSIA

(Application no. 6887/02)

JUDGMENT

*This version was rectified on 12 April 2011
under Rule 81 of the Rules of Court*

STRASBOURG

16 December 2010

FINAL

20/06/2011

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

In the case of Eldar Imanov and Azhdar Imanov v. Russia,
The European Court of Human Rights (First Section), sitting as a
Chamber composed of:

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 25 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 6887/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Russian nationals, Mr Eldar Nasrula¹ oglu Imanov (“the first applicant”) and his brother Mr Azhdar Nasurulla oglu Imanov (“the second applicant”), on 4 February 2002.

2. The applicants, who had been granted legal aid, were initially represented by Mr Z. Babayev and subsequently by Mr N. Abdullayev, lawyers practising in Baku. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that they had been ill-treated by the police, that the investigation into their allegations of ill-treatment had been inadequate and ineffective and that they had been detained in inhuman conditions.

4. On 6 February 2007 the President of the First Section decided to communicate the above complaints to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

¹ Rectified on 12 April 2011: the text was “Nasurulla”

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1953 and 1962 respectively and live in Baku, Azerbaijan.

A. The applicants' arrest and ill-treatment

7. According to the applicants, on 5 September 1998 at about 4 p.m. the police entered their house, searched it and seized their belongings. The police officers searched the applicants, handcuffed them and took them into the police car. On the way to the car the police officers allegedly struck the applicants on the neck and back with gun butts and shouted obscene words at them. The police officers also aimed their guns at the applicants and shouted that "all dark-faced Caucasians should be killed". The applicants were taken to Nizhnevartovsk police station no. 1. They were not informed about the reasons for their arrest.

8. The first applicant was held at Nizhnevartovsk police station no. 1 for more than twenty-four hours. He was allegedly not given any food or drink, and was not allowed to go to the toilet or sleep. The police officers hit him several times on the neck and threatened to kill him. On 6 September 1998 he was placed in a temporary detention centre.

9. As to the second applicant, three hours after the arrest he was transferred to Nizhnevartovsk police station no. 4. On the way there the police officers allegedly beat him on the head many times. In the morning of 6 September 1998 the second applicant was transferred to Nizhnevartovsk police station no. 3, where he was held until the next morning. He was not allowed to sleep and was not given any food. On 7 September 1998 the second applicant was placed in a temporary detention centre.

10. According to the Government, the applicants were arrested on 6 September 1998. On the same day they were placed in the temporary detention centre of Nizhnevartovsk.

11. On 9 September 1998 the prosecutor of Nizhnevartovsk authorised the applicants' detention.

12. On 15 or 16 September 1998 the applicants were charged with the attempted murder of the mayor of Nizhnevartovsk.

13. During the investigation the applicants were allegedly repeatedly ill-treated by police officers, who sought to make them confess. In particular, the officers threatened to kill the applicants and their relatives. They kicked the first applicant in the stomach and kidneys, put a gas-mask on him and made him inhale cigarette smoke, put plastic bags on his head and blocked access to the air until he fainted, and raped him with a

truncheon. The first applicant alleged that as a result of the ill-treatment his ears had bled and he had urinated blood.

14. The second applicant contended that the police officers had beaten him on the head, and in the stomach and kidneys, put a plastic bag on him and suffocated him, put him handcuffed on the floor and stepped on his back. They had also put a gas-mask on him and made him inhale cigarette smoke. On several occasions in September 1998 the police officers had blindfolded him and put him on the floor of a police car. The police officer Mr Sh. had pushed his head against the floor with his feet. He had been taken to a cemetery where the police officers ill-treated him and threatened to kill him. They had put a gun against his head and shot blanks.

15. On 14 September 1998 the second applicant was taken to Nizhnevartovsk police station no. 1, where he was allegedly beaten up by four drunken police officers until he lost consciousness. They also threatened to sodomise him with a truncheon.

16. On 15 and 17 September 1998 the applicants confessed to the attempted murder. However, once questioned in the presence of counsel they retracted their confessions.

17. On 25 December 2001 the applicants were released on an undertaking not to leave the town.

18. On 13 August 2002 the criminal proceedings against the applicants were discontinued. The investigator noted that the confessions had been given without the benefit of legal assistance and that the applicants had complained about ill-treatment. As they had indeed received injuries during the investigation, their confessions were not reliable evidence. There was no other evidence against them.

B. Relevant medical documents

1. The first applicant

19. The first applicant submitted his medical records from remand centre no. IZ-68/5 of Nizhnevartovsk.

20. It appears from the records that upon his arrival at the remand centre on 6 October 1998 the first applicant was examined by a doctor. The doctor found no injuries.

21. On 19 October 1998 the first applicant complained to the facility doctor about headaches, aches in his left wrist, wrist swelling and a hearing impediment. He also repeatedly complained about his aching spine.

22. On 5 April 1999 the first applicant was X-rayed. The examination revealed that he had a deformed spinal disc, possibly as a result of trauma.

23. On the same day the doctors noted old abrasions on the first applicant's wrists, oedema of the wrists and fingers, and a sprained left

wrist. He was diagnosed with a post-traumatic spinal osteochondrosis and periarthrititis of the shoulder joint.

24. On 4 July 2001 the first applicant was diagnosed with post-traumatic spondylitis (inflammation of a spine vertebra).

25. In January 2002, after his release, the first applicant was examined by doctors who diagnosed him with a post-traumatic cataract, post-traumatic arthritis of the left wrist, and deformation of a spinal disc, possibly of traumatic origin. They also suspected a wrist fracture.

2. The second applicant

26. It appears from the second applicant's medical records that on 30 October 1998 he arrived at remand centre no. IZ-68/5 of Nizhnevartovsk. He was examined by a doctor, who found no injuries. He was again examined on 8 December 1998 and on an unspecified date in February 1999. No injuries were noted.

27. Between 1999 and 2002 the applicant regularly complained to the facility doctor about headaches and dizziness. His medical records do not contain any indications that those symptoms were of traumatic origin.

28. In January 2002, after the release, the second applicant was diagnosed with post-traumatic encephalopathy (a brain disease).

C. Investigation into the alleged ill-treatment

1. Investigation into the first applicant's allegations of ill-treatment

29. On an unspecified date the first applicant asked the prosecutor's office of Nizhnevartovsk to initiate criminal proceedings against the police officers who had ill-treated him.

30. On 19 October 1998 the first applicant was examined by a medical expert. The expert noted a bruise on his right knee, abrasions on his forehead, right knee and wrists, sprained fingers on both hands, and a left shoulder sprain.

31. On 20 November 1998 the prosecutor's office of Nizhnevartovsk refused to initiate criminal proceedings. Despite his repeated requests, the applicant was not served with a copy of the decision.

32. On 11 June 1999 the prosecutor's office of the Khanty-Mansiysk Region set aside the decision of 20 November 1998 and ordered an additional inquiry.

33. On 25 June 1999 the prosecutor's office of Nizhnevartovsk refused to initiate criminal proceedings. The parties did not submit a copy of that decision.

34. On 20 August 1999 the first applicant was examined by a medical expert, who found no traces of ill-treatment.

35. Between 1999 and 2002 the first applicant filed many complaints with prosecutors of different levels describing the details of the ill-treatment and the injuries sustained. In particular, he complained about his sprained left arm and aching spine. He asked to initiate criminal proceedings against the head of the Nizhnevartovsk police station, his deputy and the subordinate police officers.

36. In October 2002 the Interior Department of the Khanty-Mansiysk Region conducted an internal inquiry. The investigator questioned one of the police officers of the Nizhnevartovsk police station, who denied beating the first applicant. It was not possible to interview the other police officers who had arrested and questioned the applicant, as they had been dismissed from the police and moved to another region of Russia. Nor was it possible to question the head of the Nizhnevartovsk police station or his deputy as they were on annual leave.

37. The investigator also questioned the first applicant's co-detainees, who testified that they had seen marks of beatings on the first applicant's body and heard him complaining of ill-treatment. One of the warders of the temporary detention centre in which the first applicant had been held also stated that he had seen numerous bruises on the first applicant's skin.

38. On 23 October 2002 the Interior Department of the Khanty-Mansiysk Region found that the evidence was contradictory and that an investigation and a medical expert's examination were necessary to verify the first applicant's allegations of ill-treatment. The materials of the inquiry were forwarded to the prosecutor's office of the Khanty-Mansiysk Region.

39. On 26 October 2002 the prosecutor's office of the Khanty-Mansiysk Region refused to initiate criminal proceedings with reference to the decision of 25 June 1999. The prosecutor noted that the first applicant had not submitted any new information.

40. The applicant complained to the Prosecutor General of the Russian Federation.

41. By letter of 9 January 2003 the Prosecutor General's office informed the applicant that the decision of 26 October 2002 had been set aside and that criminal proceedings had been opened.

42. On 26 May 2003 the prosecutor's office of the Khanty-Mansiysk Region recognised the first applicant as a victim. In his decision the prosecutor noted that "the inquiry had established that [the first applicant] had indeed been subjected to violence during the investigation in criminal case no... in which he had been a defendant".

43. On 5 June 2003 the criminal proceedings were suspended because it was not possible to identify the perpetrators.

44. The first applicant complained about that decision to the prosecutor's office of the Khanty-Mansiysk Region. On 9 March 2007 a deputy prosecutor of the Khanty-Mansiysk Region confirmed the decision, finding that it had been lawful.

2. Investigation into the second applicant's allegations of ill-treatment

45. According to the second applicant, from the date of his arrest and until 8 February 1999 he had no access to legal assistance and was not allowed to send any correspondence. He was therefore prevented from lodging a complaint about ill-treatment. From February 1999 onwards he repeatedly complained about ill-treatment to the prosecutor's office of Nizhnevartovsk. He described the details of the ill-treatment and named the police officers who had beaten him. He asked the prosecutor's office to appoint a medical expert to examine him and to initiate criminal proceedings against the police officers. Copies of those complaints were seized by the detention facility officials in April 1999.

46. In reply to the second applicant's complaints, on 24 February 1999 the prosecutor's office of Nizhnevartovsk ordered a medical expert's examination.

47. On 6 and 7 May 1999 the second applicant was examined by medical experts, who found no traces of ill-treatment.

48. By letter of 28 May 1999, the prosecutor's office of the Khanty-Mansiysk Region informed the applicant that an inquiry had not revealed any evidence of ill-treatment.

49. On 10 November 1999 the prosecutor's office of Nizhnevartovsk refused to initiate criminal proceedings. The parties did not submit a copy of that decision.

50. The second applicant continued to complain about ill-treatment to the prosecutor's officers at various levels.

51. On 29 June 2003 the Nizhnevartovsk prosecutor's office for a second time refused to initiate criminal proceedings concerning the second applicant's allegations of ill-treatment. The prosecutor noted that the second applicant had had no injuries and the police officers in charge of the criminal case against him had denied beating him.

52. The second applicant challenged the decision before the Nizhnevartovsk Town Court. He complained that the prosecutor's office of Nizhnevartovsk had not questioned his co-detainees who had seen marks of beatings on him.

53. By letter of 1 September 2003, the prosecutor's office of the Khanty-Mansiysk Region informed the second applicant that the decision of 29 June 2003 had been set aside and an additional inquiry had been ordered and that the second applicant was not entitled to receive information about the outcome of the inquiry as his procedural status was that of a witness.

D. Conditions of the applicants' detention

1. The Government's description of the conditions of the applicants' detention

54. According to the Government, between 5 September 1998 and 25 December 2001 the applicants were repeatedly transferred between the temporary detention centre of Nizhnevartovsk and remand centre no. IZ-86/1 in Nizhnevartovsk. It was not possible to establish the periods of their detention in each of those facilities, as the registers for that period had been destroyed on expiry of the statutory storage time-limit. For the same reasons it was not possible to describe in detail the conditions of detention in each cell. The Government, however, submitted certain documents outlining the general conditions of detention in each of those facilities.

(a) The temporary detention centre of Nizhnevartovsk

55. It appears from an undated report by the Ministry of the Interior, submitted by the Government, that the applicants were intermittently held at the temporary detention centre of Nizhnevartovsk in 1998 and 1999. They were detained in cells nos. 4 and 8. Cell no. 4 measured 6.5 sq. m and housed two to three inmates, while cell no. 8 measured 13.6 sq. m and housed ten to eleven inmates. The cells were not equipped with a lavatory bowl and had no running water. There was forced ventilation and central heating in the cells. The average temperature inside was 19 to 21°C. The lighting level met the statutory norms. Inmates were provided with bedding, tableware, food and drinking water. The cells were cleaned every day. Inmates took daily outdoor exercise. The temporary detention centre had a medical unit. It was not possible to establish whether the applicants received medical treatment because the medical records had been destroyed on expiry of the statutory storage time-limit. The report stated, in conclusion, that the conditions of the applicants' detention did not meet the requirements of the Detention of Suspects Act.

56. The same information is contained in the report of 19 April 2007 prepared by the Interior Department of the Khanty-Mansiysk Region and produced by the Government.

57. Further, it appears from sanitary inspection reports of 1998, 2000 and 2007 submitted by the Government that the temporary detention centre of Nizhnevartovsk did not meet the statutory sanitary norms. In particular, it was overcrowded and the number of bunks was insufficient, the inmates were not provided with clean bedding, the lighting level was below the statutory minimum, two showers out of the three available were out of order, the walls were shabby, the cells were not equipped with wash basins, the ventilation was insufficient and the disinfection was irregular.

58. The Government also produced a certificate issued by the head of the temporary detention centre of Nizhnevartovsk on 16 April 2007. The certificate indicates that the temporary detention centre is always overpopulated. Although the designed capacity is for thirty-four persons, the temporary detention centre houses fifty inmates on average. The cells have no running water and are not equipped with lavatory bowls. Inmates use aluminium cans to relieve themselves. The cans are emptied every morning into a pit in the walking yard.

59. Finally, the Government submitted black and white photographs of cells nos. 4 and 8. The photographs show bare concrete walls and windows covered with thick metal grills and shielded by wooden plates. Cell no. 4. has two two-tier wooden beds with mattresses. Cell no. 8 has a plank bed covered with blankets which occupies the entire cell with the exception of a narrow passage of about 0.5 m in width. Both cells have shelves with tableware. There are also large aluminium cans in the cells. No other equipment is visible.

(b) Remand centre no. IZ-86/1 in Nizhnevartovsk

60. According to certificates of 14 September 2007 issued by the remand centre management and produced by the Government, the first applicant was held in cells nos. 4 and 6, while the second applicant was held in cells nos. 26, 27, 30 and 31. Cell no. 4 measured 17.3 sq. m and housed four inmates on average. Cell no. 6 measured 21.5 sq. m and housed five inmates on average. Cell no. 26 measured 18.2 sq. m and housed four inmates on average. Cell no. 27 measured 17.8 sq. m and housed four inmates on average. Cell no. 3 measured 15.8 sq. m and housed four inmates on average. Cell no. 31 measured 14.1 sq. m and housed three inmates on average. It was not possible to submit confirming documents as they had been destroyed on expiry of the statutory storage time-limit.

61. It can be seen from the same certificates that inmates suffering from contagious diseases were held separately from healthy inmates. All inmates had separate bunks and were provided with bedding and tableware. Inmates were allowed to take a shower once a week and had an hour-long daily walk. They were provided with hot food three times a day. They were also supplied with drinking water. They received adequate medical care on demand. All cells were equipped with forced ventilation. Inmates could also open the windows to air the cells. The cells were sufficiently lit by electric lamps. There was a lavatory bowl and cold-water taps in each cell. The lavatory bowls were separated from the living area by a partition. All cells had central heating. The average inside temperature was 18 to 25°C. Inmates were allowed to have two family visits per month. The above information was confirmed by written affidavits of 14 September 2007 by the remand centre officials.

2. The applicants' description of the conditions of their detention

62. According to the applicants, they were repeatedly held at the temporary detention centre of Nizhnevartovsk for long periods of time. They were held together with detainees suffering from tuberculosis, HIV and other contagious diseases. Food was distributed once a day. No medical assistance was provided. During the entire detention period the relatives were not allowed to visit the applicants. They were also prohibited from going outside into the exercise yard. Their sister complained to the prosecutor's office of Nizhnevartovsk about the ban on visits and on outdoor exercise. By letters of 15 December 1998 and 23 March 1999, a deputy prosecutor of Nizhnevartovsk confirmed that family visits and outdoor exercise were not allowed to the applicants.

63. The applicants described cells nos. 4 and 8 in which they had been held as follows. Cell no. 4 was equipped with four bunks. It housed five to nine inmates. Cell no. 8 measured about 18 sq. m. It accommodated fourteen to twenty-six inmates. It was equipped with a plank bed of 2 metres by 2.5 metres. As it could not accommodate all the inmates, some of them had to sleep on the floor. Inmates were not provided with bedding. There was no lavatory bowl and inmates used a metal bucket to relieve themselves. The bucket was filthy and was not separated from the rest of the cell by any partition. Both cells were extremely stuffy and smoky. They were infested with cockroaches, lice and rats. The inmates were allowed to take a cold shower once a week. The first applicant was not treated for hypertension, prostatitis or skin diseases.

64. On 26 August 1999 counsel for the first applicant complained to the prosecutor's office of the Khanty-Mansiysk Region that the first applicant had been held in inhuman conditions. In particular, his detention at the temporary detention centre for almost a year violated the Detention of Suspects Act in accordance with which no one could be held at a temporary detention centre for more than ten days in a month. The first applicant was not provided with bedding, had no outdoor exercise and was deprived of medical assistance. It appears that he did not receive a reply.

E. Compensation proceedings

1. The first applicant

65. In November 2003 the first applicant sued the local office of the Ministry of Finance for compensation in respect of pecuniary and non-pecuniary damage incurred through unlawful prosecution and detention, the allegedly inhuman conditions of detention and ill-treatment. He described the details of his ill-treatment and the conditions of his detention at the temporary detention centre. Finally, he asked for

compensation for the loss of earnings and for his property that had been seized or destroyed by the police.

66. On 24 March 2004 the Nizhnevartovsk Town Court of the Khanty-Mansiysk Region partly allowed the claims. It awarded the first applicant 751,632.68 Russian roubles (RUB) for the loss of earnings (the amount was established on the basis of a certificate from the employer showing his salary before the arrest), RUB 20,000,000 in compensation for the non-pecuniary damage sustained as a result of unlawful detention, the inhuman conditions of detention “which [were] well known to be incompatible with sanitary and hygienic norms” and damage to his reputation, and RUB 180,725 for legal costs and expenses. The court rejected his claims for compensation in respect of ill-treatment as unsubstantiated. It also rejected his claims for compensation for the seized or destroyed belongings, because he had not proved his ownership.

67. On 14 October 2004 the Khanty-Mansiysk Regional Court held, on appeal, that the first applicant had not proved that the conditions of his detention had been inhuman or that there had been any damage to his reputation. Therefore, it reduced the amount of compensation for non-pecuniary damage to RUB 500,000 (about 13,945 euros). It further quashed the award for the loss of earnings because the tax authorities had no data about the amount of his salary before the arrest. It upheld the remainder of the judgment.

2. The second applicant

68. The second applicant also sued the local office of the Ministry of Finance. He submitted the same claims as the first applicant.

69. On 12 March 2004 the Nizhnevartovsk Town Court of the Khanty-Mansiysk Region partly allowed his claims. It awarded the second applicant RUB 619,444.34 for the loss of earnings, and RUB 20,000,000 in compensation for the non-pecuniary damage sustained as a result of the unlawful detention, the inhuman conditions of detention “which [were] well known to be incompatible with sanitary and hygienic norms” and the damage to his reputation. The court rejected the remainder of his claims for pecuniary damage as unsubstantiated.

70. The second applicant appealed. In particular, he complained that the first-instance court had not awarded him any compensation for ill-treatment.

71. On 10 June 2004 the Khanty-Mansiysk Regional Court held on appeal that the second applicant had not proved that he had been ill-treated, that the conditions of his detention had been inhuman or that there had been any damage to his reputation. Therefore, it reduced the amount of compensation for non-pecuniary damage to RUB 600,000. It further reversed the award for the loss of earnings because the tax authorities had no data about the amount of his salary before the arrest. It upheld the remainder of the judgment.

72. On 10 December 2004 the Presidium of the Khanty-Mansiysk Regional Court considered the award excessive and reduced the compensation for non-pecuniary damage to RUB 200,000 (about 5,360 euros).

II. RELEVANT DOMESTIC LAW

A. Statutory requirements for conditions of detention

73. The Federal Law on Detention of Suspects and Defendants charged with Criminal Offences (“the Detention of Suspects Act” no. 103-FZ of 15 July 1995) provides that suspects and defendants detained pending investigation and trial are held in remand centres (section 8). They may be transferred to temporary detention centres (*IIBC*) if it is necessary for the purposes of the investigation or trial and if transportation between a remand centre and a police station or courthouse is not feasible because of the distance between them. Such detention at a temporary detention centre may not exceed ten days per month (section 13).

74. Detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation (section 22 of the Detention of Suspects Act). Detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell (section 23).

75. According to the Internal Regulations of Temporary Detention Centres, approved by Order No. 41 of the Ministry of the Interior of the Russian Federation on 26 January 1996 (in force at the time of the applicants’ detention), the living space per detainee should be four square metres (para. 3.3 of the Regulations). All cells must be equipped with a table, lavatory bowl, running tap water, shelf for toiletries, drinking water tank, radio and dustbin (para. 3.2 of the Regulations). Furthermore, the Regulations made provision for the detainees’ right to outdoor exercise for at least one hour per day in a designated exercise area (para. 6.1, 6.40, and 6.43 of the Regulations).

B. Criminal-law remedies against ill-treatment

1. *Applicable criminal offences*

76. Abuse of office associated with the use of violence and weapons and entailing serious consequences carries a punishment of three to ten years’

imprisonment and a prohibition on occupying certain positions for up to three years (Article 286 § 3 (a,b,c) of the Criminal Code).

2. Investigation of criminal offences

77. Until 1 July 2002 the investigation of criminal offences was governed by the RSFSR Code of Criminal Procedure of 27 October 1960 (the “old CCrP”). It established that a criminal investigation could be initiated by an investigator on a complaint by an individual or on the investigative authorities’ own initiative, where there were reasons to believe that a crime had been committed (Articles 108 and 125). A prosecutor was responsible for overall supervision of the investigation and could order specific investigative actions, transfer the case from one investigator to another or order an additional investigation (Articles 210 and 211). If there were no grounds for initiating or continuing a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect which had to be served on the interested party. The decision was amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction (Articles 113 and 209).

78. The Code of Criminal Procedure of the Russian Federation in force since 1 July 2002 (Law no. 174-FZ of 18 December 2001, the “CCrP”), establishes that a criminal investigation may be initiated by an investigator or prosecutor upon the complaint of an individual (Articles 140 and 146). Within three days of receiving such complaint, the investigator or prosecutor must carry out a preliminary inquiry and take one of the following decisions: (1) to open criminal proceedings if there are reasons to believe that a crime has been committed; (2) to refuse to open criminal proceedings if the inquiry reveals that there are no grounds to initiate a criminal investigation; or (3) to refer the complaint to the competent investigative authority. The complainant must be notified of any decision taken. The refusal to open criminal proceedings is amenable to appeal to a higher-ranking prosecutor or a court of general jurisdiction (Articles 144, 145 and 148). A prosecutor is responsible for overall supervision of the investigation (Article 37). He can order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. Article 125 of the CCrP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

C. Civil-law remedies against illegal acts by public officials

79. Article 1064 § 1 of the Civil Code of the Russian Federation provides that damage caused to the person or property of a citizen must be fully compensated for by the tortfeasor. Pursuant to Article 1069, a State

agency or a State official is liable towards a citizen for damage caused by their unlawful actions or failure to act. Such damage is to be compensated for at the expense of the federal or regional treasury. Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage must be compensated for irrespective of any award for pecuniary damage.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT IN RESPECT OF THE FIRST APPLICANT

80. The first applicant complained that during the investigation in the criminal case against him he had been repeatedly ill-treated by the police and that the authorities had not undertaken an effective investigation into his allegations of ill-treatment. He relied on Article 3 of the Convention, which reads as follows:

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

A. Arguments by the parties

81. The Government submitted that the domestic authorities had conducted a thorough investigation into the first applicant's allegations of ill-treatment. In particular, criminal proceedings had been opened on 5 January 2003 and the first applicant had been recognised as a victim. The first applicant, his relatives, his co-detainees and the police officers of the Nizhnevartovsk police station had been questioned. The police officers had denied beating the first applicant, while the testimony of the relatives and co-detainees was unreliable as they had not witnessed the alleged ill-treatment and had received an account of it from the first applicant. Moreover, a medical examination performed on 5 February 2003 had been unable to establish with certainty the origins of the ailments affecting the first applicant's spinal cord and left wrist. They might have been the result of a trauma, excessive physical activity or metabolism problems. The evidence collected by the domestic authorities did not therefore allow to find “beyond reasonable doubt” that the first applicant had sustained injuries at the hands of the police. Nor could the perpetrators of the alleged

ill-treatment be identified as the first applicant had failed to name or describe them.

82. The first applicant maintained his claims.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

(i) As to the substantive obligations

84. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V).

85. Ill-treatment must however attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Labita*, cited above, § 120). Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively

rule out a finding of a violation of Article 3 (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

86. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-...; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

87. The Court further reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the 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 in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Where an individual is taken into custody in good health but is found to be injured at the time of release, the burden of proof may be regarded as resting on the authorities to provide a plausible and convincing explanation of how those injuries were caused (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Ribitsch*, cited above, § 34).

(ii) *As to the procedural obligations*

88. Where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. An obligation to investigate “is not an obligation of result, but of means”: not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant’s account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71,

ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

89. An investigation into serious allegations of ill-treatment must therefore be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports* 1998-VIII). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman*, cited above, § 106; *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq.; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

90. Further, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita*, cited above, § 133). Consideration was given to the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV), and the length of time taken during the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

(b) Application to the present case

(i) Alleged ill-treatment of the first applicant

91. The Court observes that an expert's examination of 19 October 1998, performed almost a month and a half after the first applicant's arrest, revealed a bruise and abrasions on his face and body, a shoulder sprain and finger injuries on both hands (see paragraph 30 above). The Government did not claim that those injuries could have predated the applicant's arrest. The Court is therefore convinced that the first applicant sustained those injuries while in custody.

92. The Court further notes that the domestic authorities established that the first applicant had been subjected to violence during the investigation in the criminal case against him (see paragraph 42 above). It does not see any reason to doubt that finding. Although in their observations the Government seemed to question the findings of the prosecutor's office, arguing that the evidence collected was insufficient to establish beyond reasonable doubt that the first applicant had been subjected to ill-treatment at the hands of the police, they did not provide any alternative explanation for the injuries sustained by the first applicant. Bearing in mind the authorities' obligation

to account for injuries caused to persons within their control, in custody, and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court finds it established to the standard of proof required in Convention proceedings that the first applicant's injuries were the result of the treatment of which he complained and for which the Government bore responsibility (see *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004).

93. The Court will next examine whether the treatment complained of attained a minimum level of severity such as to fall within the scope of Article 3. The position of the injuries shows that the first applicant was hit at least several times on his face and body. Such treatment must have caused him mental and physical suffering. It also resulted in long-term damage to his health. Indeed, his medical records reveal that many months after the ill-treatment he continued to suffer from its consequences, in particular he had a spinal disc deformed and developed post-traumatic arthritis of shoulder and wrist joints (see paragraphs 22 to 25 above). Moreover, it appears that the use of force was aimed at debasing the first applicant, driving him into submission and making him confess to a criminal offence that he had not committed (see paragraphs 16 and 18 above). Therefore, the Court finds that the treatment to which the applicant was subjected was serious enough to be considered inhuman and degrading.

94. Accordingly, having regard to the nature and extent of the first applicant's injuries, the Court considers that the State is responsible under Article 3 on account of inhuman and degrading treatment of the first applicant by the police and that there has been a violation of that provision.

(ii) Effectiveness of the investigation

95. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 for the ill-treatment of the applicant (see paragraph 94 above). The applicant's complaint in this regard is therefore "arguable". The authorities thus had an obligation to carry out an effective investigation into the circumstances in which the applicant sustained his injuries (see *Krastanov*, cited above, § 58).

96. The Court notes at the outset that very few documents from the investigation file were disclosed by the Government. It therefore has to assess the effectiveness of the investigation on the basis of very scarce information submitted by the Government and the few documents available to the first applicant, which he provided to the Court.

97. The Court observes that the first applicant started to complain about ill-treatment in September or early October 1998. Apparently in response to his complaints, a medical examination was performed on 19 October 1998 which seemed to corroborate his statements, revealing numerous injuries on his body (see paragraph 30 above). There is however no evidence that any

further inquiry was conducted. A month later the domestic authorities issued a refusal to open criminal proceedings. The first applicant was not given a copy of that decision and was therefore deprived of an opportunity to know the reasons for the refusal and to appeal against it. Seven months later that decision was set aside by a higher prosecutor who ordered an additional inquiry. The Court is unable to assess the effectiveness of that inquiry as the Government did not submit any related documents. The inquiry culminated in a new refusal to open criminal proceedings, a copy of which was not made available to the Court.

98. It appears that despite the first applicant's repeated requests for an additional investigation, no further action was taken until October 2002 when the regional Interior Department launched an internal inquiry into his allegations of ill-treatment. The Court, however, considers that the internal inquiry could not be regarded as adequate for the purposes of Article 3 as it was conducted by the Interior Department hierarchically linked to the police officers involved in the incident. It therefore lacked the necessary independence (see *Jašar v. the former Yugoslav Republic of Macedonia* (dec.), no. 69908/01, 11 April 2006).

99. The Court takes note of the fact that criminal proceedings were ultimately opened in January 2003, that is more than four years after the first complaint about ill-treatment lodged by the first applicant. In the Court's view, the belated commencement of the criminal proceedings resulted in a loss of precious time which could not but have a negative impact on the success of the investigation (see *Mikheyev v. Russia*, no. 77617/01, § 114, 26 January 2006).

100. Further, the Court has to assess the scope of the investigative measures taken in the course of the criminal proceedings. It is important to note that no documents relating to the investigation were submitted by the Government. In their observations they claimed that the prosecuting authorities had questioned the first applicant, his relatives, his co-detainees and the police officers of Nizhnevartovsk police station and had arranged for a medical expert's examination. However, in the absence of the related documents it is impossible not only to establish when those investigative measures were taken but whether they were taken at all (see, for similar reasoning, *Satabayeva v. Russia*, no. 21486/06, § 123, 29 October 2009).

101. Finally, the Court observes that although the prosecuting authorities found that the first applicant's allegations of ill-treatment were corroborated by evidence, they suspended the criminal proceedings because they were unable to identify the perpetrators. However, the Government did not explain what measures were taken by the authorities to identify possible suspects. There is no evidence that any identification parades or face-to-face confrontations with the officers from the Nizhnevartovsk police station were organised. The Court is therefore not persuaded that the domestic authorities took all reasonable steps available to them to identify and punish those

responsible for the ill-treatment. It also notes that the criminal proceedings have remained suspended since 5 June 2003 and that no investigative measures have apparently been taken during that time.

102. The Court is satisfied that the domestic authorities opened an inquiry into the first applicant's allegations of police brutality. However, it finds that that inquiry was not conducted diligently, and that the authorities showed a lack of determination to prosecute those responsible. Indeed, more than twelve years after the events complained of no one had been charged, despite the fact that evidence corroborating the first applicant's allegations had been discovered. Accordingly, the inquiry cannot be said to have been "effective" (see, for similar reasoning, *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V).

103. There has therefore been a violation of Article 3 under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT IN RESPECT OF THE SECOND APPLICANT

104. The second applicant also complained that he had been ill-treated by State officials and the investigation into his allegations of ill-treatment had been ineffective. He relied on Article 3 of the Convention.

A. The parties' submissions

105. The Government did not submit any observations in respect of the second applicant.

106. The second applicant maintained his claims. He submitted that he had been tortured for many days with a view to obtaining a confession. His allegations about ill-treatment had not been investigated effectively. In particular, despite his numerous requests the prosecuting authorities had not arranged for a medical expert's examination and had not questioned witnesses. He also pointed out that the Government had not produced the investigation materials, without giving a valid reason.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) Alleged ill-treatment of the second applicant

108. The Court notes at the outset the similarity between the second applicant's situation and that of the first applicant. The second applicant was arrested on the same day as the first applicant and they were taken to the police station together. They were subsequently detained at the same temporary detention centre for a long period of time. Their descriptions of the ill-treatment to which they were allegedly subjected during that time coincide in many particulars. It is also noteworthy that they both confessed to the murder which they had not committed and later retracted their confessions. Given that it has already found on the basis of evidence adduced by the first applicant that he had been subjected to ill-treatment in the hands of the police (see paragraph 94 above), the Court is inclined to give credit to the similar allegations of ill-treatment raised by the second applicant.

109. Further, it is true that during the examinations of the second applicant by the detention facility doctor no traces of injuries were noted (see paragraph 26 above). However, immediately after his release the second applicant was diagnosed with a post-traumatic encephalopathy (see paragraph 28 above). Given that the Government did not claim that the trauma could have predated the arrest or provide an explanation for it, the Court concludes that the second applicant sustained it while in custody and in the circumstances described by him.

110. Taking into account the similarity of the second applicant's situation to that of the first applicant and the lack of a convincing and plausible explanation from the Government for the injury caused to the second applicant within their control, the Court considers that the State is responsible under Article 3 on account of inhuman and degrading treatment of the second applicant by the police and that there has been a violation of that provision.

(b) Effectiveness of the investigation

111. In view of its conclusion in paragraph 110 above, the Court considers that the second applicant's complaint of ill-treatment was arguable. The authorities thus had an obligation to carry out an effective investigation into his allegations of ill-treatment.

112. The Court observes that the second applicant complained about police brutality for the first time in February 1999, that is several months after the alleged ill-treatment. However, it considers that the second applicant cannot be blamed for undermining the effectiveness of the investigation by a belated application to the competent domestic authorities. The Court has emphasised on several occasions that persons held in custody

are often in a stressful situation and may be vulnerable to pressure (see *Mammadov v. Azerbaijan*, no. 34445/04, § 74, 11 January 2007). It takes note of the second applicant's allegation, which was not disputed by the Government, that until February 1999 he had had no access to legal assistance and had not been allowed to correspond with the outside world (see paragraph 45 above). The second applicant was therefore prevented from bringing his claim of ill-treatment immediately to the attention of the authorities.

113. Further, it was not until May 1999, three months after the second applicant lodged a complaint about ill-treatment with the prosecutor's office, that the domestic authorities arranged for a medical expert's examination. The Court notes in this connection that allegations of ill-treatment in police custody are extremely difficult for the victim to substantiate if he or she has been isolated from the outside world, without access to doctors, lawyers, family or friends who could provide support and assemble the necessary evidence (see *Aksoy v. Turkey*, 18 December 1996, § 97, *Reports* 1996-VI). The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including *inter alia* forensic evidence (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 134, ECHR 2004-IV (extracts)). The Court therefore considers that the failure to secure the forensic evidence in a timely manner was one of the important factors contributing to the ineffectiveness of the investigation in the present case. A timely medical examination could have enabled the medical expert to determine whether the second applicant had sustained any injuries in the circumstances described by him.

114. The Court also notes that the prosecution authorities ultimately carried out a preliminary inquiry, which lasted from May to November 1999 and which did not result in criminal prosecution. Given that no documents relating to the inquiry were submitted by the Government, it is impossible to establish what investigative measures were taken (see paragraph 100 above for similar reasoning in respect of the first applicant). An additional inquiry was apparently conducted in June 2003. It, however, follows from the materials in the Court's possession that it was limited to the questioning of the police officers in charge of the criminal case against the second applicant. There is no evidence in the documents submitted by the Government that any other investigative measures were taken. In those circumstances the Court cannot but conclude that the inquiry was ineffective.

115. The Court reiterates in this connection that the second applicant was entirely reliant on the prosecutor to gather the evidence necessary to corroborate his complaint. The prosecutor had the legal power to interview the police officers, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for the purpose of establishing the truth of the second applicant's account. His role was critical

not only to the pursuit of criminal proceedings against the possible perpetrators of the offences but also to the pursuit by the second applicant of other remedies to redress the harm he had allegedly suffered (see *Maksimov*, cited above, § 86).

116. Finally, the Court observes that the second applicant was never granted the procedural status of victim and participated in the inquiry as a witness. This fact restricted his participation in the investigation and prevented him from exercising the rights attached to the procedural status of victim, including the right to lodge applications or the right to put questions to the medical expert. The Court is particularly struck by the prosecutor's statement that, having the procedural status of witness, the second applicant had no right to be informed about the outcome of the inquiry (see paragraph 53 above). It cannot therefore be said that the second applicant's right to participate effectively in the investigation was secured (compare *Denis Vasilyev v. Russia*, no. 32704/04, § 126, 17 December 2009).

117. In the light of the above-mentioned considerations, the Court finds that the inquiry into the alleged ill-treatment was initiated belatedly, that its scope was insufficient and that the second applicant's procedural rights were not secured. Accordingly, the investigation of the matter by the domestic authorities cannot be considered "effective". There has therefore been a violation of Article 3 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANTS' DETENTION

118. The applicants further complained that the conditions of their detention in the temporary detention centre in Nizhnevartovsk had been in breach of Article 3 of the Convention

A. Submissions by the parties

119. The Government conceded that the conditions of the applicants' detention in the temporary detention centre of Nizhnevartovsk had not met the statutory requirements. By contrast, the conditions of detention in remand centre no. IZ-86/1 had been satisfactory and in compliance with the requirements of Article 3.

120. The applicants maintained their claims.

B. The Court's assessment

121. The Court observes, firstly, that the applicants complained about the allegedly inhuman conditions of detention in the temporary detention centre of Nizhnevartovsk. They did not raise any complaints in respect of

remand centre no. IZ-86/1. The Court will therefore limit its examination to the temporary detention centre.

122. The parties disputed certain aspects of the conditions of the applicants' detention in the temporary detention centre of Nizhnevartovsk. However, there is no need for the Court to establish the truthfulness of each and every allegation, because it finds a violation of Article 3 on the basis of the facts that have been presented or are undisputed by the respondent Government, for the following reasons.

123. The Court reiterates, firstly, that it has on many occasions considered that the mere fact of holding an applicant in custody in a cell designed only for short-term detention disclosed a violation of Article 3 (see, for example, *Khristoforov v. Russia*, no. 11336/06, §§ 23-27, 29 April 2010; *Kaja v. Greece*, no. 32927/03, §§ 49-50, 27 July 2006; and *Shchebet v. Russia*, no. 16074/07, §§ 84-96, 12 June 2008). The Government did not dispute that the applicants had been detained for long periods of time at the temporary detention centre designed for short-term detention not exceeding ten days (see paragraph 73 above).

124. Secondly, the parties have in principle agreed that the cells in the temporary detention facility were overpopulated. According to the information submitted by the Government, the applicants were at different times afforded from 1.2 sq. m to 3.25 sq. m of personal space. The applicants were confined to their cells day and night without any possibility of outdoor exercise (see paragraph 62 above). The Court considers that the fact that the applicants were obliged to live, sleep and use the toilet in the same cell with so many other inmates amounted in itself to inhuman treatment. It reiterates in this connection that in previous cases where the applicants disposed of less than 3 sq. m of personal space, it found that the overcrowding was severe enough to justify, in its own right, a finding of a violation of Article 3 of the Convention. Accordingly, it was not necessary to assess other aspects of the physical conditions of detention (see, for example, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kanttyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005; and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005).

125. However, in the present case the Court cannot but state that it is appalled by the Government's description of the sanitary facilities in the cells (see paragraph 58 above). The situation where inmates had to use aluminium cans to relieve themselves – in the presence of other inmates – can only be described as degrading. The situation was further aggravated by the fact that the cans were emptied once a day and this must have resulted in a foul smell in the cells.

126. The Court also takes note of other deficiencies of the temporary detention centre acknowledged by the domestic authorities (see paragraphs 57 and 59 above), such as the lack of clean bedding, insufficient

showers, irregular disinfection, and insufficient lighting and ventilation, which were apparently due to the thick metal grills and wooden shields installed on the windows. Those deficiencies undoubtedly contributed to the distress that the applicants felt owing to the overcrowding and the unusual toilet facilities described above.

127. Having regard to the cumulative effect of the factors analysed above, the Court finds that the conditions in which the applicants were held diminished their human dignity and caused them distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. It follows that the conditions of the applicants' detention in the temporary detention centre in Nizhnevartovsk amounted to inhuman and degrading treatment.

128. There has therefore been a violation of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

129. The applicants complained that the investigations into their allegations of ill-treatment by the police had been ineffective, contrary to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

130. The Court observes that this complaint concerns the same issues as those examined in paragraphs 95 to 103 and 111 to 117 above under the procedural limb of Article 3 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 3 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

131. Lastly, the Court has examined the other complaints submitted by the applicants. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's jurisdiction, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. Article 41 of the Convention provides:

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

A. Damage

133. The first applicant claimed 17,751,632.68 Russian roubles (RUB) in respect of pecuniary damage, representing his loss of earnings and the cost of property seized during the criminal proceedings against him. He also claimed RUB 92,000,000 in respect of non-pecuniary damage. The second applicant claimed RUB 25,619,444.34 in respect of pecuniary damage, representing his loss of earnings and the cost of property seized during the criminal proceedings against him. He also claimed RUB 70,000,000 in respect of non-pecuniary damage.

134. The Government submitted that there had been no causal link between the claims for pecuniary damage and the complaints lodged by the applicants. Moreover, they had not produced any supporting documents. The claim for non-pecuniary damage was excessive.

135. The Court observes that the decision to prefer criminal charges against the applicants was not the subject of its review in the present case. There was no causal link between the violations found and the alleged loss of earnings and seizure of property (see *Nakhmanovich v. Russia*, no. 55669/00, § 102, 2 March 2006). The Court therefore rejects the claim for pecuniary damage.

136. The Court further observes that it has found a combination of particularly grievous violations in the present case. In these circumstances, the Court considers that the applicants' sufferings and frustration cannot be compensated for by a mere finding of a violation. Nevertheless, the particular amounts claimed appear excessive. Making its assessment on an equitable basis, it awards 27,000 euros (EUR) to each of the applicants in respect of non-pecuniary damage, plus any tax that may be chargeable on those amounts.

B. Costs and expenses

137. The applicants also claimed reimbursement of their legal fees and translation expenses in the amount of RUB 4,527,000.

138. The Government submitted that the claims were excessive.

139. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses in so far as it has been shown that

these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicants did not submit any documents in support of their claim for reimbursement of legal fees. It therefore rejects this part of the claim. As for the translation expenses, regard being had to the documents in its possession, the Court considers it reasonable, in addition to the legal aid already granted, to award the sum of EUR 600, plus any tax that may be chargeable to the applicants on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the alleged ill-treatment of the applicants by the police, the ineffectiveness of the investigation into their allegations of ill-treatment, the absence of an effective remedy for their complaints about ill-treatment and the allegedly inhuman conditions of their detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the first applicant's ill-treatment by the police;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the first applicant's complaints about ill-treatment;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the second applicant's ill-treatment by the police;
5. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the second applicant's complaints about ill-treatment;
6. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicants' detention in the temporary detention centre in Nizhnevartovsk;

7. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
8. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
 - (i) EUR 27,000 (twenty-seven thousand euros), plus any tax that may be chargeable, to the first applicant in respect of non-pecuniary damage;
 - (ii) EUR 27,000 (twenty-seven thousand euros), plus any tax that may be chargeable, to the second applicant in respect of non-pecuniary damage;
 - (iii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicants, to both applicants jointly in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President