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

FIRST SECTION

CASE OF VANFULI v. RUSSIA

(Application no. 24885/05)

JUDGMENT

STRASBOURG

3 November 2011

FINAL

08/03/2012

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

In the case of Vanfuli v. Russia**,**

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 11 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 24885/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Vladimir Vladimirovich Vanfuli ("the applicant"), on 1 June 2005.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged under Articles 3 and 6 of the Convention that he had been ill-treated by the police after his arrest, that the authorities had failed to investigate this episode and that the criminal proceedings against him had been tainted with a number of defects, such as the courts' failure to secure the attendance of key prosecution witnesses, alleged denial of access to counsel on 3 and 4 October 2002 and erroneous assessment of the evidence in the case by the courts.

4. On 6 November 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in the town of Chita, the Chita Region (the Zabaykalskiy Region).

A. Arrest and alleged ill-treatment of the applicant

6. On 1 and 2 October 2002 a series of night robberies took place on the Khabarovsk-Chita motorway in the vicinity of the town of Mogocha, the Chita Region. According to the reports of the victims, the perpetrators were five individuals travelling in two cars.

7. At around 5.30 p.m. on 3 October 2002 the police stopped two cars corresponding to the descriptions given by the victims on the outskirts of Chita. The police arrested the applicant and three individuals, N., Ta. and To., who had been travelling in the cars, on suspicion of their involvement in the recent robberies.

8. The applicant's arrest record notes the suspicion of his involvement in one of the recent robberies and the fact that a victim had already identified him as one of the perpetrators of the robbery. The record bears the applicant's handwritten comment:

> "I consent to arrest. I did commit that crime ..."

9. The arrest record of that date contains the following pre-typed standard wording followed by the applicant's signature:

> "I have been informed that in accordance with Article 46 of the Code of Criminal Procedure, I have the following rights:
>
> 1) to know what I am suspected of, and to receive a copy of [the relevant decision];
>
> 2) to make comments and statements in respect of that suspicion or to refuse to make any comments and statements;
>
> 3) to benefit from the assistance of a lawyer from the moment defined by subparts 2 and 3 of the second paragraph of Article 49 of the Code of Criminal Procedure and to see him privately and confidentially before my first interview ...
>
> I have also been informed that in accordance with Article 51 of the Constitution I have the right not to give evidence against myself ..."

10. The applicant acknowledged having received a copy of the record with his signature.

11. After the arrest, the applicant was taken to the building of the Department for Combating Organized Crime of the Ministry of Internal

Affairs of the Chita Region ("the Organised Crime Unit"). It appears that the policemen started to interview him on arrival, but that the applicant remained silent. According to the applicant, his request for counsel was turned down. There is no record in the case file which would confirm that the applicant indeed made such a request. The applicant submitted that he had been punched and kicked all over his body and that a plastic bag had been put over his head to suffocate him.

12. On 4 October 2002 the applicant was brought to the temporary detention wing of the Department of the Interior of Chita ("the temporary detention wing", *изолятор временного содержания УВД г. Читы*). Upon arrival, he was examined by a nurse, who detected no injuries on his body.

13. On 5 October 2002 the applicant was placed in remand prison IZ-75/1 in Chita.

14. On 8 October 2002 a doctor from the remand prison examined the applicant and reported a soft tissue contusion on his chest. The contusion was diagnosed as having appeared two or three days prior to the examination.

B. Criminal proceedings against the applicant

1. Pre-trial stage of proceedings

15. It appears that on 3 October 2002 an interview with the applicant did not take place, as the applicant chose to remain silent.

16. On the next day a police investigator conducted face-to-face confrontations between the applicant and his alleged victims M. and Ya., who both identified the applicant as one of the perpetrators of the robbery. During the confrontations the applicant admitted his involvement in the robbery of M. and Ya. and described in detail how it had happened.

17. Both confrontation records state that the applicant:

> "... agreed to participate in the face-to-face confrontation in the absence of counsel ... [and that he]
>
> ... has been informed that under Article 51 of the Constitution [he] has a right not to give evidence against himself ..."

18. On 5 October 2002 the applicant was formally charged with aggravated robbery of M. and Ya., committed as a member of an organised group consisting of him and three other individuals, N., Ta. and To., who had travelled with him in two cars on the night of 2 October 2002.

19. During a subsequent interview which took place on that day in the presence of his counsel the applicant made a handwritten comment on the interview record that:

> "... [he] endorsed his earlier statements only in part and that [he had] decided to remain silent ..."

20. On 24 December 2002 the applicant was additionally charged in respect of other episodes of aggravated robbery committed by the same group in respect of Sh., Zh., Z. and spouses G. on the night of 1 October 2002.

21. During a subsequent interview which took place later on the same day in the presence of his counsel the applicant made a handwritten comment on the interview record to the effect that:

> "... he denied the charges ... did not wish to make any statements ... would give evidence in court ..."

22. During the pre-trial stage of proceedings victims Zh. and Sh., Z., Ya., and M., as well as spouses G., made detailed statements about the circumstances of the robberies. In addition, photo identification parades were conducted and victims Zh., Ya. and spouses G. recognised the applicant and other members of the group as the perpetrators of the robberies.

2. *Court examination of the applicant's criminal case*

(a) Trial proceedings

23. The criminal case against the applicant and three co-accused N., Ta. and To. was sent for examination on the merits to the Mogochinskiy District Court of the Chita Region ("the District Court").

24. During the subsequent trial the District Court called victims Zh. and Sh., spouses G., M. and Ya. to the hearing as witnesses and issued three decisions dated 22 December 2003, 4 March and 27 April 2004, in which it gave instructions to the police to locate their whereabouts and secure their attendance by force.

25. In response to the court's request, the competent police authorities carried out a search, but were unable to locate spouses G., because they had moved away and failed to leave any information about their whereabouts.

26. As regards witnesses M. and Ya., they established that both resided in the town of Krasnoyarsk, which is over three thousand kilometres away from the location of the trial. In addition, witness Ya. had a sick child and could not come, whilst M., fearing for his life, categorically refused to appear in court and asked the court to examine the case on the basis of his prior statements.

27. Witness Sh. could not appear because of his state of health and the distance of over one thousand kilometres between his home town of Irkutsk and the location of the trial. In addition, witness Sh. wrote a letter to the court and complained that unknown individuals had been calling him on the phone with threats in connection with the proceedings. Witness Zh.,

residing in Irkutsk, also refused to appear, fearing for his life, and asked the court to examine the case on the basis of his previous statements, made at the pre-trial stage of the proceedings.

28. Having analysed the information collected by the police, the District Court excused the absence of the above-mentioned witnesses, ruling that their failure to appear was for "a good reason", and granted the prosecution's motion to read out their pre-trial statements in spite of the objections of the applicant and co-accused.

29. On 14 July 2004 the District Court examined the evidence presented by the prosecution and, having analysed its admissibility, approved the use of the evidence, including the applicant's confession of 4 October 2002, contained in the prosecution case file.

30. During the trial the applicant acknowledged having travelled by car with the other co-accused on both nights when the robberies in question had been committed. The applicant also stated that he had had an argument with M. and punched M. in the eye with a lighter. As a result, M. had given him 100 United States dollars (USD) and Ya. had given a tyre mounted on a rim to one of the applicant's co-accused (see below). At the same time, the applicant insisted that both M. and Ya. had acted voluntarily.

(b) The first-instance judgment of 17 August 2004

31. On 17 August 2004 the District Court convicted the applicant and the other co-accused of participation in three episodes of robbery committed on the Khabarovsk-Chita motorway near the town of Mogocha. The applicant was sentenced to nine years of imprisonment. The court noted that:

> "The accused created an organised group which corresponded to the description given in Article 35 of the Criminal Code, [namely,] permanent links between its members, prior collusion, stability and the use of specific methods in commission of the crimes. The group was created to [intercept newly-purchased Japanese cars being driven home] on the Khabarovsk-Chita motorway by persons passing near the town of Mogocha [and to levy an unofficial "toll" on the drivers]. The attacks were directed solely at drivers who had ... transit identification number of the town of Vladivostok [and presumably had just bought a "new" second-hand Japanese car and were driving it back home]. To carry out their attacks, the group had its own cars, acted only during the night, in a coordinated manner and daringly, made threats and substantiated them by showing [weapons], such as a shotgun, grenades, pistols ..., gave special notes confirming the payment, which also confirms that there were preliminary preparations and coordination. All of the accused were participants. No group leader was identified. The stability and organised nature of the group are also confirmed by the fact that they acted [on two consecutive nights]. That their actions were coordinated is also confirmed by the [wire-tapping records of their cell phone conversations] ..."

32. The court established that the group had carried out its robberies on three occasions. As regards the first episode, the court noted that on the night of 1 October 2002 the applicant and the co-accused stopped two cars belonging to and driven by Zh. and Sh., having shown them a gun. They

then forced them to pay for "safe passage" through the territory of the Chita Region and compelled them to hand over a spare car tyre. The involvement of the group had been confirmed by the discovery of a small handwritten note given by the group to victims Zh. and Sh. as a confirmation of payment and as a "security" in case of future extortion during their further journey, which read:

> "Masda Bongo Pulsar [the make and models of the victims' cars] in Mogochi were met by us [signature]"

33. The expert examination recognised that the note had been written by To., one of the co-accused. The court also relied on the statements given by Zh. and Sh. during the pre-trial stage of the proceedings, the results of a photo identification parade during which Zh. had recognised the applicant, and the arrest and search record, which confirmed that the group had been in possession of firearms, that the applicant had travelled in one of the cars referred to by the victims, and the finding of the tyre taken away from Zh. and Sh. in possession of the group.

34. As regards the second episode, the court noted that very shortly after the first episode the group flagged down the car of spouses G. and forced them to stop and pay. The co-accused collectively intimidated the victims, showing them a grenade and a gun, and also later gave them a handwritten note confirming the payment. The note contained the make and the identification number of the victims' car and was recognised by an expert as having been written by To. Apart from the note and the search record confirming the finding of a mock grenade in possession of the applicant's group, the court also relied on the statements made by spouses G. during the pre-trial stage of the proceedings, the identification records according to which spouses G. identified the co-accused, including the applicant, and the grenade.

35. As regards the third episode, the court pointed out that on the following night the group stopped the car of Ya. and M., who were also robbed in a similar way. The group took away a tyre mounted on a rim as well as a one-hundred-dollar bill, which was later found and identified by the investigation authorities and M., because the group used it for payment later on the journey to Chita. The court referred to the search record, which confirmed the finding of the mounted tyre and its subsequent identification by M., as well as the applicant's own admissions made during the pre-trial stage of proceedings and in court of having punched M. and having afterwards received the hundred dollar bill and the mounted tyre from M. and Ya. The court also referred to the medical examination of M., which showed that the latter had a minor facial injury.

36. In respect of all three episodes, the court also relied on the applicant's admission made at the pre-trial stage of proceedings and during the trial that he had travelled as a member of the group on both nights.

37. In so far as the group was also charged with the robbery of individual Z., who had allegedly been robbed on one of those nights in the same area and in a similar manner, the court noted that the prosecution case was unsubstantiated, as it contained no evidence implicating the group apart from the pre-trial statement of Z. Accordingly, the court acquitted the group on that count of charges.

38. In addition to the above-mentioned evidence, the court also relied on the records of the applicant's telephone conversations with his co-accused in the first few days following their arrest.

39. The court rejected the applicant's arguments concerning the alleged use of torture, the denial of access to counsel as well as the absence of the victims of the robberies from the trial. The applicant appealed and raised those arguments on appeal.

40. On 25 April 2005 the Chita Regional Court upheld the judgment. It stated that the first-instance court had fulfilled its duty to call the victims to the hearing, but that they had failed to appear for a legitimate reason. The appeal court also found that the first-instance court's decision rejecting the applicant's allegations of ill-treatment by the police as unsubstantiated had correctly been based on the materials of the case file, medical documents and the investigator's decisions to discontinue the criminal proceedings. The court also examined and rejected the rest of the applicant's arguments about the use of the pre-trial statements of the victims and the alleged denial of access to his counsel at the initial stages of the investigation.

C. The applicant's attempts to bring criminal proceedings in connection with the alleged ill-treatment

1. The initial refusal to institute criminal proceedings

41. On unspecified dates the applicant and three other co-accused lodged requests with the investigator to institute criminal proceedings against the UBOP officers, who had allegedly beaten them up.

42. On 14 October 2002 a medical expert examination of the applicant was conducted. The expert stated in his report no. 3454 that he had not discovered any injuries on the applicant.

43. By decisions of 24 October 2002 and 9 June and 3 August 2003 the investigator refused to institute criminal proceedings. By a decision of 22 September 2003 the supervising prosecutor quashed the investigator's refusals and ordered additional investigation into the applicant's allegations of ill-treatment.

44. On 27 September 2003 the investigator refused to institute criminal proceedings against the police officers.

2. Criminal investigation into the events of 3 October 2002

45. On 6 November 2003 the prosecutor quashed the decision of 27 September 2003 and instituted criminal proceedings against unidentified police officers under Article 286 of the Criminal Code.

46. On 6 January 2004 the investigator discontinued the criminal proceedings due to the absence of a crime. He relied on the statements of police officers denying the use of any force on the applicant, and information received from the temporary detention facility showing an absence of any complaints on the applicant's part about any injuries during his detention there, and concluded that the injury had occurred on the second day of the applicant's placement in the remand prison and therefore the allegations of ill-treatment had not been supported by any evidence.

47. On 19 February 2004 the deputy prosecutor quashed the decision of 6 January 2004 and ordered additional investigation. He indicated in the decisions that it was necessary to indentify and question all the individuals who had been detained with the applicant in the temporary detention facility and in the remand prison.

48. The criminal proceedings were subsequently discontinued by the investigator's decisions of 25 April, 27 May, 28 July, 22 September and 22 October 2004 and reopened by the prosecutor's decisions of 27 April, 28 June, 23 August and 22 September 2004 and 18 April 2005.

49. In the decisions of 27 April, 28 June and 23 August 2004 and 18 April 2005 the prosecutor referred to the need to find and question all former cellmates of the applicant from the temporary detention facility and the remand prison. In the decision of 22 September 2004 the prosecutor also considered it important to eliminate the contradictions between the statements of the applicant about beatings by the police and the statements of the temporary detention facility's officers about the absence of any visible injuries on the applicant upon his arrival there.

50. On 19 May 2005 the investigator suspended the criminal proceedings, since a person who could be held responsible for the alleged ill-treatment of the applicant had not been identified. The criminal proceedings were subsequently reopened by the prosecutor's decisions of 10 August, 2 November and 12 December 2005 and 7 November 2006 and suspended by the investigator's decisions of 14 September and 9 December 2005 and 12 January 2006.

51. The decision of 10 August 2005 once again indicated the need to identify all those who had been detained together with the applicant in the temporary detention facility.

52. The decisions of 2 November and 12 December 2005 and 7 November 2006 referred to the necessity to establish in which cells of the remand prison the applicant had been detained at the relevant time.

53. The decisions of 2 November 2005 and 7 November 2006 also indicated the need to resolve the contradictions between the statements of

the applicant about the alleged beatings and the statements of the temporary detention facility's officers about the absence of injuries on the applicant. The decision of 2 November 2005 also noted the need to question the attesting witnesses to the applicant's identification by the victims in the first few days following his arrest.

54. On 26 May 2010 the expert studied the results of the applicant's medical examination of 14 October 2002 and concluded in report no. 752 that the applicant had not had any injuries at the time of the examination.

55. On 7 June 2010 the investigator discontinued the criminal proceedings concerning the alleged ill-treatment of the applicant. He noted that the applicant's allegations about beatings by the police had been disproved by the results of the expert medical examination of the applicant, during which no injuries on him had been recorded.

56. With regard to the injuries of the applicant's co-accused, the investigator concluded that they could have been inflicted by the victims of the crimes or by other persons, including the co-accused themselves, during their detention in the remand prison. Since the actions of unidentified individuals in that case fell under Article 116 of the Criminal Code the criminal proceedings were due to be terminated, as the time-limit for holding those persons responsible had expired.

57. The investigator relied on: (i) the statements of the doctor who had examined the applicant on 8 October 2002 and discovered a soft tissue contusion on the applicant's chest; (ii) the findings of the expert in report no. 752 on the examination of the applicant's medical records of 14 October 2002, which did not note any injuries on the applicant, (iii) the statements of the police officers who had denied any application of force to the applicant; (iv) the statements of three of the applicant's former cellmates from the remand prison and one from the temporary detention facility, who had asserted that there had been no fights in the cells; (v) the statements of the officer on duty of the temporary detention facility who had examined the applicant on 4 October 2002 and had found no injuries on him, though he had noted that the applicant had complained about pain in the chest area; and (vi) the statements of the nurse of the temporary detention facility who had examined the applicant on 5 October 2002 and had discovered no injuries.

58. The applicant has apparently never challenged any decision to discontinue the criminal proceedings in the domestic courts.

II. RELEVANT DOMESTIC LAW AND PRACTICE

59. Article 116 § 1 of the Criminal Code of the Russian Federation of 13 June 1996 in force as from 1 January 1997 provides that application of physical force to another person which has caused physical pain but has not

resulted in any health damage shall be punishable by a fine, compulsory or correctional labour or arrest for a period up to three months.

60. Article 286 § 3 (a) of the Criminal Code provides that actions of a public official which clearly exceed his authority and entail a substantial violation of the rights and lawful interests of citizens, committed with violence or the threat of violence, shall be punishable by three to ten years' imprisonment with a prohibition on occupying certain posts or engaging in certain activities for a period of three years.

61. The Code of Criminal Procedure of the Russian Federation (CCrP) in force as from 1 July 2002 provides that a witness cannot evade the duty to appear when summoned by a court and that in case of evasion for no valid reason a witness can be compelled to appear (Article 56). Articles 9 and 75 of the Code prohibit the use of evidence obtained through inhuman or degrading treatment or torture in criminal proceedings.

62. Article 49 § 2 of the CCrP provides that an advocate is admitted to participate in the proceedings as defence counsel. It also specifies that defence counsel takes part in the criminal proceedings as of the moment of institution of a criminal case against a specific person (part 2) or as of the moment of the actual apprehension of the suspect if [the latter was caught red-handed] (part 3).

63. Article 144 of the CCrP provides that a prosecutor, investigator, or body of inquiry is obliged to consider applications and information about any crime committed or being prepared, and to take a decision on that information within three days. In exceptional cases, this time-limit could be extended to ten days. The decision should be either a) to institute criminal proceedings, or b) to refuse to institute criminal proceedings, or c) to transmit the information to another competent authority (Article 145 of the CCrP).

64. Article 125 of the CCrP provides that the decision of an investigator or a prosecutor to dispense with criminal proceedings or to terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice may be appealed against to a district court, which is empowered to check the lawfulness and grounds of the impugned decisions.

65. Article 213 of the CCrP provides that in order to terminate the proceedings the investigator should adopt a reasoned decision with a statement of the substance of the case and the reasons for its termination. A copy of the decision to terminate the proceedings should be forwarded by the investigator to the prosecutor. The investigator should also notify the victim and the complainant in writing of the termination of the proceedings.

66. According to Article 214 of the CCrP, the prosecutor can reverse the decision of the investigator and reopen the proceedings. The proceedings

can be reopened until the time-limit for holding a person criminally responsible has expired.

67. Under Article 221 of the CCrP, the prosecutor exercises general supervision of an investigation. In particular, the prosecutor can order that specific investigative activities be carried out, transfer the case from one investigator to another, or reverse unlawful and unsubstantiated decisions taken by investigators and bodies of inquiry.

68. In its Ruling of 27 December 2002 no. 29 “On judicial practice in cases concerning theft and robbery”, the Plenary Session of the Supreme Court of Russia explained that a group could be defined as “organised” if it had a stable structure, a leader and a developed plan of concerted criminal activity. It was also characterized by a division of roles between its members when preparing and carrying out a criminal act. The Supreme Court noted that when it was established that a crime had been committed by an organised group, all members of the group carried responsibility for it as perpetrators irrespective of their individual roles in the commission of the crime.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

69. The applicant complained that on 3 October 2002 he had been ill-treated by the police and that no proper investigation into this had been made, all in breach of Article 3 of the Convention, which reads as follows:

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

A. The parties’ submissions

70. The Government argued at the outset that the alleged ill-treatment of the applicant had not reached the minimum level of severity required to engage Article 3 of the Convention. The Government further submitted that the applicant had failed to exhaust the available domestic remedies since he had never challenged any of the investigator’s decisions not to institute criminal proceedings in a court of general jurisdiction. The Government also argued that the investigation into the applicant’s allegations of ill-treatment had been thorough and effective.

71. The applicant disagreed with the Government and maintained his initial complaints. He also stated that he could not have challenged the

investigator's decisions since he had not been provided with effective legal assistance during his detention on remand.

B. The Court's assessment

1. *Admissibility*

72. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdıvar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

73. Turning to the facts of the present case, the Court notes that the applicant has never challenged any of the investigator's decisions to discontinue the criminal proceedings on his complaints of ill-treatment in court (paragraph 58). The Court has already found that although a court itself has no competence to institute criminal proceedings, its power to annul a refusal to institute criminal proceedings and indicate the defects to be addressed appears to be a substantial safeguard against the arbitrary exercise of power by the investigating authority (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). At the same time the Court has pointed out that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case (see *Akdivar and Others*, cited above, § 69, and *Aksoy*, cited above, §§ 53-54).

74. The Court has strong doubts as to whether this remedy would have been effective in the circumstances of the present case. The investigation into the applicant's allegations of ill-treatment continued with some short interruptions for almost seven years. During this period the criminal proceedings were discontinued and reopened thirteen times (see paragraphs 46-55). In fact, except for two long interruptions of five and ten months, the proceedings were discontinued and reopened every one or two months on the supervising prosecutors' requests. The prosecutors had mostly referred to the same reasons for reopening the investigation (see

paragraphs 47, 49, 51-53). In the Court's view, this demonstrates that the investigators were not diligent in eliminating the drawbacks in the investigation indicated by the supervising prosecutors. In such circumstances, the Court is not convinced that an appeal to a court, which could only have had the same effect, would have offered the applicant any redress. It considers, therefore, that such an appeal in the particular circumstances of the present case would be devoid of any purpose (see, for example, *Khatsiyeva and Others v. Russia*, no. 5108/02, § 151, 17 January 2008). The Court finds that the applicant was not obliged to pursue that remedy and that the Government's objection should therefore be dismissed.

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

2. *Merits*

(a) The alleged breach of Article 3 under its procedural limb

76. The Court reiterates its settled case-law to the effect that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible.

77. The investigation of arguable allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, among other things, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates apt to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries. Any deficiency in the investigation which undermines its ability to establish the cause of the injuries or the identity of the persons responsible will risk falling foul of this standard. The investigation into the alleged ill-treatment must be prompt. Lastly, there must be a sufficient

element of public scrutiny of the investigation or its results; in particular, in all cases, the complainant must be afforded effective access to the investigatory procedure (see, among many other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports* 1998-VIII; *Mikheyev v. Russia*, no. 77617/01, §§ 107-08, 26 January 2006; and *Petropoulou-Tsakiris v. Greece*, no. 44803/04, § 50, 6 December 2007).

78. Turning to the circumstances of the present case, the Court notes that from the date of the first decision refusing to investigate the incident it is clear that the applicant complained about the alleged beatings by the police no later than the first two weeks of October 2002 (see paragraphs 41 and 43). By that time, the results of the applicant's medical examination of 8 October 2002, which noted a soft tissue contusion on the applicant's chest, were already available to the authorities (see paragraph 14). The Court considers that those results, together with the applicant's complaint, constituted an "arguable claim" of ill-treatment at the hands of the police and warranted an investigation by the domestic authorities in conformity with the requirements of Article 3 of the Convention.

79. The Court notes, however, that the investigation into the applicant's allegations of ill-treatment was properly instituted only on 6 November 2003, which is over a year after the events at issue (see paragraph 45). The authorities thereby missed an opportunity to collect relevant material evidence, to identify and question all possible witnesses in this case and to order a medical examination of the police officers allegedly involved. In fact, the delay in the institution of proceedings constituted such a serious omission that the Court has doubts that any subsequent investigation would have been able to remedy the resulting damage.

80. Next, the Court finds that the investigation authority routinely disregarded its duties and displayed a surprising lack of diligence in the subsequent examination of the case, to the extent that the supervising prosecutor had to issue the same instruction to identify the applicant's former inmates on at least five occasions (see paragraph 49), the same instruction to identify the applicant's cells on at least three occasions (see paragraph 52) and the same instruction to dissipate the discrepancies in witness statements on at least three occasions (see paragraphs 49 and 53). This resulted in a delay of almost two years in the execution of the first task and delays of almost of three years each in respect of the last two tasks.

81. The Court further notes that the initial witness statements collected in the course of the investigation contained many inconsistencies (paragraphs 49 and 53) which had to be dissipated by the meticulous comparison of this evidence in relation to specific details as well as a series of cross-examinations, identification parades, confrontations or possibly crime-scene reconstructions. It was important to conduct this process as fast as possible whilst the memories of what had happened were still fresh, but also in order to avoid the loss of contact with witnesses. The Court is also

mindful of the important role which investigative interviews play in obtaining accurate and reliable information from suspects, witnesses and victims and, ultimately, the discovery of the truth about the matter under investigation. Observing the suspects', witnesses' and victims' demeanour during questioning and assessing the probative value of their testimony forms a substantial part of the investigative process. The recollection of the events in question by the witnesses naturally fades away over the years, and the substantial delays in carrying out these assignments in the present case added up to the initial lapse of time (paragraph 79) and contributed greatly towards rendering the investigation ineffective.

82. Lastly, the Court deplores the overall quality of the final legal decision which summarised the findings of the investigation (see paragraphs 55-57). In addition to being crippled by the previously mentioned and apparently uncorrected defects, it failed to establish the relevant factual circumstances of the case, failing to offer any plausible explanation of the origin of the applicant's injuries.

83. Having regard to the foregoing, the Court does not consider that the authorities have conducted an effective investigation into the applicant's allegations of ill-treatment and holds that there has been a violation of Article 3 of the Convention under its procedural limb.

(b) The alleged breach of Article 3 under its substantive limb

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. Unlike most of the substantive clauses of the Convention and its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others*, cited above, § 93).

85. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

86. Turning to the case at hand, the Court has regard to its findings concerning numerous deficiencies in the domestic investigation into the applicant's alleged ill-treatment and, in particular, the late institution of proceedings in connection with his complaints (see paragraph 79 above).

87. Having regard to the parties' submissions and all the materials in its possession, the Court considers that the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to treatment contrary to Article 3, as alleged. In particular, on the next day after his arrest the applicant was examined by a nurse who failed to detect any injuries on his body (see paragraph 12), whilst a medical certificate issued by a doctor in the remand prison on 8 October 2002 confirming the presence of a soft tissue contusion on his chest and diagnosed as having appeared two or three days beforehand (see paragraph 14) does not correspond in full to the timing and the extent of the ill-treatment described by the applicant in his version of events (see paragraph 11). At the same time, this data is contradicted to some extent by the depositions of the officer on duty of the temporary detention facility who had examined the applicant on 4 October 2002 and noted the applicant's complaints about pain in the chest area (see paragraph 57). Furthermore, it is unclear whether and to what extent the applicant's alleged ill-treatment could have resulted in any visible signs on his body.

88. The Court notes, however, that its inability to reach any conclusions as to whether there has been treatment prohibited by Article 3 of the Convention derives in a considerable part from the failure of the domestic authorities to react effectively to the applicant's complaints at the relevant time (compare *Gharibashvili v. Georgia*, no. 11830/03, § 57, 29 July 2008, with further references, and see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 178, 24 February 2005, with further references and *Lopata v. Russia*, no. 72250/01, §§ 124-26, 13 July 2010).

89. Thus, the Court cannot establish a substantive violation of Article 3 of the Convention in respect of the applicant's alleged ill-treatment while in police custody.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

90. The applicant complained that the criminal proceedings against him had been unfair. In particular, he claimed that:

(a) he had not been provided with legal assistance from the moment of his arrest and as a result had been coerced into making self-incriminating statements;

(b) the courts had used the statements of witnesses M., Ya., Sh., Zh. and spouses G. to convict him and that he had not been able to examine these witnesses before the court in person.

(c) the domestic courts had erroneously assessed the evidence in his case and had relied on inadmissible evidence.

The Court will examine these grievances under Article 6 §§ 1 and 3 (c) and (d) of the Convention, which, in so far as relevant, provides as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

A. The parties' submissions

91. The Government disagreed with the applicant and submitted that his allegation that he had been denied legal assistance after his arrest was unsubstantiated. They further argued that the criminal proceedings had been fair and that the use of pre-trial statements by the witnesses had been lawful. In particular, the applicant had had an opportunity to put questions to victims M. and Ya. during the face-to-face confrontations conducted at the pre-trial stage. The Government further submitted that the trial court had taken all reasonable measures to secure the attendance of the witnesses and, having excused their failure to appear, lawfully used their pre-trial statements for the applicant's conviction.

92. The applicant maintained his original position and argued that the trial court had failed to take appropriate measures to secure the attendance of victims M., Ya., Sh., Zh., and spouses G. and had unlawfully based his conviction on their pre-trial statements.

B. The Court's assessment

1. Admissibility

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

2. *Merits*

(a) Legal assistance in police custody

i. General principles

94. Article 6 § 1 of the Convention requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008; see also *Dayanan v. Turkey*, no. 7377/03, §§ 29-34, 13 October 2009). Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6 (ibid). The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.

95. The Court further emphasises the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial (see *Salduz*, cited above, § 54). At the same time, an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure tends to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task is, among other things, to help to ensure respect for the right of an accused not to incriminate himself (see *Jalloh v. Germany* [GC], no. 54810/00, § 100, ECHR 2006-IX, and *Kolu v. Turkey*, no. 35811/97, § 51, 2 August 2005).

96. Lastly, the Court reiterates that a waiver of a right guaranteed by the Convention – in so far as it is permissible – must not run counter to any important public interest, must be established in an unequivocal manner and must be attended by minimum safeguards commensurate to the waiver's importance (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II). Moreover, before an accused can be said to have impliedly, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be (see *Talat Tunç v. Turkey*, no. 32432/96, § 59, 27 March 2007, and *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003).

ii. The application of the above principles to the present case

97. Turning to the circumstances of the present case, the Court observes that the applicant was arrested by the police on 3 October 2002 as a part of the group of people travelling in two cars on suspicion of their involvement in recent robberies (see paragraph 6). The applicant made a handwritten comment in the arrest record to the effect that he "consent[ed] to arrest" and that he "did commit that crime". The arrest record also contained a notice informing the applicant of his rights, including the right to remain silent and to be assisted by a lawyer, which he countersigned. The notice specified that the applicant could see his lawyer only as of "the moment defined by subparts 2 and 3 of the second paragraph of Article 49 of the Code of Criminal Procedure" (see paragraphs 8 and 9). The applicant refused to give evidence on that day. According to him, he asked for access to a lawyer, but the request was refused and the police put serious pressure on him, forcing him to confess (see paragraph 11).

98. On 4 October 2002 the applicant agreed to take part in face-to-face confrontations with victims of one of the robberies, M. and Ya., and, during these confrontations, confessed. The confrontation record stated that the applicant had agreed to participate in the absence of counsel and that he had been informed about his right to remain silent (see paragraph 17). The applicant was provided with access to his lawyer after he had been formally charged in connection with this episode on 5 October 2002. From that moment on, he partly retracted his earlier confession and consistently refused to give any evidence to the investigator (see paragraphs 19 and 21). Later at the trial, the court admitted the applicant's earlier confession of 4 October 2002 as evidence and used it in convicting the applicant (see paragraphs 29, 35 and 36).

99. The Court first observes that the parties disagreed whether the applicant had indeed asked for a counsel after his arrest or whether he essentially waived this right and his right to remain silent and consented to giving evidence in the absence of his lawyer. In this connection, the Court takes note of the undisputed fact that the applicant refused to give evidence immediately after his arrest on 3 October 2002 and that he made a number of serious allegations about the pressure and coercion by the police with a view to forcing him to confess (see paragraph 11). The Court further observes that in addition to the allegation of duress the applicant also contended that his confession should have been excluded from the body of evidence at trial due to the absence of legal assistance at the time it was made (see paragraphs 29 and 39).

100. Without prejudice to its findings under the substantive aspect of Article 3 of the Convention, the Court further observes that it considered that the applicant had an "arguable claim" of ill-treatment at the hands of the police (see paragraph 78 above). Regrettably, the investigation conducted by the domestic authorities failed to elucidate the circumstances,

in which the applicant's confession had been obtained and the Court was afforded no means of clarifying those circumstances so as to dispel any doubts in that respect (see paragraph 88).

101. The Court further cannot attach importance to the applicant's handwritten comment in the arrest record of 3 October 2002, his signature on the notice informing him about his legal rights on the same day and his agreement to participate in the confrontation in the absence of his counsel on 4 October 2002. The applicant's comment was too vague and inconclusive, especially in view of his refusal to speak on 3 October 2002, whilst the notice cited Article 49 § 2 of the Code of Criminal Procedure without explaining its meaning (see paragraphs 9 and 62, by contrast to *Sharkunov and Mezentsev v. Russia*, no. 75330/01, §§ 102-107, 10 June 2010), which made it difficult for the applicant to understand whether he at all had the right to consult his lawyer at that particular moment. As regards the applicant's agreement of 4 October 2002, it does not confirm that the applicant was at all informed about his right to see his counsel (see paragraph 17).

102. Having regard to its foregoing considerations, the parties' submissions and the materials in its possession, the Court concludes that there is no indication that the applicant validly waived his right to legal assistance on 4 October 2002 (see paragraphs 16 and 29, compare to *Savaş v. Turkey*, no. 9762/03, §§ 66-67, 8 December 2009 and *Pishchalnikov v. Russia*, no. 7025/04, §§ 78-80, 24 September 2009).

103. As is apparent from the judgment of 17 August 2004, the trial court found the applicant guilty of robbery on the basis of his confession and the results of face-to-face confrontations, which it found to be corroborated by other evidence (see paragraphs 35 and 36 above). The Court has already discussed the circumstances in which the confession was obtained and considers that they were such as to cast doubts on its reliability. It also transpires that although the trial and appeal courts dealt with the applicant's submissions concerning duress, the relevant court decisions contain no meaningful ruling on the issue of legal assistance, despite the fact that the applicant consistently raised this matter at both levels of jurisdiction (see paragraphs 39 and 40 above). Hence, the Court is not satisfied that the applicant's grievance received an appropriate response from the national courts and considers that fair procedures for making an assessment of the issue of legal assistance proved non-existent in the present case.

104. In sum, even though the applicant had the opportunity to challenge the evidence against him at the trial and subsequently on appeal (see paragraph 40), the absence of a lawyer while he was in police custody irretrievably affected his defence rights.

105. In view of the above, the Court concludes that there has been a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1 in the present case.

(b) The reading out of statements made by Zh., Sh., Ya., M. and spouses G. at the pre-trial stage of the proceedings

i. General principles

106. According to the Court's case-law, the right to a fair trial presupposes that all the evidence must normally be produced at a public hearing, in the presence of an accused, with a view to adversarial argument. However, the use in evidence of statements obtained at the stage of the police inquiry and the judicial investigation is not in itself inconsistent with paragraphs 1 and 3 (d) of Article 6, provided that the rights of the defence have been respected.

107. As a rule, these rights require that the defendant be given an adequate and proper opportunity to challenge and question a witness against him or her either when the statements were made or at a later stage of the proceedings (see *Saïdi v. France*, 20 September 1993, § 43, Series A no. 261-C, and *A.M. v. Italy*, no. 37019/97, § 25, ECHR 1999-IX). In the event that the witnesses cannot be examined and that this is due to the fact that they are missing, the authorities must make a reasonable effort to secure their presence (see *Artner v. Austria*, 28 August 1992, § 21, Series A no. 242-A; *Delta v. France*, 19 December 1990, § 37, Series A no. 191-A; and *Rachdad v. France*, no. 71846/01, § 25, 13 November 2003).

108. Article 6 does not grant the accused an unlimited right to secure the appearance of witnesses in court. It is normally for the national courts to decide whether it is necessary or advisable to hear a witness (see, among other authorities, *Bricmont v. Belgium,* 7 July 1989, § 89, Series A no. 158).

109. However, where a conviction is based solely or to a decisive extent on statements that have been made by a person whom the accused has had no opportunity to examine or to have examined at some stage of the proceedings, the rights of the defence are restricted to an extent that is incompatible with the guarantees provided by Article 6 (see *Unterpertinger v. Austria*, 24 November 1986, §§ 31-33, Series A no. 110; *Saïdi*, cited above, §§ 43-44; *Lucà v. Italy*, no. 33354/96, § 40, ECHR 2001-II; and *Solakov v. the former Yugoslav Republic of Macedonia*, no. 47023/99, § 57, ECHR 2001-X).

ii. The application of the above principles to the present case

110. Turning to the matter of the examination of victims Zh., Sh., Ya., M. and spouses G., the Court observes at the outset that none of these persons testified at the court hearing. However, all of them should, for the purposes of Article 6 § 3 (d) of the Convention, be regarded as witnesses because their statements during the pre-trial interviews, photo identity parades or face-to-face confrontations, as taken down by the investigating authority, were used at the trial (see paragraph 33, 34 and 35). In the circumstances, the Court considers that there was no material difference

between a recorded deposition by a witness or the result of an identity parade on the one hand and the result of a face-to-face confrontation on the other, since all are capable of furnishing evidence against a defendant in a criminal trial (see also *Mirilashvili v. Russia*, no. 6293/04, § 159, 11 December 2008).

α. Reading out of statements of Sh. and Zh.

111. As regards the applicant's conviction in respect of the first charge of robbery and the evidence given in this connection by witnesses Sh. and Zh., the Court notes that the applicant had no possibility of confronting them either before or during the court proceedings (see paragraphs 22 and 28). The Court's task is thus to determine whether the applicant's conviction in respect of the first charge concerning which witnesses Sh. and Zh. gave their evidence was based solely, or in a decisive manner, on the evidence given by these witnesses in such a way that his right to a fair trial was violated (see, for example, *Vladimir Romanov v. Russia*, no. 41461/02, §§ 100-03, 24 July 2008).

112. In this connection, the Court would note that, apart from the evidence given by witnesses Sh. and Zh., the applicant's conviction in respect of the first charge was confirmed mostly by less decisive evidence, such as the handwritten notes given by a member of the group to the victims in exchange for payment and the search records confirming the applicant's group to have been in possession of the stolen car tyres and the weapons used for threatening the victims (see paragraphs 32 and 33). Given these circumstances, the Court concludes that the applicant's conviction in respect of the first charge was based to a decisive extent on the pre-trial statements of witnesses Sh. and Zh. whom the applicant had no possibility to question. Thus, he was in this respect at a disadvantage vis-à-vis the prosecution during the trial (see *Vladimir Romanov*, cited above, § 103).

β. Reading out of statements of spouses G.

113. Turning to the applicant's conviction for the second charge, the Court notes that the applicant had no possibility of confronting the victims, i.e. spouses G., either before or during the court proceedings (see paragraphs 22 and 34).

114. Similarly to the previous episode, his conviction for the robbery of spouses G. was also based principally on the pre-trial statements and the identification records by the victims, the other pieces of evidence, such as a handwritten note and the search record, being of a secondary nature (see paragraphs 34). In view of the above, the Court finds that the applicant's conviction in respect of the second charge was based to a decisive extent on the pre-trial statements of witnesses G. whom the applicant had no possibility to question, thus placing him at a disadvantage vis-à-vis the prosecution during the trial.

γ. Reading out of statements of M. and Ya.

115. Finally, the Court notes that in so far as the applicant's conviction for the third charge and the evidence given by witnesses M. and Ya. are concerned, the applicant had an opportunity to confront them at the interview of 4 October 2002, when they both identified the applicant as one of perpetrators of that robbery (see paragraph 16). During that confrontation the applicant admitted his involvement in the incident, later partly confirming this position at the trial (see paragraphs 16, 17 and 30). The Court notes, however, its earlier findings under Articles 3 and 6 § 1 (c) about the circumstances in which the applicant's consent to take part in interviews and confrontations of 4 October 2002 was obtained, the absence of the applicant's counsel on that day and, more generally, its doubts concerning the voluntary character of the applicant's participation. It therefore cannot conclude that the applicant had a meaningful an opportunity to confront these witnesses either at the pre-trial stage of the proceedings or during the trial.

116. As to the question whether the applicant's conviction in respect of the third episode concerning which witnesses M. and Ya. gave their evidence was based solely, or in a decisive manner, on the evidence given by these witnesses, the Court notes that that the applicant's conviction in respect of the third episode was mainly based on the evidence obtained from these witnesses on 4 October 2002, including their statements and the face-to-face confrontation records and the applicant's confession, as well the applicant's subsequent admissions made to the trial court at a hearing (see paragraph 35) which themselves resulted from the confession made on 4 October 2002. The other pieces of evidence in respect of that episode, such as the search records, were of less decisive character.

117. The Court finds that the applicant cannot be regarded as having had a proper and adequate opportunity to challenge the statements of M. and Ya., which were of decisive importance for his conviction in respect of the third charge.

118. The Court would next note that all of the above-mentioned witnesses could not appear at the trial, that the police authorities were unsuccessful in their attempts to secure their attendance and that the domestic courts at two instances eventually excused their absence as justified (see paragraphs 24-28).

119. Regard being had to the circumstances of the case, the Court has serious doubts that the decision of the domestic courts to accept their explanations and excuse their absence from the proceedings could indeed be accepted as justified. It considers that the domestic courts reviewed the reasons advanced by the competent police authorities and the witnesses superficially and uncritically. Whilst such reasons as the alleged remoteness of the location of the trial, fear for their lives or the absence at the place of registration (see paragraphs 26, 27 and 28) could be seen as relevant, the

courts did not go into the specific circumstances of the situation of each witness and failed to examine whether any alternative means of securing their depositions in person would have been possible and sufficient. It follows that the decision to excuse the absence of these witnesses was not sufficiently convincing and that the authorities failed to take reasonable measures to secure their attendance at the trial.

120. Overall, the Court concludes that there has been a violation of Articles 6 § 3 (d) of the Convention, taken in conjunction with Article 6 § 1 in the criminal proceedings against the applicant due to the fact that his conviction was to a decisive extent based on evidence he could not challenge.

(c) The applicant's other grievances

121. The Court reiterates its earlier findings that the absence of a lawyer while the applicant was in police custody irretrievably affected his defence rights (see paragraph 105) and that his conviction in respect of all three charges was to a decisive event based on evidence he could not challenge (see paragraph 120).

122. It therefore considers it unnecessary to examine separately whether the fairness of the proceedings was also breached because of the allegedly erroneous assessment of the evidence in the applicant's case (see *Komanický v. Slovakia*, no. 32106/96, § 56, 4 June 2002 and *Vladimir Romanov*, cited above, § 107).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

124. The applicant claimed the overall sum of 53,000 euros (EUR) for the damage allegedly sustained as a result of "all the violations of the Convention in his case".

125. The Government considered the claim unsubstantiated and excessive.

126. The Court observes that the applicant must have suffered a certain degree of stress and frustration as a result of the violations found. The actual amount claimed is, however, excessive. Making its assessment on an

equitable basis, it awards the applicant the sum of EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

127. The applicant has not made any claims with regard to the costs and expenses incurred before the domestic court or the Court.

C. Default interest

128. 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 application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

3. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;

4. *Holds* that there has been a violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1 of the Convention on account of the absence of a lawyer while the applicant was in police custody;

5. *Holds* that there has been a violation of Article 6 § 3 (d) taken together with Article 6 § 1 of the Convention on account of the fact that his conviction was to a decisive event based on evidence he could not challenge;

6. *Holds* that it is not necessary to consider other aspects of the criminal proceedings against the applicant;

7. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), in respect of non-pecuniary damage, plus any tax that may be chargeable to

the applicant, to be converted into the Russian roubles at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount[s] at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen Registrar	Nina Vajić President