



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

FIRST SECTION

CASE OF A.A. v. RUSSIA

(Application no. 49097/08)

JUDGMENT

STRASBOURG

17 January 2012

FINAL

17/04/2012

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

In the case of A.A. 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 13 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 49097/08) 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 A.A. (“the applicant”), on 10 September 2008. The President of the Chamber acceded to the applicant’s request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

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. On 5 July 2010 the President of the First Section decided to give priority treatment to the application and to give notice of it 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

4. The applicant was born in 1945 and is serving a prison term in colony no. 6 in the Kirov Region.

I. THE CIRCUMSTANCES OF THE CASE

A. Alleged ill-treatment

1. The parties' versions of the events

5. The applicant and several others were suspected of kidnapping a Mr K. for ransom in the Dagestan Republic. The case was investigated by Mr A., an investigator in the Khasavyurt town prosecutor's office, Dagestan Republic.

6. On 23 April 2006 the applicant was arrested, apparently by officers D. and Z., while he was driving a car in the town of Khasavyurt. As noted in the arrest record, the arrest was recorded on video. According to the applicant, a bag was placed on his head, he was put into a police car and allegedly received several blows to the head and stomach. He was then taken to the local Organised Crime Unit (OCU). He was severely beaten up by several individuals, including the above-mentioned officer Z. (the head of the OCU), and subsequently remained at the OCU (see also paragraphs 11 and 20 below). Despite beatings, he refused to admit to the kidnapping or any other offences.

7. On the same day, the applicant was interviewed in the OCU by investigator A. The arrest record, which was signed by two attesting witnesses, indicates that the applicant was suspected of kidnapping and that his son had been notified of his arrest. The applicant made the following statement in the record:

"I am not acquainted with the kidnapping victim...I would like to see a lawyer and ask that all subsequent investigative measures be carried out in his presence."

The applicant was provided with legal assistance at some point between 23 and 25 April 2006 (see also paragraph 9 below).

8. Also, on 23 April 2006 a search of his mother's house, where the applicant was living at the time, was carried out. Another search was carried out some two weeks later.

9. On 25 April 2006 the Khasavyurt Town Court remanded the applicant in custody. The text of the court decision indicates that the applicant and his counsel were present at the hearing. According to the Government, during this hearing the defence made no allegations of ill-treatment and no health-related complaints. According to the applicant, he was not brought to this hearing from the OCU.

10. According to the Government, on the day of his arrest the applicant was admitted to the Khasavyurt temporary detention centre at the police station, where he was examined by a medical assistant, who did not record any health complaints and did not detect any visible injuries.

11. According to the applicant, he was kept until 9 May 2006 at the OCU premises, except for two or three days in solitary confinement in the temporary detention centre (apparently on 7 or 8 and 9 May 2006). The police station, the OCU and the temporary detention centre were, at the time, located in the immediate vicinity. According to the applicant, the beatings continued in the OCU until 9 May 2006. He remained handcuffed all the time; for extended periods of time he was attached to a radiator by the handcuffs. He sustained fractures of his right arm and one of his legs (see also paragraph 46 below). He was not given any food or drink and was not allowed to sleep. The applicant was forced to sit on a bottle on at least three occasions, which provoked acute bleeding from the anus. He was also forced to stand in a position of doing the splits, while his arms remained handcuffed behind his back. The applicant was sexually assaulted at night from 8 to 9 May 2006. OCU head officer Z. and investigator A. brought in three relatives of the kidnapping victim, who had been told that the applicant had kidnapped their relative. The applicant was beaten on the kidneys and head with a plastic bottle filled with water; he was hit on the legs with a shovel handle. His co-accused, Mr Ib., was told to have sexual intercourse with him. Acts of torture were photographed by one of the kidnap victim's relatives. The applicant was told that if he refused to confess, the photographs would be distributed among his neighbours and other detainees. The photographs were subsequently distributed in the remand centre and were later examined at the trial (see below).

12. According to the applicant, officers of the temporary detention centre saw the officers beating him up but took no action to put a stop to the beatings or to alert the authorities. The applicant was not provided with any medical assistance in the temporary detention centre, in particular after 9 May 2006.

13. The Government submitted written statements, apparently made in 2010, by three officers of the temporary detention centre, on duty at the time. They affirmed that no force had been used against the applicant in that detention facility; and that the logbooks recording detainees' admission to or departure from the detention centre and the police station had been destroyed during an explosion in the police station in 2009. According to the Government, the applicant had been taken from the detention centre for measures connected with the investigation but had not had any contact with OCU officers. According to the Government, emergency services were called to examine the applicant when he complained of stomach and kidney pains on 30 April and 9 and 10 May 2006; no fractures were recorded. According to the applicant, he was examined by paramedics in the presence of OCU officers, who attempted to put pressure on them.

14. According to the applicant, his adolescent son was also arrested and detained for three days. He saw the applicant in bad condition. He stated that his wife was also kept in detention, with their young daughter.

15. On 11 May (15 or 16 May according to the applicant) 2006 the applicant was transported from the temporary detention centre to Khasavyurt remand centre no. 3/5. He was then brought back to the temporary detention centre because of his medical condition. However, the applicant was admitted to the remand centre soon afterwards.

16. According to the applicant, in the remand centre he was kept in solitary confinement. Due to his state of health after the alleged torture, he was unable to walk or use the toilet. He was not provided with any medical assistance. He also alleged that numerous injuries had been recorded in the register of the remand centre, including fractures of the right arm and right leg.

17. The applicant's medical file in the remand centre indicates that on 11 May 2006 he complained of pain in the chest, arms, legs and head; he had bruises on his body, showed sensitive palpation in his cheekbone and hips; had bruises and scratches on his hips; severe pain in the chest, especially in the area of the costal margins; and soft tissue and bone bruising. It does not appear from the record that the applicant was given any medication. In the applicant's submission, on several occasions the investigator prevented emergency paramedics from providing the applicant with medical assistance and refused to allow him to be transferred to a hospital.

2. Complaints of torture lodged by the applicant and Mr I.

18. In the meantime, on 9 May 2006 Mr I. was arrested in connection with the kidnapping case and was interviewed by investigator A. After this interview, Mr I.'s relatives complained that he had been ill-treated. On 18 May 2006 the Prosecutor's Office of the Dagestan Republic ("the regional prosecutor's office") instituted criminal proceedings (file no. 668130) on charges of insult and abuse of power.

19. According to the applicant, he also complained to the regional prosecutor's office, the regional ombudsman and the regional office of the Federal Security Service that he had been tortured. He did not specify the details of the sexual assault he complained of, while naming among his assailants chief officer Z. and investigator A., and asking the authorities to carry out an investigation. He asked them to examine photographs which had allegedly been taken during the ill-treatment (see also paragraph 25 below).

20. Unlike Mr I., the applicant was not granted victim status in case no. 668130. However, on 19 May 2006 the applicant, who was not assisted by counsel, was interviewed as a witness and made the following written statement concerning the events between 23 April and 11 May 2006:

"I was taken out of my car by force and brought to the Khasavyurt OCU. I was taken up to a room on the second floor and beaten up there. Four officers punched and kicked me. I was then taken to the OCU Chief officer's office, where I was forced to

put on a gas mask; I lost consciousness on several occasions. Later on, I was taken to another room for questioning. After this, I remained handcuffed to a radiator until the next morning, when I was questioned by investigator A. Another man, K., who was apparently the son of the kidnap victim, was also present. Mr A. put a gas mask on my head and blocked the air flow; I lost consciousness on several occasions while being beaten up by K.... the next day I was beaten up by OCU officers, who used their hands, feet and a plastic bottle...I can identify at least one of the officers...Later, I was again beaten up by two OCU officers who had just arrived from Makhachkala...During the night of 8 to 9 May 2006 I was beaten up again. I also heard another person, Mr Ib., being tortured in another office...Mr A. told me to sign some documents but I refused. I was taken into the room where Mr Ib. was. There, I was told to kneel; A. hit me on the back and told Ib. to have sexual intercourse with me. Ib. was told to take off my and his trousers and to approach me from behind and bend over me. I resisted and received a blow to the head from a bottle. K. took photographs...”

21. On 19 May 2006 the investigator dealing with case no. 668130 ordered that the applicant be examined by medical experts of the regional Forensic Expert Office (see below).

22. On 23 May 2006, for unspecified reasons, the regional prosecutor’s office reassigned K.’s kidnapping case from investigator A. to an investigator in the Investigations Department of the regional prosecutor’s office under case no. 668493.

23. On 25 May 2006 senior officer Z. was interviewed by an investigator of the regional prosecutor’s office and denied torturing Mr I.

24. As can be seen from a report dated 30 May 2006, the applicant had been examined by a medical expert in the Forensic Expert Office on 22 May 2006, when he had complained of pain in the chest and hip. The expert identified two bruises measuring 8 x 6 cm and 5 x 4 cm on the left side of the applicant’s chest. According to the applicant, no check-up had been carried out on 22 May 2006 and the report was false.

25. An expert report was commissioned on the photographs submitted in I.’s torture case. The following descriptions were given in the report, no. 4161 dated 8 June 2006. Photograph no. 1 depicted a man lying on the floor, with his arms held behind him by another person. Photograph no. 2 depicted a man lying on the floor with another person’s genitals near his face. Photograph no. 3 depicted a man lying on the floor with his arms handcuffed behind him, his buttocks half exposed and a stick near his anus. Photograph no. 4 depicted two men: one man lying on the floor with his pants slightly down so that his genitals are partly visible, and the other man bending over him. The report describes the photographs as reproductions/computer screen captures, photos 2 and 4 showing “indications of editing”. The expert was not able to determine whether the photographs had been taken in the police station or the OCU. Another report, issued by another expert institution on 14 October 2006, concluded that the photographs had not been edited.

26. On 9 June 2006 the Internal Control Office of the Ministry of the Interior carried out an inquiry in reply to a request from a Member of Parliament. The inquiry concluded that senior officer Z. and two officers had been interviewed and had denied torturing Mr I.

27. According to the Government, senior officer Z. and officer D., who had arrested the applicant on 23 April 2006, could not be interviewed during the inquiry because they had been killed on 20 June and 23 July 2006 respectively.

28. In July 2006 the applicant wrote to the regional prosecutor's office about ill-treatment. Receiving no reply, on 21 November 2006 he submitted another complaint.

29. On 22 November 2006 the torture case (concerning Mr I.) was reassigned from the regional prosecutor's office to the town prosecutor's office. The criminal investigation was suspended on 18 December 2006 for lack of a suspect. However, on 22 December 2006 the regional prosecutor's office instructed the district prosecutor to continue the inquiry.

30. By a letter of 22 December 2006, the regional prosecutor's office notified the applicant that his complaint against investigator A. and unlawful methods of investigation had been forwarded for examination by the Khasavyurt prosecutor's office.

31. On 30 December 2006 the Khasavyurt prosecutor's office suspended the inquiry in I.'s case because no suspect had been identified. According to the applicant, he first learnt about this decision at the trial (see below).

32. Having received no information about the investigation into his allegations of ill-treatment, the applicant complained to the Prosecutor General's Office. On 10 January 2007 the latter forwarded this complaint for examination by the Khasavyurt prosecutor's office.

33. On 14 September 2007 the applicant complained to the regional prosecutor's office that there had been no meaningful investigation of torture, that the authorities had failed to examine his earlier complaints, the presumption of innocence had been violated and the jurors had been influenced by the mass media (see paragraph 40 below). On 24 September 2007 the regional prosecutor's office forwarded this complaint to the Khasavyurt prosecutor's office. It appears that no reply was received.

34. However, by a letter of 10 July 2008 the Khasavyurt prosecutor's office notified the applicant that his complaints of ill-treatment were unfounded and that they had already been examined at the trial and on appeal against the jury verdict. The applicant received this letter on 1 October 2008.

35. No proceedings were pending until 7 December 2009, when the Khasavyurt town prosecutor issued an order to resume the preliminary investigation in Mr I.'s torture case, and to investigate the applicant's allegations made before the European Court.

36. As it appeared that no investigative measures had been taken, the applicant complained to the Prosecutor General's Office. He submitted a handwritten copy of their letter dated 23 June 2010, which reads as follows:

"Indeed, during the stage of preliminary investigation [the applicant] and another convict in the same criminal case were subjected to violence at the hands of police officers and relatives of the crime victim. This fact gave rise to criminal proceedings initiated on 18 May 2006. The relevant case file was examined by the trial court in the [applicant's] criminal case.

This notwithstanding, [the applicant] and I. stated at their trial that violence applied to them had not resulted in false testimony or admissions."

37. On 11 August 2010 Mr A., acting head of the Khasavyurt inter-district investigations unit of the Investigations Department of the regional prosecutor's office (the investigator A. mentioned above), considered that the Khasavyurt prosecutor's request was justified, in part because no face-to-face confrontation had been carried out between the applicant and Ib.; the medical doctor who had provided emergency assistance to the applicant in the OCU, had not been interviewed; and officers of the temporary detention centre had not been interviewed in relation to injuries mentioned in the forensic expert report. In view of the above, Mr A. quashed the decision of 18 December 2006 (see paragraph 29 above) and ordered an investigator in the Khasavyurt inter-district investigations unit to resume the preliminary investigation. According to the applicant, the newly-designated official was subordinate in rank to Mr A., who had been implicated in the allegations of torture made by the applicant and his co-accused.

38. On 11 September 2010 the preliminary investigation was suspended for unspecified reasons. On 8 October 2010 it was resumed but then again suspended on 8 November 2010. By a letter of 14 December 2010 the Prosecutor General's Office informed the applicant that his allegations had been previously examined in I.'s torture case and that further inquiries should be addressed to the Khasavyurt prosecutor's office, also noting that the applicant's application was pending before the European Court.

B. Criminal proceedings against the applicant

39. On 25 April 2006 the Khasavyurt Town Court of the Dagestan Republic remanded the applicant in custody as a suspect in the kidnapping case. Separate preliminary investigations concerning kidnapping, extortion, murder and unlawful handling of firearms were joined in one case. In May 2006 the applicant was charged with kidnapping (Article 126 of the Criminal Code).

40. After the arrest of the applicant and his accomplices their case received some press coverage. The applicant submitted an article entitled "Who was the contract murder client?", which had been published in a

regional newspaper, *Dagestan Argumenty i Fauty*, on 24 May 2006. Another article in similar terms was published at the same period of time in *Dagestanskaya Pravda*, another local newspaper. These publications relied on statements allegedly made by a public official. The applicant was treated in these publications as a “bandit” and a “recidivist” convicted of murders and kidnapping.

41. The applicant and his counsel studied the materials of the criminal case (twelve volumes), allegedly, for two hours on 23 December 2006. On 27 or 28 December 2006 the applicant had a heart attack. On 6 January 2007 he was provided with a copy of the bill of indictment.

42. Thereafter, the criminal case against the applicant and his accomplices, including Mr I. and Mr Ib., was listed for trial before the Supreme Court of the Dagestan Republic. The applicant requested to be tried by a lay jury. On 12 January 2007 the presiding judge held a preliminary hearing, extended the defendants’ detention and granted the applicant’s request for a trial by a lay jury. A jury panel was formed. Apparently, at the time the applicant was not aware of the publications in the press (see paragraph 40 above).

43. The transcript of the hearing indicates that the presiding judge made a general direction requesting the jury not to follow any media coverage of the trial; if they had already seen any press coverage of the case they were instructed not to take account of the conclusions drawn by the mass media.

44. The trial judge admonished the public prosecutor for mentioning the applicant’s criminal record. The judge instructed the jury not to take that information into account. The applicant was also admonished for subsequently mentioning his own criminal record.

45. In the course of the trial the applicant admitted that that he had unlawfully deprived the victim of his liberty, but pleaded not guilty to the remaining charges.

46. The presiding judge ordered the prosecution to submit the criminal investigation file in relation to I.’s allegation of torture. Instead, the prosecution read out a procedural summary note concerning this file. The applicant stated that he had been subjected to similar humiliating ill-treatment, which had been photographed. The presiding judge also admitted to the file a letter from the remand centre, apparently containing information concerning the applicant’s injuries. The judge granted the defence’s request and ordered a medical expert examination of the applicant, to investigate his allegation that fractures had been inflicted on him by torture. According to the applicant, a report compiled by the expert indicated that the applicant had sustained arm and leg fractures. No copy of this report was submitted to the Court.

47. The applicant made a written statement accusing investigator A. of torture. The presiding judge accepted the statement, and ordered it to be forwarded to the appropriate authority after the trial. In reply to the judge’s

questions, the applicant stated on several occasions that despite torture he had not made any “false” admissions during the preliminary investigation.

48. The court examined four photographs. The applicant affirmed that he was shown in one of them, depicting two men. His co-accused Mr Ib. (the other man in this photo) confirmed it. Ib. also affirmed that A. had made him watch video recordings showing the applicant and I. being ill-treated.

49. During the hearing on 5 June 2007 the applicant was removed from the courtroom because of repeated misbehaviour. He was then brought back after counsel’s concluding remarks and was allowed to conclude his pleading.

50. On 21 June 2007 the jury found the applicant guilty as charged and sentenced him to twenty-five years’ imprisonment.

51. It appears that the car, which the applicant had used with the permission of its owner, was seized during the investigation. At the closure of the trial, the car was handed over to the victims in settlement of their civil claims. It appears that the owner of the car then sought compensation from the applicant and his next of kin. The latter paid the owner a sum equal to the value of the car.

52. The applicant appealed against the verdict, seeking a retrial in another region of Russia because, he submitted, it was impossible to ensure a fair trial in Dagestan, particularly on account of the press coverage of the first trial.

53. On 15 May 2008 the Supreme Court of Russia upheld the verdict of 21 June 2007. According to the applicant, the appeal hearing, which was carried out by video link, took no more than fifteen minutes.

54. On 6 June 2008 the Supreme Court dismissed the applicant’s request for supervisory review. The Supreme Court considered that it was not shown that the jury had been aware of the publications in 2006 and that it was not established that they had been unduly influenced by these publications. The Supreme Court also considered that these publications were not capable of prejudicing the impartiality of the jury.

C. Conditions of detention and transport

55. A medical certificate issued in 2003 indicates that the applicant has a Category 2 disability and was recognised as unfit for work (without any period of limitation). He also has ischaemic heart disease, hemiplegia (paralysis of part of the body) and some other conditions.

56. From 25 April to 9 or 11 May 2006 the applicant was kept in a police station or a temporary detention centre. From 9 or 11 May to 8 December 2006 he was detained in Khasavyurt remand centre no. 3. From 8 December 2006 to an unspecified date in March 2008 he was detained in Makhachkala remand centre no. 1, allegedly in overcrowded cells. From

March to 5 June 2008 the applicant was detained in Moscow remand centre no. 77/3.

57. On 5 June 2008 the applicant was sent back to Makhachkala remand centre no. 1. On his way back he was temporarily admitted to the medical unit of a Volgograd remand centre. In Astrakhan colony no. 6 he was, however, placed in an ordinary transit cell, which was, allegedly, overcrowded. It appears that the applicant's complaint to the administration of the colony was not examined. Thereafter, the applicant was transported for twelve hours in a "container" measuring 1.7 m x 2 m, together with many other detainees. Upon his arrival in Makhachkala remand centre no. 1 he was sent to a colony in the Kirov Region, while his medical file containing the recommendations for his treatment was, allegedly, replaced by a blank one.

58. On an unspecified date, the applicant was transferred to colony no. 6 in the Kirov Region. He was admitted to a hospital on several occasions in 2008 and 2009 and prescribed various types of medication.

D. Correspondence with the European Court

59. By a letter of 14 October 2008, the European Court acknowledged receipt of the applicant's first letter to the Court. By a letter of 19 August 2009 the Court informed the applicant that his recent request under Rule 39 of the Rules of Court had been rejected. According to the applicant, the above letters were opened and inspected before being handed over to him in unsealed envelopes.

60. Allegedly, in March 2009 the colony administration refused the applicant access to his medical file and refused to issue any documents relating to this file in the absence of an official request from a national public authority or the European Court of Human Rights.

61. On 10 March 2009 the applicant handed over the completed application form to be dispatched from the detention facility to the Registry of the Court. The application form was received by the Registry of the Court on 15 May 2009. Allegedly, in 2010 the detention facility staff refused to dispatch one letter to the Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Use of force against detainees and investigation of complaints

62. Under the Custody Act (Federal Law no. 103-FZ of 15 July 1995), physical force may be used against a suspect or an accused in a detention facility in order to put an end to an offence or his resistance to lawful orders issued by public officials, if other means prove to be inefficient (section 44

of the Act). Rubber truncheons may be used to stop a detainee assaulting a public official, to put an end to mass disorder or breaches of prison rules committed in a group, to put an end to unlawful actions on the part of the detainee if he resists a lawful order, or to prevent him from causing damage to others (section 45). Handcuffs may be used to put an end to unlawful actions on the part of the detainee if he resists a lawful order, or to prevent him from causing damage to himself or others (*ibid*).

63. The Federal Ministry of Justice's decree no. 189 of 14 October 2005 provides that during admission to a remand centre a detainee should be examined by a duty medical doctor or a medical assistant, with the purpose of identifying health problems requiring isolation from other detainees or urgent medical care. If there is reason to believe that injuries identified on the detainee's body could have been caused by unlawful actions, the medical staff should indicate this in the medical record and compile a separate note. An inquiry should be carried out by a special unit. If there are indications of a criminal offence the inquiry file should be submitted to a prosecutor (section 16 of the Decree).

B. Code of Criminal Procedure (CCrP)

64. Article 125 of the CCrP provides for judicial review of a decision or (in)action on the part of an inquirer, investigator or prosecutor, which has affected constitutional rights or freedoms. The judge is empowered to verify the lawfulness and reasonableness of the decision/(in)action and to grant the following forms of relief: (i) to declare the impugned decision/(in)action unlawful or unreasonable and to order the respective authority to remedy the violation; or (ii) to reject the complaint.

65. In its Resolution of 10 February 2009 the Plenary Supreme Court of Russia considered that it was incumbent on the judges to verify before processing an Article 125 complaint whether the preliminary investigation has been completed in the main case (point 9). If the main case has already been set for trial or has been completed, the complaint should not be examined unless it was brought by a person who was not a party to the main case or if the complaint was not amenable to judicial review under Article 125 at the pre-trial stage of the proceedings. In all other situations, the complaint under Article 125 should be left without examination and the complainant be informed that he or she can raise the matter before the trial or/and appeal courts in the main case.

66. In the same vein, according to the interpretation given by the Constitutional Court, a complaint under Article 125 cannot be brought or pursued after the criminal case to which the complaint is connected has been submitted for trial. However, when it is established that a party to the proceedings (including a judge or a witness) has committed a criminal offence, thus seriously affecting the fairness of the proceedings, the Code

exceptionally allows for a separate investigation of the relevant circumstances leading to a reopening of the case (see Decision no. 412-O-O of 17 November 2009; see also Ruling no. 13-II of 29 April 1998 and Ruling no. 5-II of 23 March 1999 concerning respectively Articles 113 and 218 of the RSFSR Code of Criminal Procedure before 1 July 2002).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

67. The applicant complained that he had been subjected to torture in detention and that no meaningful investigation had been carried out, in breach of Articles 3 and 13 the Convention. The Court will examine this complaint under Article 3 of the Convention. It reads as follows:

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

68. The applicant argued that between 23 April and 9 May 2006 he had been continually and severely beaten up by officers of the Organised Crime Unit, had been sexually assaulted and humiliated, and had not been provided with any medical assistance.

69. The Government argued that the investigation into the allegation of torture was effective, since the national authorities had taken all practicable investigative measures, given the death of the arresting officers and the destruction of the relevant logbooks of the temporary detention facility. As the investigation was not yet complete, the applicant’s grievance was premature.

A. Admissibility

70. The Court considers that the examination of the Government’s argument concerning exhaustion of domestic remedies is closely linked to the merits of the applicant’s grievances concerning the procedural aspect of Article 3 of the Convention. Thus, the Court considers that the issue of exhaustion of domestic remedies should be joined to the merits.

71. The Court also notes that this part of the application 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.

B. Merits

1. *Alleged ill-treatment*

(a) General principles

72. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. In order to fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among others, *Ireland v. the United Kingdom*, judgment of 18 January 1978, § 162, Series A no. 25).

73. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt”. 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. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Zelilof v. Greece*, no. 17060/03, § 44, 24 May 2007, and *Polyakov v. Russia*, no. 77018/01, §§ 25 and 26, 29 January 2009).

74. The Court reiterates that where domestic proceedings have taken place, it is not the Court’s task to substitute its own assessment of the facts for that of the domestic courts, and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where arguable allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny.

(b) Application of the principles in the present case

75. The applicant provided a detailed account of physical ill-treatment at the hands of, with the connivance of, or instigated by, agents of the State after his arrest and during his detention between 23 April and 9 May 2006 (see paragraphs 6, 11 and 20 above). In particular, according to the applicant, he was beaten up on numerous occasions; he was forced to stand in a position of doing the splits, while his arms remained handcuffed behind his back. He was sexually assaulted and was forced to sit on a bottle, which

provoked acute bleeding from the anus. The applicant was beaten on the kidneys and head with a plastic bottle filled with water; he was hit on the legs with a shovel handle. Allegedly, he sustained fractures of his right arm and one of his legs.

76. While for unspecified reasons the applicant failed to submit before the Court any documentary evidence concerning his allegation of fractures inflicted by ill-treatment (see paragraph 46 above), it was recorded in the remand centre that on 11 May 2006 he had complained of pain in the chest, arms, legs and head; he had bruises on his body, showed sensitive palpation in the area of his cheekbone and hips; had bruises and scratches on his hips; severe pain in the chest, especially in the costal margin area; and had soft tissue and bone bruising (see paragraph 17 above).

77. It is also noted, and is not in dispute between the parties, that the applicant was arrested on 23 April 2006 in “good health”. The Court also observes that there is no indication that the applicant self-mutilated or resisted arrest, which might have accounted for injuries. The applicant’s description of the alleged ill-treatment is sufficiently detailed, and there is a clear match between this description of the beatings and the injuries identified. Moreover, as followed from a document submitted by the applicant and uncontested by the Government, the Prosecutor General’s Office had acknowledged that violence had been used against the applicant (see paragraph 36 above).

78. It follows from the Government’s submissions that on the day of his arrest the applicant was examined by a medical assistant, who did not detect any visible injuries (see paragraph 10 above). Should this finding be accepted as true and supported by appropriate evidence, it remains unexplained why the applicant had injuries during his admission to the remand centre on 11 May 2006. Moreover, it is noted that emergency services were called to examine the applicant when he complained of stomach and kidney pains on 30 April and 9 and 10 May 2006 (see paragraph 13 above). In view of the above considerations, it is plausible that the injuries were inflicted during the applicant’s detention.

79. The Court also considers that the medical evidence, together with the fact that the alleged ill-treatment took place while the applicant was within the authorities’ control in custody, created a presumption of fact that the applicant was subjected to ill-treatment at the hands of State agents and required the national authorities to provide a satisfactory and convincing explanation as to how those injuries could have originated.

80. The Court observes in that connection that the applicant’s grievance was not properly assessed by any domestic courts, which could have examined the available evidence. In fact, the national authorities did not provide any plausible explanation for the applicant’s injuries.

81. Thus, the Court accepts the applicant’s submission that he was physically ill-treated by State agents. At the same time, the Court does not

find it necessary to assess whether the allegations of sexual assault are true owing to the difficulty of proving them in the absence of appropriate medical evidence (see, *mutatis mutandis*, *Yavuz v. Turkey*, no. 67137/01, § 39, 10 January 2006).

82. In these circumstances and having assessed the available material, including the available medical evidence, the Court considers it established that between 23 April and 9 May 2006 the applicant was subjected to physical ill-treatment and humiliation, which amounted to inhuman and degrading treatment.

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

2. Alleged lack of an effective investigation

(a) General principles

84. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by agents of the State in breach of Article 3 there should be a thorough and effective investigation (see, among others, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Gäfgen v. Germany* [GC], no. 22978/05, § 117, 1 June 2010).

85. While not every investigation should necessarily come to a conclusion which coincides with the claimant's account of events, any investigation 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 *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II).

86. The investigation into credible allegations of ill-treatment must be thorough. This means that the authorities must 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*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Also, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time, consideration being given to the date of commencement of investigations, delays in taking statements and the length of time taken to complete the investigation (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV, and *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001). 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 the applicable standard.

(b) Application of the principles in the present case

87. Turning to the present case, the Court first observes, and it is common ground between the parties, that the applicant's injuries and his allegations were sufficiently serious and credible to require an investigation on the part of the national authorities.

88. The Court also observes that it is unclear when the applicant first informed the national authorities of the ill-treatment allegedly inflicted on him between 23 April and 9 May 2006. A person alleging ill-treatment should not act in a way which prejudices any future investigation. However, in the circumstances of the case the Court is not prepared to draw adverse inferences from this delay (see, for comparison, *Shanin v. Russia*, no. 24460/04, §§ 64-68, 27 January 2011, and *Andreyevskiy v. Russia*, no. 1750/03, § 55, 29 January 2009). The Court notes with concern that on 11 May 2006, having recorded certain injuries on the applicant's body, the staff of the remand centre omitted to initiate, without delay, a proper medical examination of the applicant (see paragraph 17 above) or an inquiry, as required by national law (see paragraph 63 above).

89. Moreover, despite an unequivocal and detailed allegation of ill-treatment made by the applicant during an interview on 19 May 2006, no formal inquiry was opened. Instead, after being interviewed as a witness in relation to his co-accused's allegations of torture, the applicant was not given a different procedural status which could have enabled him to participate effectively in an inquiry (see paragraph 20 above). The Court considers that the applicant's right to participate effectively in the investigation was not secured.

90. In fact, it transpires from the available material that the majority of the measures taken at the domestic level did not directly relate to the examination of the applicant's complaint, which was connected to the co-accused's complaint but distinct from it in various respects. In this context, the Court does not attach any particular weight to the expert report dated 30 May 2006 (see paragraph 24 above). Even assuming that the applicant had been taken for examination to an expert institution on 22 May 2006, the findings concerning the presence of two bruises on the applicant's body were not assessed by the domestic authorities. Nor was the expert interviewed at any stage of the proceedings to dispel any doubts about the examination procedure.

91. The Court reiterates in this connection that proper medical examinations are an essential safeguard against ill-treatment (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000-X). When a medical doctor writes a report after examining a person who has alleged ill-treatment, it is important that the doctor states the degree of consistency with the story of ill-treatment. A conclusion indicating the degree of support for the alleged description of ill-treatment should be based on a discussion of different possible diagnoses (injuries not relating to ill-

treatment, including self-inflicted injuries and diseases) (see *Barabanshchikov v. Russia*, no. 36220/02, § 59, 8 January 2009).

92. In any event, bearing in mind the medical record of 11 May 2006 and the report of 30 May 2006, it was incumbent on the national authorities to respond to the applicant's claim, which was clearly credible, without undue delay and to provide a plausible explanation for the applicant's injuries. In that context, the Government's argument before this Court concerning the destruction of logbooks in 2009 is not convincing.

93. The Court also observes that no attempts to interview officers Z. and D. were made after the authorities became aware of the alleged ill-treatment. Nor were any OCU officers, police officers or staff of the temporary detention centre or remand centre, or medical personnel including emergency paramedics interviewed in connection with the applicant's allegations. No adequate assessment was made in relation to his allegations of sexual assault. No clear attempt was made to identify whether the applicant appeared in any of the photographs at all.

94. Furthermore, the Court reiterates its finding made on a number of occasions that the "investigation" in terms of Article 2 or 3 of the Convention should be carried out by competent, qualified and impartial experts who are independent of the suspected perpetrators and the agency they serve (see *Oğur v. Turkey* [GC], no. 21594/93, §§ 91 and 92, ECHR 1999-III, and *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II). In the Court's view, it is highly questionable whether any investigation by the Khasavyurt prosecutor's office could be independent and impartial. In fact, the respondent Government did not deny the hierarchical, institutional or organisational interdependence between officials allegedly implicated in the ill-treatment (in particular, OCU officers and investigator A.) and the authorities who had the task of dealing with the applicant's complaints, in particular the Khasavyurt prosecutor's office (see paragraph 37 above).

95. Lastly, even accepting that the domestic proceedings concerning the allegation of torture raised by the applicant's co-accused Mr I. could be taken into consideration as regards the Government's argument concerning exhaustion of domestic remedies, the Court cannot but observe that these proceedings were closed and reopened several times between 2006 and 2010. These proceedings are still pending at the stage of a preliminary investigation. In the absence of any indication to the contrary and taking into account the findings made in the preceding paragraphs, the Court finds that the Government had sufficient time at their disposal to address the applicant's own grievances by means of the domestic investigation (see *Maslova and Nalbandov v. Russia*, no. 839/02, § 83, 24 January 2008). In view of the above, the Court finds that the applicant has complied with the requirement to exhaust domestic remedies, and rejects the Government's objection.

96. In view of the foregoing, the Court concludes that there was no effective investigation into the applicant's allegation of ill-treatment, in breach of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

97. The applicant complained of a violation of the presumption of innocence due to adverse statements allegedly made by a public official in local newspapers. Article 6 § 2 of the Convention reads as follows:

“2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

98. The Government submitted that the impugned statements had been made in 2006. The applicant had been convicted in July 2007, whereas the present complaint had been lodged in September 2008. The Government concluded that the applicant had not complied with the six-month time-limit under Article 35 § 1 of the Convention. In any event, he had not raised the matter in any separate proceedings. As to the substance of the complaint, the Government argued that the articles did not contain any verifiable information concerning the official source of affirmations contained therein. In any event, the applicant had not made any allegations to the effect that the publications in question had affected the trial court in his criminal case.

99. The applicant submitted that he had first learnt about the publications in the newspapers only after the formation of the jury for his trial. As soon as he had become aware of them, he complained to the trial judge, but received no reply; his request for the withdrawal of the trial judge had also been dismissed. He argued that his related complaints in the course of the trial and on appeal against conviction, as well as on supervisory review and on his separate complaints before various authorities, had been dismissed with reference to the absence of evidence that the jurors had effectively read the publications. In the applicant's view it was incumbent on the authorities, including the trial judge or the public prosecutor, to dispel doubts as to whether the jurors had become aware of the statements made by a public official in those publications and with extensive coverage on television, which had both offended the presumption of innocence and his honour and dignity. The applicant referred in that connection to the part of the publications treating him as a “bandit”, a “recidivist” convicted of murders and kidnapping.

100. The Court has first to determine whether applicant has complied with the admissibility criteria. The Court observes at the outset that the applicant first wrote to the Court on 10 September 2008, raising complaints of torture, lack of an investigation and effective remedies at the domestic level. He also referred in general terms to the criminal proceedings against him and Article 6 of the Convention. In his application form of

10 March 2009 he raised specific grievances concerning the fairness of these proceedings, as well as a complaint about a breach of the presumption of innocence on account of public statements made by a public official after the applicant's arrest. A general reference to the trial and Article 6 of the Convention in the first letter does not suffice in the circumstances of the case for taking 10 September 2008 as the introduction date (see, in a similar context, *Pavlenko v. Russia*, no. 42371/02, § 94, 1 April 2010, and *Allan v. the United Kingdom* (dec.), no. 48539/99, 28 August 2001). In view of the above, the Court considers that the complaint concerning the presumption of innocence was first raised in substance before it on 10 March 2009.

101. Even assuming, in the applicant's favour, that the appeal judgment of 15 May 2008 in the applicant's criminal case could have been taken as the relevant final domestic decision in the chain of domestic remedies to be exhausted before lodging an application before this Court, the Court cannot but note that the matter was raised before it nearly ten months after this court decision, that is still outside the six-month time-limit in breach of Article 35 § 1 of the Convention. It has not been argued, and the Court does not consider, that the applicant was not immediately aware of the contents of the appeal judgment or could not obtain a copy in due time before bringing a complaint before this Court.

102. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

103. The applicant also complained about the arrest and ill-treatment of his next of kin; conditions of detention; various detention proceedings and raised a number of complaint in relation to the trial. Furthermore, he alleged that letters from the Court had been opened and that the detention facility authorities had delayed the dispatch of his application form. Lastly, the applicant complained that law-enforcement officers had misappropriated a sum of money and that his next of kin had had to pay a sum equal to the value of the car seized by the authorities. The applicant referred to Articles 3, 5, 6 and 34 of the Convention, as well as Article 1 of Protocol No. 1.

104. The Court has examined these complaints as submitted by the applicant. However, having regard to all the material in its possession, and in so far as the matters complained of are within its competence, it finds that these complaints 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 manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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

106. The applicant claimed 18,000 euros (EUR) in respect of pecuniary damage and EUR 10,000,000 in respect of non-pecuniary damage.

107. The Government contested these claims.

108. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, the Court notes that it has found a violation under the substantive and the procedural heads of Article 3 of the Convention on account of the applicant’s ill-treatment and the authorities’ failure to carry out an effective investigation into the matter. In these circumstances, the Court considers that the pain, humiliation and frustration caused to the applicant cannot be compensated for by the mere finding of a violation. Having regard to the nature of the violation and making its assessment on an equitable basis, the Court awards the applicant EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

109. The applicant also claimed EUR 5,000 for the costs and expenses incurred before the domestic courts.

110. The Government contested this claim.

111. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings.

C. Default interest

112. 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. *Decides* to join to the merits the Government's argument concerning exhaustion of domestic remedies in relation to the alleged ill-treatment from 23 April to 9 May 2006 and *rejects it*;
2. *Declares* the complaint concerning the alleged ill-treatment from 23 April to 9 May 2006 and the alleged lack of an effective investigation into it admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive aspect;
4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural aspect;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into 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 at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President