



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

FIRST SECTION

CASE OF ALCHAGIN v. RUSSIA

(Application no. 20212/05)

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 Alchagin v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
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. 20212/05) 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 Nikolayevich Alchagin (“the applicant”), on 12 May 2005.

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

3. The applicant alleged that he had been ill-treated while in State custody and that the domestic authorities had failed to investigate the matter. He further alleged that his conviction had been based on a self-incriminating statement he made under duress.

4. On 8 April 2009 the President of the First Section decided to give notice of the above application to the Government. It was also decided (pursuant to former Article 29 § 3 of the Convention) to rule on the admissibility and merits of the application at the same time.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1973 and lives in Biysk, the Altay Region.

A. Applicant's arrest and alleged ill-treatment at the police station

6. On 13 October 2003 the applicant was arrested on suspicion of theft and brought to the Priobskiy police station of the Department of the Interior in Biysk (*Территориальное отделение милиции «Приобский» Управления внутренних дел по г. Бийску*). He was put in the station's temporary detention facility (*ИВС УВД г. Бийска*).

7. On 15 October 2003 at midnight the applicant was examined by a medical auxiliary at the temporary detention facility. No injuries were found on him.

8. On the same day the Priobskiy District Court of Biysk ordered that the applicant be remanded in custody.

9. On 21 October 2003 the applicant was charged with theft, and on 24 October 2003 he was transferred to Biysk remand prison IZ-22/2 (*учреждение ИЗ-22/2 г. Бийска УФСИН России по Алтайскому краю*). It appears that no injuries were found on the applicant on his admission to the remand prison.

10. According to the applicant, from 13 October to 24 October 2003 the policemen of the Priobskiy police station interrogated him about his suspected involvement in an organised criminal group. The applicant alleged to have been ill-treated by the policemen during the interrogations. He contended that the policemen kicked him, used a gas mask to restrict his air supply, and gave him electric shocks.

11. As a result of the alleged intimidation the applicant made a confession statement. The exact contents of the statement were not made available to the Court. According to the Government the applicant's defence counsel was present when the applicant made his confession statement. The applicant did not claim otherwise.

B. Investigation of the alleged ill-treatment

12. On 22 October 2003 the applicant filed a complaint about ill-treatment to the Biysk City Prosecutor's Office.

13. Shortly afterwards the assistant of the Biysk City Prosecutor ordered the applicant's forensic medical examination.

14. On 5 November 2003 the applicant was examined by a forensic medical expert (report no. 4918). The following injuries were discovered on him: an abrasion in the left lumbar region (measurements illegible on the copy of the report), a deep abrasion on the right shin measuring 7 x 0.3 cm, a bruise on the internal surface of the right knee joint measuring 3 x 4 cm, and a scar on the upper lip mucous membrane measuring 2 cm. The expert concluded that the injuries could have been caused by a blunt, hard object in the period of time between 13 October and 16 October 2003, on account of the nature of the abrasions and scars and the colour of the bruise. The expert

further indicated that the above injuries did not cause harm to the applicant's health.

15. On 13 November 2003 investigator M. of the Biysk City Prosecutor's Office refused to institute criminal proceedings against the policemen because there was no indication of a criminal offence. The investigator's decision was based on statements by policemen Kh., Yar. and K., who submitted that the applicant had agreed to go to the police station to be questioned on suspicion of theft and that no force or intimidation had been used on him during the interview, and statements by the investigator dealing with the criminal case against the applicant who submitted that he had questioned the applicant as a suspect in the presence of the applicant's defence counsel, that the applicant had been subsequently released, that he had had no visible injuries on his body and had not complained about any intimidation by policemen.

16. On 11 May 2004 the Deputy Prosecutor of Biysk annulled the above decision and ordered an additional inquiry into the applicant's complaints of ill-treatment. A copy of the above decision was not made available to the Court.

17. On 28 November 2004, following an additional inquiry into the applicant's allegations of ill-treatment, chief investigator B. of the Biysk City Prosecutor's Office refused to institute criminal proceedings against the alleged perpetrators. The decision was based on statements by investigators Kolp. and Gar., statements by police officers Sel., Yud., Petr., Prokh., Ser., Kh., Yar. and K., and a certificate attesting to the fact that from 15 October to 24 October 2003 the applicant was held in the temporary detention facility, that he had had no injuries upon his admission to the temporary detention facility on 15 October 2003 or later upon his admission to the remand prison on 24 October 2003.

18. On 21 March 2005 the Deputy Prosecutor of the Altay Region upheld the above-mentioned decision.

19. The applicant appealed against the decision of 28 November 2004 to the court.

20. On 30 November 2005 the Vostochniy District Court of Biysk held that the decision of 28 November 2004 had been lawful and substantiated. The court noted the following:

- Policemen Sel., Yud., Petr., Prokh., Ser., Kh., Yar., K. and G. denied having used physical force or intimidation against the applicant;

- Investigators Kolp. and Gar. stated that no physical force had been applied to the applicant during the investigation of the criminal case against him and that no complaints in this respect had been made by the applicant;

- According to the certificate issued by the temporary detention facility the applicant had been held at the police station from 15 October to 24 October 2003. He had no injuries on his body when he had arrived at the police station.

- According to the certificate issued by Biysk remand prison IZ-22/2 the applicant had had no injuries when he arrived on 24 October 2003.

- According to the finding of forensic medical examination no. 4918 of 5 November 2003 the applicant had had an abrasion in the left lumbar region, a deep abrasion on the right shin, a bruise on the right knee joint and a scar on the upper lip mucous membrane. The report noted that the injuries could have been caused by a blunt, hard object in the period of time between 13 October and 16 October 2003, on account of the nature of the abrasions and scars and the colour of the bruise. The injuries were not deemed harmful to the applicant's health.

The court held that the fact that the applicant's injuries had been confirmed by a forensic medical examination could not serve as a sufficient ground for instituting criminal proceedings against the police officers, since "the expert examination only certified the presence of bodily injuries and did not answer the question as to who had caused those injuries to the applicant and under what circumstances".

21. The applicant appealed to the Altay Regional Court. He claimed that the refusal to open a criminal investigation had been based exclusively on the statements by the police officers concerned whereas no evidence had been taken from those who had been detained with him and who could have confirmed his account of events. He further insisted that his injuries were confirmed by the forensic medical examination and two videotapes recorded by the police officers in the course of gathering the evidence against him.

22. On 19 January 2006 the Altay Regional Court upheld the decision of 30 November 2005 on appeal. The court noted that the decision of 30 November 2005 had been taken after careful examination and assessment of statements by the individuals who were in a place to know about the circumstances of the alleged beatings, the results of a forensic medical examination, and relevant documents from the temporary detention ward and the remand prison where the applicant had been detained. The court further found that the failure to question the applicant's cellmates did not mean that the decision of the investigator had been unlawful and unjustified, since the above individuals had not witnessed the alleged beatings and could not therefore have furnished any information about the circumstances of the alleged events. The court went on to say that the fact that the applicant's injuries were confirmed by the expert did not necessarily imply that the injuries had been caused as a result of resort to physical violence by the police officers. No alternative version, however, was put forward to explain the origin of the applicant's injuries.

C. Applicant's trial

23. On 11 November 2004 the Altay Regional Court, in a jury trial, convicted the applicant of robbery and five counts of theft, and sentenced

him to thirteen years' imprisonment. The following evidence was examined by the jury: the statements by the victims and the witnesses, the applicant's confession statement made at the pre-trial stage and his further confession statements made at the trial, a statement by one of the applicant's co-defendants, reports of various examinations (forensic medical examination, crime scene examination, trace examination), and records of the seizure of the victims' belongings.

24. While examining the issue of the admissibility of the applicant's confession statement made at the pre-trial stage, the trial court questioned police officers Ser., Sel., Petr., Prokh. and Yud., who denied having used any unlawful methods of investigation on the applicant. It viewed the videotape of a conversation between the applicant and a police officer (date unspecified) and pictures (*фотоаблица*) taken on 21 October 2003 in the course of an investigative procedure, in which no signs of visible injuries could be seen on the applicant. The court further questioned the attesting witnesses who had participated in various investigative procedures with the applicant between 15 October and 13 November 2003 and had not seen any visible injuries on him either. Finally, the court refused the applicant's request to obtain attendance and question those who had been detained together with him at the temporary detention facility.

25. The applicant appealed, claiming, *inter alia*, that the jury had found him guilty on the basis of his confession statement, which had been obtained under duress.

26. On 10 February 2005 the Supreme Court of Russia upheld the conviction on appeal.

27. On 3 August 2005 the Presidium of the Supreme Court of Russia, by way of supervisory review, modified the qualification of the crimes committed by the applicant and reduced the sentence to twelve years' imprisonment.

D. Inquiry into the applicant's complaints of ill-treatment following the communication of the application to the Government

28. After the application was communicated to the Russian Government, in June 2009 the internal security department of the Ministry of the Interior of the Altay Region (*Управление собственной безопасности ГУВД по Алтайскому краю*) was charged with a further inquiry into the applicant's allegations of ill-treatment.

29. In the course of the inquiry information was received about the possible infliction of the injuries in question prior to the applicant's arrest. Namely, on 28 September 2003 the Priobskiy police station registered a complaint to the effect that on that date at about 2 a.m. on Martjyanova Street in Biysk unidentified persons caused injuries to Alchagin V. During the inquiry Alchagin V. explained that on 28 September 2003, in a state of

inebriation, he had fallen over several times on his way home, thereby sustaining bodily injuries. According to forensic medical examination report no. 4227 the injuries (multiple bruises to the face, head and body) were possibly sustained on 28 September 2003 as a result of a fall from his own height and did not cause harm to his health. Subsequently, Alchagin V. asked for the inquiry to be discontinued. For that reason, on 3 October 2003 a decision not to open a criminal investigation into the matter was issued.

II. RELEVANT DOMESTIC LAW

A. Criminal Code

30. Abuse of position associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment (Article 286 § 3 of the Criminal Code).

B. Code of Criminal Procedure

31. The Russian Code of Criminal Procedure (Law no. 174-FZ of 18 December 2001, in force from 1 July 2002, the "CCrP") states that a criminal investigation may be initiated by an investigator or prosecutor on a complaint by an individual (Articles 140 and 146). Within three days of receipt of such a complaint the investigator or prosecutor must carry out a preliminary inquiry and make one of the following decisions: (1) to open criminal proceedings if there are reasons to believe that a crime has been committed; (2) to decline to open criminal proceedings if the inquiry reveals that there are no grounds to initiate a criminal investigation; or (3) to refer the complaint to the appropriate investigating authority. The complainant must be notified of any decision taken. The decision not to open criminal proceedings is amenable to appeal to a higher prosecutor or a court of general jurisdiction (Articles 144, 145 and 148).

32. 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: (1) to declare the impugned decision/(in)action unlawful or unreasonable and to order the respective authority to remedy the violation; or (2) to reject the complaint (Article 125).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained that he had been ill-treated in police custody following his arrest and that his complaints about ill-treatment were futile. The Court will examine this complaint from the standpoint of the State's negative and positive obligations flowing from Article 3, which reads as follows:

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

A. Admissibility

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

B. Merits

1. Submissions by the parties

35. The Government submitted that the applicant's allegations of ill-treatment had been carefully checked by the domestic authorities and had been reasonably found unsubstantiated. The conclusions reached by the domestic authorities were confirmed by relevant evidence which the applicant failed to refute. Referring to the inquiry set up by the domestic authorities after the communication of this complaint in 2009 (see paragraphs 28-29 above), the Government put forward a version of the facts in which the applicant sustained the injuries prior to his arrest as a result of several falls from his own height. The Government summed up that there had therefore been no violation of either the substantive or the procedural aspect of Article 3 of the Convention.

36. The applicant submitted that, as it follows from the results of his forensic medical examination of 5 November 2003 (report no. 4918), the injuries discovered on him were caused by a blunt, hard object in the period of time between 13 October and 16 October 2003, and not earlier as supposed by the Government. He further noted that the documents relied on by the Government in support of the argument that the injuries had been caused to him prior to his arrest did not in fact concern him, but his brother, Vyacheslav Alchagin.

2. *The Court's assessment*

(a) **Alleged inadequacy of the investigation**

(i) *General principles*

37. The Court reiterates 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 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

38. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II; *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III; and *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006).

39. 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, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates capable of providing 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 injuries or the identity of the persons responsible will risk falling foul of this standard (see *Mikheyev*, cited above, § 108, and *Nadrosov v. Russia*, no. 9297/02, § 38, 31 July 2008).

40. The investigation into the alleged ill-treatment must be prompt. 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 *Mikheyev*, cited above, § 109; *Maksimov v. Russia*, no. 43233/02, § 83, 18 March 2010; and *Lopata v. Russia*, no. 72250/01, § 110, 13 July 2010).

41. Finally, the investigation into alleged ill-treatment by State agents should be independent (see *Öğür v. Turkey*, [GC], no. 21954/93, ECHR 1999-III, §§ 91-92; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004; *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III; and *Oleg Nikitin v. Russia*, no. 36410/02, § 35, 9 October 2008).

(ii) Application of the above principles in the present case

42. Turning to the circumstances of the present case, the Court observes that on 22 October 2003 the applicant submitted to the Biysk City Prosecutor's Office a complaint to the effect that as from his arrest on 13 October 2003 he had been subjected to ill-treatment on several occasions by police officers of the Biysk Priobskiy police station and had sustained bodily injuries (see paragraph 11 above). The existence of the applicant's injuries was confirmed by a forensic medical examination report of 5 November 2003, which established that the injuries in question (two abrasions, a bruise and a scar) could have been sustained between 13 October and 16 October 2003 as a result of the impact of a blunt, hard object (see paragraph 14 above). The applicant's claim, therefore, revealed itself to be "arguable", and the domestic authorities were placed under an obligation to carry out "a thorough and effective investigation capable of leading to the identification and punishment of those responsible".

43. In this connection the Court notes that the prosecution authorities, who were made aware of the applicant's ill-treatment, carried out a preliminary investigation which did not result in criminal prosecution. The applicant's ill-treatment complaints were also the subject of examination by the domestic courts at two levels of jurisdiction. In the Court's opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there was one, but whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was effective. The Court will therefore assess the thoroughness of the investigation.

44. The Court observes that on 13 November 2003 and 28 November 2004 the Prosecutor's Office decided to refuse the criminal investigation into the applicant's allegations. The first decision was based exclusively on statements by police officers and an investigator (see paragraph 15 above). The second decision further relied on a certificate attesting to the fact that the applicant had had no injuries on his admission to the temporary detention facility on 15 October 2003 and subsequently on his admission to the remand prison on 24 October 2003 (see paragraph 17 above). The Court finds it striking that regardless of the availability of the forensic medical report drawn up on 5 November 2003 at the request of the investigating authorities, it was never mentioned in the decisions refusing to open a criminal investigation against the police officers.

45. The Court further observes that it was not until the examination of the applicant's complaint by the district court in November 2005, that is, over two years after the alleged ill-treatment, that the existence of the above-mentioned report – confirming the applicant's injuries and their infliction in the time frame under consideration – was taken into account by the domestic authorities (see paragraph 20 above). Yet even then this evidence was not attributed any weight since "the expert examination only certified the presence of bodily injuries and did not answer the question as to who had caused those injuries to the applicant and under what circumstances". Thus, the Court notes that the domestic court expected the forensic medical examination not only to detect the injuries, define their nature and determine the possible time and mechanism of their infliction, but furthermore to fulfil the task of the investigating authorities and the court itself in providing the answers to the questions as to who had caused the injuries to the applicant and under what circumstances.

46. Besides the disregard of the medical evidence, the Court is concerned at the lack of any effort on behalf of the domestic authorities – either the investigating authorities or the court – to obtain any evidence from any other sources other than the police officers and the investigators. In particular, throughout the proceedings the applicant insisted that the persons who had been detained together with him at the temporary detention facility be questioned as they had seen his state when he had been leaving the cell for interrogations and when he had been taken back (see paragraphs 21 and 23 above). However, the domestic court refused the applicant's requests, citing as a reason the fact that the persons whose attendance the applicant sought to obtain had not witnessed the alleged beatings and, therefore, could provide no information as to the circumstances of the case.

47. Lastly, the Court notes that the domestic authorities took no steps to eliminate the discrepancies in the evidence. In particular, it remained unexplained how the applicant was found to have no injuries at the moment of his admission to the remand prison on 24 October 2003 but was subsequently, on 5 November 2003, observed as having a number of injuries dating between 13 October and 16 October 2003 (see paragraphs 14, 17 and 20 above).

48. 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) Alleged ill-treatment of the applicant

(i) General principles

49. The Court reiterates that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical

well-being (see *Gladyshev v. Russia*, no. 2807/04, § 51, 30 July 2009; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004; and *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006).

50. The Court further reiterates that to fall under Article 3 of the Convention ill-treatment must attain a minimum level of severity. The standard of proof relied upon by the Court is that “beyond reasonable doubt” (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). 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 *Gladyshev*, cited above, § 52; *Oleg Nikitin*, cited above, § 45; and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

51. 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 the 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). The Court must apply a particularly thorough scrutiny where the applicant raises an arguable complaint of ill-treatment (see *Ribitsch*, cited above, § 32, and *Avşar*, cited above, § 283).

(ii) *Application of the above principles in the present case*

52. Turning to the circumstances of the instant case, the Court notes that following his arrest on 13 October 2003 the applicant was detained in the temporary detention facility at the Biysk Priobskiy police station (see paragraph 6 above). He was examined by a medical auxiliary and observed as having no injuries (see 7 above). Shortly after the applicant lodged his complaint of ill-treatment with the Prosecutor’s Office on 22 October 2003 and underwent a forensic medical examination. The report of this examination of 5 November 2003 recorded an abrasion of the applicant’s

left lumbar region, a deep abrasion on the right shin, a bruise on the internal surface of the right knee joint and a scar on the upper lip mucous membrane. The expert concluded that the injuries, which caused no damage to the applicant's health, could have been caused by a blunt, hard object in the period of time between 13 October and 16 October 2003 (see paragraph 14 above). The validity of the above report was not disputed by the parties.

53. The Court considers that the above-mentioned medical evidence, along with the fact that the alleged beatings took place while the applicant was under the authorities' control in custody, created an un rebutted presumption of fact that the applicant was subjected to ill-treatment at the hands of State agents and required the Government to provide a satisfactory and convincing explanation as to how those injuries could have been caused.

54. In this connection the Court notes, first of all, that no effort to provide such an explanation was made by the domestic authorities when the issue of the applicant's alleged ill-treatment was addressed by them between 2003 and 2006.

55. The Court further notes that following the communication of the application to the respondent Government, in June 2009 the domestic authorities launched an additional inquiry, in the course of which they submitted that the applicant's injuries had been inflicted on 28 September 2003, that is, prior to his arrest, as a result of a fall from his own height. They furnished relevant documents which supposedly supported that account (see paragraphs 28 and 29 above). The Court observes, however, that, as quite rightly pointed out by the applicant (see paragraph 36 above), the documents in question do not in fact concern the applicant, Vladimir Alchagin, but his brother, Vyacheslav Alchagin, and are, therefore, irrelevant to the present case.

56. On the basis of all the material placed before it, the Court finds, therefore, that neither the authorities at the domestic level nor the Government in the proceedings before the Strasbourg Court have advanced any convincing explanation as to the origin of the applicant's injuries (see, by contrast, *Klaas*, cited above, §§ 29-31). The Court concludes therefore that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than – entirely, mainly, or partly – by the treatment he underwent while in police custody (see *Ribitsch*, cited above, § 34).

57. Accordingly, having regard to the nature and the extent of the applicant's injuries, the Court concludes that the State is responsible under the substantive limb of Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected between 13 October and 24 October 2003 by police officers of the Biysk Priobskiy police station.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF USE OF EVIDENCE OBTAINED UNDER DURESS

58. The applicant complained that his right to a fair trial had been infringed by the use at his trial of his confession statements obtained under duress. The Court will examine this complaint under Article 6 §§ 1 and 3 (c), which, in so far as relevant, provides:

“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 ...”

A. Admissibility

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

B. Merits

1. Submissions by the parties

60. The Government submitted that the applicant’s confession statement had not been the only evidence against the applicant; his guilt in having committed each criminal offence was corroborated by other items of evidence, among which the applicant’s confession statements made at the trial, statements by victims and witnesses, statements by one of the applicant’s co-defendants, and records of various examinations. The confession statement was made by the applicant in the presence of the defence counsel selected by the applicant himself, which excluded the possibility of any alleged coercion. Being represented by defence counsel throughout the proceedings, the applicant had had ample opportunity to take part in the examination of the evidence, to request the court to declare his confession statement inadmissible as evidence, and to defend his rights in any other lawful way. Furthermore, although he had been informed about

his right not to testify against himself, during the jury trial the applicant had pleaded guilty to the crimes of which he was subsequently convicted. Overall, the trial had been compatible with the fairness requirement of Article 6.

61. The applicant made no submissions regarding this issue.

2. *The Court's assessment*

(i) *General principles*

62. The Court reiterates that its duty under Article 19 of the Convention is to ensure the observance of the engagements undertaken by the Contracting States to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Jalloh v. Germany* [GC], no. 54810/00, § 94, ECHR 2006-IX; *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140; and *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, *Reports* 1998-IV).

63. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair (see *Jalloh*, cited above, § 95; *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V; *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 76, ECHR 2001-IX; and *Allan v. the United Kingdom*, no. 48539/99, § 42, ECHR 2002-IX).

64. In determining whether the proceedings as a whole were fair, regard must be had to whether the rights of the defence have been respected. It must be examined in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubts on its reliability or accuracy. Indeed, where the reliability of evidence is in dispute the existence of fair procedures to examine the admissibility of the evidence takes on an even greater importance (see *Allan*, cited above, §§ 43 and 47).

65. The use of evidence obtained by a measure found to be in breach of Article 3 of the Convention always raises serious issues as to the fairness of the proceedings even if the admission of such evidence was not decisive in securing the conviction (see *İçöz v. Turkey* (dec.), no. 54919/00, 9 January 2003; *Jalloh*, cited above, §§ 99 and 104; *Göçmen v. Turkey*, no. 72000/01,

§ 73, 17 October 2006; and *Harutyunyan v. Armenia*, no. 36549/03, § 63, ECHR 2007-VIII).

66. While having regard to the interests at stake in the context of Article 6, the Court cannot but take note of the fact that Article 3 of the Convention enshrines an absolute right. Being absolute, there can be no weighing of other interests against it, such as the seriousness of the offence under investigation or the public interest in effective criminal prosecution, for to do so would undermine its absolute nature. The securing of a criminal conviction may not be obtained at the cost of compromising the protection of the absolute right not to be subjected to ill-treatment proscribed by Article 3, as this would sacrifice those values and discredit the administration of justice (*Gäfgen v. Germany* [GC], no. 22978/05, § 176, ECHR 2010).

(ii) *Application of the those principles in the present case*

67. The Court will determine whether in the light of the above principles the criminal proceedings against the applicant can be considered fair.

68. The Court notes that it has previously found a violation of Article 6 of the Convention with respect to similar complaints, having taken into consideration the following elements: (a) the proven fact of ill-treatment (intentional or not, acknowledged domestically or found in the proceedings before the Court) resulting in self-incrimination; (b) the deficiency in legal representation at the moment when the applicant made confession statement (absence of counsel, inefficient counsel, waiver of the right to be represented); (c) the use of such confession statement to secure the applicant's conviction (regardless of whether the confession statement was corroborated by other evidence or not and regardless of the impact such statement had on the outcome of the criminal proceedings); (d) the deficiency of safeguards in the procedure for challenging the admissibility and use of confession statement (see, *inter alia*, *Harutyunyan*, cited above, §§ 58-67; *Yaremenko v. Ukraine*, no. 32092/02, §§ 74-81, 12 June 2008; *Pavlenko v. Russia*, no. 42371/02, §§ 97-120, 1 April 2010; *Lopata*, cited above, §§ 130-146; and *Shishkin v. Russia*, no. 18280/04, §§ 148-152, 7 July 2011).

69. In the instant case the Court found it established that between 13 October and 24 October 2003 while in police custody the applicant was subjected to inhuman and degrading treatment contrary to the substantive provisions of Article 3 (see paragraph 57 above). The applicant claimed that as a result of the above treatment he had made a confession statement. The Government did not claim otherwise.

70. The Court notes that, according to the Government, at the moment when the applicant made his confession statement, he enjoyed the benefit of legal advice by defence counsel of his own choice (see paragraphs 11 and 60 above). The applicant did not contest that assertion.

71. The Court further notes that the parties did not dispute that the domestic court used the applicant's confession statement for securing his conviction. The Government claimed, however, that the above statement had been cumulative to other extensive evidence against the applicant, including his own statements made during the jury trial. The applicant did not deny that during the jury trial he had indeed pleaded guilty in having committed the crimes of which he had been subsequently convicted.

72. The Court finally observes that the applicant was duly represented throughout the proceedings and was, therefore, afforded ample opportunity, which he took, to challenge before the domestic court the admissibility and use of the evidence obtained under pressure.

73. Having regard to the foregoing, and, in particular, the applicant's own confession during the trial itself, the Court is unable to conclude, in the circumstances of this particular case, that the use of the applicant's confession statement made at the pre-trial stage rendered the proceedings against him wholly unfair.

74. The Court finds accordingly that there has been no violation of Article 6 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

77. The Government submitted that if the Court were to find a violation, the finding of such a violation would constitute in itself sufficient just satisfaction.

78. The Court notes that it has found a violation under both the substantive and procedural heads of Article 3 of the Convention on account of the applicant's ill-treatment whilst in State custody and the failure to carry out an effective investigation into the matter. In these circumstances, the Court considers that the suffering and frustration caused to the applicant cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 18,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

79. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

80. 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 substantive and procedural limbs on account of the applicant's ill-treatment between 13 October and 24 October 2003;
3. *Holds* that there has been no violation of Article 6 of the Convention on account of use of evidence obtained under duress;
4. *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 18,000 (eighteen 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.
5. *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