



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

THIRD SECTION

CASE OF IDALOV v. RUSSIA (No. 2)

(Application no. 41858/08)

JUDGMENT

STRASBOURG

13 December 2016

FINAL

13/03/2017

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

In the case of Idalov v. Russia (no. 2),

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

Luis López Guerra, *President*,

Helen Keller,

Dmitry Dedov,

Branko Lubarda,

Pere Pastor Vilanova,

Alena Poláčeková,

Georgios A. Serghides, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 22 November 2016,

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

PROCEDURE

1. The case originated in an application (no. 41858/08) 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 Timur Said-Magomedovich Idalov (“the applicant”), on 21 July 2008.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya, Ms K. Moskalenko and Mr I. Zuber, lawyers practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. On 5 November 2013 the complaints concerning ill-treatment in custody, conditions of detention and transport, the lawfulness and length of the applicant’s pre-trial detention, and the applicant’s removal from the courtroom were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1967 and lives in Lakha-Varanda, Chechen Republic.

A. The applicant's arrest and ensuing criminal proceedings

1. The applicant's arrest and pre-trial detention

5. On 11 July 2008 P. caused a traffic accident while driving and damaged the applicant's car. According to P., the applicant threatened him, asking for cash for his car's repair.

6. On 16 July 2008 P. reported the applicant to the regional police department for combatting organised crime. The police decided to run a special operation to arrest the applicant. They gave P. 2,000 United States dollars (USD) and 90,000 Russian roubles (RUB) in marked notes. At around noon several police officers arrived at a car market where P. worked. At about 5 p.m. the applicant entered P.'s office. P. met the applicant and gave him the money he had received from the police. Immediately thereafter, the policemen arrested the applicant. According to the police officers, the applicant resisted the arrest and they had to handcuff him. The applicant was then taken to the regional police department for combatting organised crime. At 5 p.m. the policemen searched the applicant and found heroin on him. Lay witnesses F. and R. were present during the search. The applicant alleged that it was the police officers who had planted the drug on him.

7. At 8 p.m. on 16 July 2008 police captain A. drew up an administrative arrest record, according to which the applicant had "failed to comply with the policemen's legitimate request to present his identification document, resisted them and tried to abscond". No legal assistance was made available to the applicant.

8. On 17 July 2008 at 12.45 p.m. investigator S. from the town police department opened a criminal investigation against the applicant on suspicion of illegal drug possession. At 6.20 p.m. she drew up a criminal arrest record.

9. On 18 July 2008 the Odintsovo Town Court authorised the applicant's pre-trial detention. The court noted as follows:

"As is apparent from the evidential material submitted, [the applicant] is suspected of having committed a serious offence and he has a prior criminal record. If released, he might abscond and interfere with [administration of justice]."

10. The applicant appealed, noting that he had been arrested by the police a day before the record of his arrest was prepared and that the Town Court had failed to take his fact into consideration. He also argued that the Town Court had ignored the fact that he had a permanent place of residence in Moscow, that he had been the sole provider for two minor children and his wife, that he was in the fourth year of study by correspondence at a higher educational establishment and that he had employment. Nor had the prosecutor furnished any evidence disclosing the applicant's intent to

abscond or to interfere with the administration of justice. Lastly, he noted that the arrest order did not indicate a time-limit for his detention.

11. On 5 August 2008 the Moscow Regional Court upheld the arrest order of 18 July 2008 on appeal.

12. On 15 September 2008 the Town Court extended the applicant's detention until 17 November 2008. The court reasoned as follows:

“As is apparent from the evidential material submitted, [the applicant] is charged with a serious offence and has a prior criminal record. Accordingly, if released, he might abscond and interfere with [administration of justice].”

13. On 12 November 2008 the Town Court extended the applicant's detention until 31 December 2008. The court reasoned as follows:

“Taking into account the fact that [the applicant] is charged with a serious offence which he committed whilst on parole, that he has a prior criminal record and that he might abscond, continue his criminal activities, and interfere with the administration of justice, it is necessary that [the applicant] remain in custody.”

2. Trial and further detention

14. On 16 December 2008 the Town Court set the trial-date for 23 December 2008. The court also ordered that the applicant remain in custody pending examination of the case and noted as follows:

“... According to the material submitted by the prosecutor, [the applicant] had been previously convicted. He is charged with a[n] ... offence classified as particularly serious The court considers that, if released, [the applicant] might abscond. Furthermore, [the applicant's] release might interfere with the comprehensive and objective examination of the evidence. Accordingly, the measure of restraint previously imposed on [the applicant] cannot be lifted.”

15. On 18 December 2008 the Town Court opened the trial.

16. On 22 May 2009 the Town Court extended the applicant's detention until 8 September 2009 noting as follows:

“Having heard the parties' arguments, the court concludes that, in view of the fact that [the applicant] is charged with a ... grievous offence ... which he committed whilst on parole, the court considers that, if released, he might abscond or continue criminal activities. Furthermore, the [applicant's] release might interfere with the comprehensive and objective examination of the case. Accordingly, ... the detention imposed on [the applicant] cannot be lifted.”

17. On 25 June 2009 the Town Court returned the case file to the prosecutor's office for rectification of certain omissions and extended the applicant's detention until 8 September 2009. The court referred to the gravity of the charges against the applicant and noted that the latter was charged with having committed a serious offence whilst released on parole.

18. On 16 July 2009 the Regional Court upheld the decision of 22 May 2009 on appeal.

19. On 23 July 2009 the Regional Court upheld the decision of 25 June 2009 on appeal.

20. On an unspecified date the prosecutor's office returned the case file to the Town Court.

21. On 2 November 2009 the Town Court opened the trial. On the same date the applicant studied the material in the case file at the court-house. He tore several pages out of the case file and burnt them.

22. During the subsequent hearings the court heard evidence from a certain P., police officers And., Rom., Ak., Z., Shch., and T. – who had taken part in the applicant's arrest – the head of the police unit Pl., lay witness R. – who had been present when the applicant was searched on 16 July 2008 – and forensic expert P., who had run a laboratory test on the heroin found on the applicant.

23. On 11 and 12 November and 2, 3, 4 and 8 December 2009 the applicant received repeated reprimands from the presiding judge for making threats and insulting persons present in the courtroom. The judge warned the applicant that he might be removed from the courtroom for continuing with such disruptive behaviour.

24. On 9 December 2009 the director of the company that provided the interpreters for the trial complained to the court that the applicant had threatened the interpreters who had earlier taken part in the proceedings.

25. On 16 December 2009 the applicant refused to leave the remand prison to attend a trial hearing. The hearing was adjourned.

26. On 17 December 2009 the court held the last trial hearing. The presiding judge confirmed the presence of the parties and witnesses. L., a police officer who had been in charge of the operation leading to the applicant's arrest on 16 July 2008, appeared for questioning. The applicant insulted the witness. The presiding judge reprimanded the applicant and warned him that he would be removed from the courtroom if he persisted with his disruptive behaviour. The applicant started talking in Chechen. The interpreter refused to interpret and asked the court to relieve him of his duties. The presiding judge informed the parties that the interpreters who had earlier taken part in the proceedings had decided to refuse further engagement in view of the insults and threats made by the applicant. The applicant talked back to the judge in Chechen. The interpreter refused to interpret into Russian. The presiding judge again reprimanded the applicant and warned him about his possible removal from the courtroom. The presiding judge presented the report from the remand prison management stating that on 16 December 2009 the applicant had refused to be transported from the remand prison to the court-house for the hearing. The presiding judge asked the prosecution and defence whether it was possible, in the circumstances, to remove the applicant from the courtroom. The prosecutor did not object. The applicant stated that the presiding judge's conduct clearly demonstrated that he was being pressurised by high-ranking law-enforcement officials to deliver an unlawful judgment in the applicant's case and that his decision to remove the applicant from the courtroom would

be unlawful and in contravention of the Convention. The court ruled as follows:

“... the court decides to remove [the applicant] from the courtroom ... for the following reasons. [The applicant] has repeatedly been disruptive in the courtroom in the course of the trial, including the current hearing. In particular, ... while studying the material in the case file, [the applicant] destroyed five pages thereof. He repeatedly refused to appear in the courtroom referring to his needs to pray, eat, wash and go to the bathroom. On several occasions he refused to appear before the court alleging that he was ill. However, the emergency response doctors summoned did not confirm his allegation. He has insulted witnesses and other participants in the proceedings and shown disrespect for the judges participating in the trial by making negative comments about the judicial system in Russia. He claimed to know the home address of [a witness] and one of the judges. He has made statements and comments unrelated to the trial. During this hearing, [the applicant] insulted a witness After [the applicant] said something in the Chechen language, the interpreter asked the court to [relieve him of his duties] The head of the interpreters’ agency reported that [the applicant] spoke Chechen [in the courtroom] with the sole intention of insulting and threatening the interpreters.”

27. The trial continued in the applicant’s absence. The court questioned L., who, at the time, had been in charge of the special operation conducted in response to P.’s complaint about the applicant extorting money from him. The applicant’s lawyer was present and put questions to the witness. The court also established that witness F. had failed to appear and decided that the statement he had made earlier to the investigator should be read out. The court also read out statements made by witnesses Shch. and T. earlier during the trial as those witnesses had also failed to appear. Lastly, the court granted a request from the applicant’s lawyer and read out several earlier statements made by the applicant and several witnesses for the defence who had failed to appear. According to the record of the court hearing, the applicant refused to return to the courtroom to participate in the closing arguments. The judgment was read out in the applicant’s absence.

28. The Town Court found the applicant guilty as charged and sentenced him to four years’ imprisonment. The court based its findings on statements made by witnesses questioned by the investigator and the court, police reports and other material in the case file, and forensic evidence. The court accepted the prosecution’s version of events, namely that the applicant had been arrested by special police forces in the course of an operation targeting him as a racketeer as alleged by P. and that heroin had been found on him during the search conducted immediately after his arrest.

29. On 13 April 2010 the Moscow Regional Court upheld the applicant’s conviction on appeal.

30. On 11 December 2013 the Presidium of the Moscow Regional Court reviewed the applicant’s conviction and reduced the applicant’s sentence to three years and two months’ imprisonment.

B. Alleged ill-treatment

1. Incident of 21 May 2009

31. On 21 May 2009 the applicant was taken to the Odintsovo police station. According to applicant, at the station he was assaulted by three police officers. They throttled him and pulled his arms behind his back causing him enormous pain.

32. On 21 and 22 May 2009 the applicant was examined by a paramedic. According to the official report, the applicant complained about chronic stomach pain.

33. On 22 May 2009 the applicant's lawyer complained to the police and the prosecutor's office about the incident of 21 May 2009.

34. On 25 May 2009 the police completed an internal inquiry into the applicant's allegations of ill-treatment. It was established that five police officers had had to subdue the applicant during a body search. They had pinned him to the ground and handcuffed him.

35. On 10 July 2009 investigator B. refused to institute criminal proceedings against the alleged perpetrators. On 31 August 2009 his superior quashed the said decision and remitted the matter for further inquiry.

36. On 9 September 2009 investigator D. dismissed the applicant's complaint as unsubstantiated and refused to institute criminal proceedings against the police officers. Relying on the evidential material obtained in the course of the inquiry, he concluded that the police officers had acted in accordance with the law. It appears that the applicant did not appeal against the decision of 9 September 2009.

37. Following communication of the application to the Government, on 4 February 2014 the Acting Head of the Investigative Committee of Odintsovo Town quashed the decision of 9 September 2009 and remitted the matter for further inquiry. The parties did not disclose the outcome of the proceedings.

2. Incident of 25 September 2009

38. On 25 September 2009, remand prison director M. ordered the applicant's placement in a disciplinary cell.

39. According to the applicant, on their way to the disciplinary cell M. repeatedly hit the applicant against the wall, administering blows to his head and body. The applicant's nose and lips began to bleed. Then the guards handcuffed the applicant and continued beating him.

40. According to the Government, the applicant refused to enter the disciplinary cell. Instead, he threw a punch at M.'s face and M. hit his head against the wall. M. tried to subdue the applicant by pulling his right arm behind his back. The applicant resisted and kicked M. Guard N. came to

M.'s rescue and pulled the applicant's arm behind his back. The applicant fell to the floor and his nose bled. The guards handcuffed the applicant and took him to a cell where he calmed down. The guards called an ambulance.

41. On the same date the prison director and the guards reported the use of force against the applicant. According to the reports, M. pulled the applicant's right arm behind his back using a combat technique and guard K. handcuffed the applicant to put an end to his resistance.

42. On an unspecified date the applicant underwent a medical examination. According to the medical report the applicant had sustained the following injuries: bruises on the right forearm and shoulder, left shoulder, left armpit and left calf; a bruised wound on the lower lip.

43. On 6 October 2009 the applicant complained that he had been beaten up by M. On 15 October 2009 investigator Mar. dismissed the applicant's allegations as unsubstantiated and refused to institute criminal proceedings against M.

44. On 12 October 2009 a medical forensic expert examined the applicant and his medical case history. The expert concluded that the applicant's injuries could have resulted from impact by blunt and solid objects and that the applicant might have sustained the injuries on 25 September 2009 as a result of blows or a fall. The expert concluded that the injuries were not serious and had not caused any harm to the applicant's health.

45. On 22 October 2009 the expert issued an additional forensic report, noting that it was impossible to determine the exact date on which the applicant had sustained the injuries. It could have been on 25 September 2009 or some time before or after that date.

46. On 7 October 2009 the prosecutor's office opened a criminal investigation into the incident of 25 September 2009. The applicant was charged with the use of force against a State agent.

47. On an unspecified date the Town Court received the file and opened the trial. During the trial, the applicant maintained his innocence. He claimed that the remand prison director and the guards had beaten him up on 25 September 2009 and he had then been prosecuted on trumped-up charges to cover up for the beatings.

48. On 16 December 2010 the Town Court found the applicant guilty as charged and sentenced him to six years' imprisonment. The court dismissed the applicant's version of events as unsubstantiated, relying on the prosecution and defence witnesses' statements and forensic evidence. On 17 March 2011 the Regional Court upheld the applicant's conviction on appeal. The court also re-calculated the applicant's sentence. It took into account that the applicant had two previous convictions and sentenced him cumulatively to seven years' imprisonment.

49. On 11 December 2013 the Presidium of the Regional Court reclassified the charges against the applicant by way of supervisory review,

reduced his sentence to five years' imprisonment and sentenced him cumulatively to five and a half years' imprisonment.

3. Incident of 29 October 2010

50. On 29 October 2010 the applicant was detained in remand prison no. IZ-77/4 in Moscow. According to the applicant, the prison guards beat him and nine other inmates. According to the Government, the applicant was inciting other inmates to disobey the guards. He also threatened the guards and insulted them. The guards used rubber truncheons and handcuffs to subdue the applicant.

51. On 3 November 2010 the applicant took part in a hearing at the Supreme Court of the Russian Federation by means of video link. The applicant demonstrated to the judges extensive bruising on his stomach, chest and lower back and claimed that he had been beaten up by guards of the remand prison.

52. On 9 November 2010 the Supreme Court informed the Moscow City Prosecutor of the applicant's injuries and forwarded the applicant's complaint about the beatings in the remand prison.

53. According to the Government, on 12 January 2014 an investigator completed the inquiry into the incident of 29 October 2010 and refused to institute criminal proceedings against the prison guards. On 27 January 2014 the district prosecutor quashed the decision of 12 January 2014 and remitted the matter for further inquiry. The Government did not disclose the outcome.

4. Alleged ill-treatment in correctional colonies

(a) Correctional colony no. IK-19

54. According to the applicant, on 24 June 2012 he was beaten up whilst in detention in correctional colony no. IK-19 in the Sverdlovsk Region. According to the Government, the applicant had an altercation with inmate Ur. As a result, the applicant sustained bruises and a bone fracture on the right side of the face and concussion. On an unspecified date the authorities instituted criminal proceedings against Ur. The parties did not disclose their outcome.

(b) Correctional colony no. IK-2

55. On an unspecified date the applicant was transferred to correctional colony no. IK-2 in Yekaterinburg.

56. According to the applicant, on 29 September 2012 some time after 10 p.m. a group of young and strongly-built men entered his cell and beat him up. They were led by inmate O.

57. According to the applicant, on 1 October 2012 a man wearing the uniform of a major and accompanied by several medical orderlies entered

the applicant's cell. The major started beating the applicant, who was lying on the bed. The major then told the orderlies to pull the applicant off the bed and continued the beatings, administering multiple blows to the applicant's head and other parts of the body.

58. On 7 October 2012 the applicant was transferred to correctional colony no. IK-19 in the Sverdlovsk Region. Upon arrival, he underwent a medical examination. The medical practitioners recorded a wound on the applicant's head and a bruise near the hip bone. The applicant explained that he had sustained the injuries as a result of the beatings to which he had been subjected in correctional colony no. IK-2. The management of correctional colony no. IK-19 forwarded the relevant report to the regional investigation committee but it was never received by them. According to the Government, the authorities' inquiry into the loss of the report is still pending.

59. According to the Government, the inquiries into the incidents of 29 September and 1 October 2012 are still pending.

C. Conditions of detention and transport

1. Conditions of detention at the temporary detention centre and remand prisons

60. Between 17 July 2009 and 13 April 2011 the applicant was detained in identical conditions in the temporary detention centre in Odintsovo, in remand prison no. IZ-50/1 in Mozhaysk and in remand prison no. IZ-77/4 in Moscow. The cells were overcrowded, dirty, poorly ventilated and insufficiently lit. The toilet offered no privacy. The use of a shower was limited.

61. From 22 November 2012 to 11 January 2013 the applicant was held in remand prison no. IZ-66/1 in Yekaterinburg.

(a) Temporary detention centre in Odintsovo

62. On numerous occasions between 10 November 2008 and 17 December 2009 the applicant was held in the temporary detention centre in Odintsovo. According to the Government, the centre comprised fifteen cells measuring 184 sq. m in total. The centre had an outdoor area where the inmates were able to exercise. The inmates were able to take a shower at least once a week. They were provided with three meals per day and an individual sleeping place, bed linen, toiletries, a bowl, a mug and a spoon.

63. According to the applicant, at all times the cells in the temporary detention centre were overcrowded and the personal space available to the inmates fell short of the statutory minimum standard of 4 sq. m. The cells were dirty and there was no ventilation. The lighting was poor and insufficient for reading. The access to shower facilities was limited. The

applicant received one meal a day. On the days of the court hearings, the applicant did not have any meals at all.

(b) Remand prisons nos. IZ-50/1 in Mozhaysk and IZ-77/4 in Moscow

64. The applicant did not provide a description of the conditions in which he was detained in remand prisons nos. IZ-50/1 in Mozhaysk and IZ-77/4 in Moscow, beyond alleging that they were identical to the conditions of his detention in the temporary detention centre in Odintsovo.

(c) Remand prison no. IZ-66/1 in Yekaterinburg

65. On 22 November 2012 the applicant was placed in cell no. 423 in remand prison no. IZ-66/1 in Yekaterinburg. The cell measured no more than 15 sq. m and was equipped with four beds. Between seven and nine inmates were held in the cell, together with the applicant.

66. From 29 November to 28 December 2012 the applicant was held in cell no. 240. The cell was constantly overcrowded and housed between eighteen and thirty inmates.

67. From 29 December 2012 to 11 January 2013 the applicant was held in cell no. 2. It measured 6.23 sq. m and housed two inmates.

2. Conditions of transport

(a) Description provided by the applicant

68. According to the applicant, on the days of the court hearings and on the days when there was a change of the applicant's place of detention, he was woken up early and placed in an overcrowded holding cell. He was then taken to the place of his destination (a court-house or a detention facility) in a prison van. On each occasion the number of the persons transported with the applicant exceeded the van's capacity of 24 persons. The vans were dirty and unventilated and had no heating. The trip lasted several hours. The van compartments were stiflingly hot in the summer and very cold in the winter.

(b) Description provided by the Government

69. According to the Government, the applicant was transported in GAZ vans which comprised two compartments measuring 6.2 sq. m and 1.2 sq. m respectively, in strict compliance with the vans' design capacity. The vans were equipped with ventilation and heating. The trips from the temporary detention centre in Odintsovo to the Odintsovo Town Court lasted no more than 5 to 10 minutes. The trips from the same detention centre to the courts in Moscow lasted no more than three hours.

3. *Conditions of detention at the court-house*

70. According to the applicant, at the court-house he was placed in a holding cell measuring 5 sq. m together with two to four other inmates. He was held in such conditions for several hours awaiting the hearing. He was allowed to use the toilet only once. The cell was not ventilated. All the other detainees smoked and the applicant, a non-smoker, was exposed to the others' tobacco smoke.

4. *Conditions of transport to the correctional colony*

71. On 13 April 2011 the applicant was transported to correctional colony no. IK-19 in the Sverdlovsk Region. The trip lasted from 13 to 27 April 2011.

(a) Description provided by the applicant

72. According to the applicant, he was held with twelve to fourteen other inmates in a train compartment of which the capacity was a maximum of six persons. During the stops, the applicant was housed in remand prisons in Moscow, Chelyabinsk and Yekaterinburg. All the cells there were overcrowded. The applicant was not provided with an individual sleeping place.

(b) Description provided by the Government

73. According to the Government, the applicant was transported in a train compartment measuring 159 x 214 x 287 cm. At no time did the number of inmates transported in one compartment together with the applicant exceed ten persons, the compartment's capacity being twelve persons. It was equipped with eight sitting and four sleeping places. The applicant was provided with dry food rations and drinking water.

II. RELEVANT DOMESTIC LAW AND PRACTICE

74. The relevant domestic law provisions concerning pre-trial detention are set out, *inter alia*, in the judgment of *Roman Petrov v. Russia*, no. 37311/08, §§ 33-37, 15 December 2015.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ALLEGED ILL-TREATMENT

75. The applicant complained that on several occasions he had been subjected to ill-treatment while in custody and that the investigation in response to his complaints had not been effective. He relied on Articles 3 and 13 of the Convention. The Court will examine the complaint from the standpoint of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

76. In his observations the applicant stated that he did not intend to maintain his complaint in respect of the incident of 24 June 2012 given that the authorities had instituted criminal proceedings against Ur.

77. The Court accepts that, in these circumstances, the applicant no longer wishes to pursue this part of the application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the applicant's complaint under Article 3 of the Convention in respect of the incident of 24 June 2012.

78. As regards the complaint in the parts concerning the incidents of 21 May and 25 September 2009, 29 October 2009, 29 September and 1 October 2012, the Court notes that it 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. The parties' submissions

79. The applicant maintained that he had been repeatedly subjected to ill-treatment while in custody and that the inquiries in response to his complaints had been incomplete. The investigators had failed to identify and question potential witnesses. Medical examinations of the applicant had been conducted with significant delay or not conducted at all. He had never been informed of the progress of the inquiries. At no time had the authorities opened a fully-fledged criminal investigation to clarify the facts the applicants had complained of.

80. The Government submitted that the applicant's allegations of ill-treatment in custody had been subjected to examination by competent authorities. The inquiries conducted in response to the applicant's complaints had not borne out his allegations. As regards the incidents of 21 May 2009, 29 October 2010, and 24 June, 29 September and 1 October 2012, the earlier refusals to institute criminal proceedings had been quashed and the matter had been remitted for further inquiry, which was still pending.

2. The Court's assessment

(a) General principles

(i) Alleged ill-treatment

81. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Kudła v. Poland* [GC], no. 30210/96, § 90, ECHR 2000-XI).

82. Where allegations are made under Article 3 of the Convention the Court must apply a particularly thorough scrutiny. Where domestic proceedings have taken place, however, 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. 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 them (see *Gäfgen v. Germany* [GC], no. 22978/05, §93, ECHR 2010).

83. Allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

84. The ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 94, *Reports of Judgments and Decisions* 1998-VIII, and *Bouyid v. Belgium* [GC], no. 23380/09, §§ 100-01,

ECHR 2015). The burden of proof rests on the Government to demonstrate with convincing arguments that the use of force resulting in the applicant's injuries was not excessive (see, for example, *Dzwonkowski v. Poland*, no. 46702/99, § 51, 12 April 2007).

(ii) *Investigation into the allegations of ill-treatment*

85. The general principles concerning the right to the conduct of an effective investigation into allegations of ill-treatment are well established in the Court's case-law and may be summarised as follows (see *Lyapin v. Russia*, no. 46956/09, 24 July 2014):

“125. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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. Such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

126. The investigation into serious allegations of ill-treatment must be both prompt and thorough. 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, eyewitness testimony and forensic evidence. 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, for example, *Kopylov v. Russia*, no. 3933/04, § 133, 29 July 2010). Thus, the mere fact that appropriate steps were not taken to reduce the risk of collusion between alleged perpetrators amounts to a significant shortcoming in the adequacy of the investigation (see, *mutatis mutandis*, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-II, and *Turluyeva v. Russia*, no. 63638/09, § 107, 20 June 2013). Furthermore, the investigation must be independent, impartial and subject to public scrutiny (see *Mesut Deniz v. Turkey*, no. 36716/07, § 52, 5 November 2013). It should result in a reasoned decision to reassure a concerned public that the rule of law had been respected (see, *mutatis mutandis*, *Kelly and Others v. the United Kingdom*, no. 30054/96, § 118, 4 May 2001).

127. It falls to the State to have recourse to a procedure which would enable it to take all measures necessary for it to comply with its positive obligation of effective investigation imposed by Article 3 (see, *mutatis mutandis*, *Sashov and Others v. Bulgaria*, no. 14383/03, §§ 64, 68 and 69, 7 January 2010; see also *Vanfuli v. Russia*, no. 24885/05, § 79, 3 November 2011; *Nechto v. Russia*, no. 24893/05, § 87, 24 January 2012; and *Nitsov v. Russia*, no. 35389/04, § 60, 3 May 2012).”

(b) Application of these principles to the present case

(i) Incidents of 21 May 2009, 29 October 2010, 29 September and 1 October 2012

(α) Alleged ill-treatment

86. Turning to the circumstances of the present case, the Court observes that the applicant provided a clear account of the events in respect of the alleged incidents of ill-treatment in custody. His version of the events did not contradict the evidence submitted by the parties. The applicant sustained multiple injuries and his allegations of ill-treatment in custody were sufficiently serious for the authorities to open a formal inquiry in each case (see paragraphs 32-34, 51 and 58 above).

87. Against this background, and being mindful of the fact that the applicant had been in the State's custody for the entire time, the Court considers that the applicant has made out a *prima facie* case in support of his complaint of ill-treatment. The burden therefore rests on the Government to provide a satisfactory and convincing explanation as to the events in question.

88. The Court notes that the Government did no more than inform the Court that the investigation into the applicant's allegations was still pending. No documents or further details were provided. In such circumstances, the Court considers that the Government has failed to provide a satisfactory and convincing explanation as to the applicant's complaint and accepts his version of the events.

89. It remains for the Court to ascertain whether the treatment complained of by the applicant attained a minimum level of severity such as to fall within the scope of Article 3. In the light of the medical documents in the Court's possession, it considers that the injuries inflicted on the applicant were sufficiently serious to amount to ill-treatment within the meaning of Article 3.

90. It follows that there has been a violation of Article 3 of the Convention under its substantive limb on account of the treatment to which the applicant was subjected on 21 May 2009, 29 October 2010, and 29 September and 1 October 2012.

(β) Effectiveness of the investigation

91. It has been established above that the applicant's allegations of ill-treatment in custody were credible. The authorities therefore had an obligation to carry out an effective official investigation.

92. The Court notes that the investigation into each incident of ill-treatment complained of by the applicant is still pending, the length of the investigation periods ranging from four to seven years.

93. The Court further notes that the Government did not provide any document to report on the progress made by the authorities in an attempt to clarify the facts complained of by the applicant. Nor did they furnish any explanation as to why the inquiries had not yet been completed.

94. In these circumstances, the Court considers that the authorities did not fulfil their obligation to carry out an effective investigation into the applicant's allegations of ill-treatment, as required by Article 3 of the Convention. This conclusion makes it unnecessary for the Court to examine in detail the many rounds of pre-investigation inquiries conducted in the applicant's case with a view to identifying specific deficiencies and omissions on the part of the investigating authority.

95. There has been accordingly a violation of Article 3 of the Convention under its procedural aspect.

(ii) Incident of 25 September 2009

(α) Alleged ill-treatment

96. As regards the applicant's allegations that on 25 September 2009 he had been severely beaten by the remand prison director and prison guards, the Court observes that the medical evidence submitted by the parties conclusively demonstrates that the applicant sustained injuries that were sufficiently serious. Accordingly, the question before the Court in the instant case is whether the State should be held responsible under Article 3 of the Convention in that respect.

97. Having considered the material in its possession and the parties' submissions before it, the Court will answer this question in the negative. In the Court's view, the Government have discharged their obligation to provide a satisfactory and convincing explanation that the applicant's injuries resulted from the use of force against him and that the force used to subdue him was necessary.

98. The Court accepts the Government's explanation that the applicant sustained an injury in the course of an altercation with the remand prison director and guards. Their argument is supported by the evidence collected and analysed by the domestic authorities in the course of the ensuing investigation and trial. In this connection, 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 disregard the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply particularly

thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336).

99. The Court notes that no material has been adduced in the course of the Court proceedings which could call into question the findings of the domestic authorities and add weight to the applicant's allegations. The Court discerns no cogent elements in his submissions which could lead it to disregard the findings of fact of the domestic authorities.

100. Accordingly, there has been no violation of Article 3 of the Convention with regard to the alleged ill-treatment by the police on 25 September 2009 under its substantive limb.

(β) Effectiveness of the investigation

101. As regards the effectiveness of the investigation into the incident of 25 September 2009, the Court observes that, in order to clarify the circumstances of the altercation between the applicant and the prison director and guards, the authorities took all the steps needed to scrutinise the applicant's accusations. They questioned the applicant, the prison director, the guards and the medical professionals, including those who attended to the applicant's injuries, and studied the reports prepared by them as well as the results of the forensic medical examinations. The judicial authorities reviewed the material gathered in connection with the investigation and questioned the witnesses for both the prosecution and the defence. The Court discerns nothing in the material in its possession to suggest that the domestic authorities' approach in the present case lacked promptness, expeditiousness or thoroughness.

102. The foregoing considerations are sufficient to enable the Court to conclude that the investigation of the applicant's complaint of ill-treatment in police custody was "effective". There has therefore been no violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S CONDITIONS OF DETENTION AND TRANSPORT

103. The applicant complained about the conditions of his detention and transport. He relied on Articles 3 and 13 of the Convention.

A. Admissibility

104. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 3 of the Convention

(a) Conditions of detention in a temporary detention centre and remand prisons

105. The applicant maintained his complaint.

106. The Government were unable to comment on the population of the temporary detention centre in Odintsovo at the time when the applicant was detained there for lack of relevant records. They admitted that during the applicant's detention in all the remand prisons in question the personal space allocated to the applicant had almost always been below the statutory standards as a consequence of the overcrowding of those remand prisons.

107. Having duly considered the parties' submissions, the Court accepts that the applicant was kept in overcrowded cells. Referring to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Kudla*, cited above, §§ 90-94; *Muršić v. Croatia* [GC], no. 7334/13, §§ 136-40, 20 October 2016; and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 139-65, 10 January 2012), the Court reiterates that a serious lack of space in a prison cell weighs heavily as a factor to be taken into account for the purpose of establishing whether the detention conditions described are "degrading" from the point of view of Article 3 and may disclose a violation, either alone or taken together with other shortcomings (see, amongst many authorities, *Karalevičius v. Lithuania*, no. 53254/99, § 39, 7 April 2005, and *Ananyev and Others*, cited above, §§ 145-47 and 149).

108. In the leading case of *Ananyev and Others*, cited above, the Court has already found a violation on account of the applicants' detention in overcrowded cells.

109. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case. It concludes, therefore, that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention on account of the conditions of his detention in the temporary detention centre in Odintsovo and remand prisons nos. IZ-50/1 in Mozhaysk, IZ-77/4 in Moscow and IZ-66/1 in Yekaterinbourg. There has been accordingly a violation of Article 3 of the Convention on that account.

(b) Conditions of transport to and from, and detention at, the court-house

110. The applicant maintained his complaint as regards the conditions of his transport and detention at the court-house.

111. The Government did not submit any comments as regards the population of the cells at the court-house or the duration of the applicant's

detention there. They argued that the conditions of the applicant's transport had been in full compliance with applicable Russian and international laws.

112. Having examined the materials submitted by the parties and the applicable case-law, the Court concludes that they disclose a violation of Article 3 the Convention in the light of its findings in cases of *Idalov* (see *Idalov v. Russia* [GC], no. 5826/03, §§ 103-08, 22 May 2012, concerning conditions of transport by prison van and conditions of detention at the court-house) and *M.S.* (see *M.S. v. Russia*, no. 8589/08, §§ 78-79, 10 July 2014, concerning conditions of transport by rail).

2. Article 13 of the Convention

113. The applicant maintained his complaint.

114. The Government did not comment.

115. Having duly considered the evidence in its possession and relying on its earlier findings in previous cases against Russia, the Court considers that the applicant did not have an effective remedy enabling him to complain about his conditions of detention and transport. There has accordingly been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

116. The applicant complained that his arrest on 16 July 2008 and subsequent detention from 16 to 17 July 2008 and the pre-trial detention authorised by the court order of 18 July 2008 had been in contravention of Article 5 of the Convention, which reads, in so far as relevant, as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so[.]”

A. Admissibility

117. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

118. The applicant maintained his complaint. He argued that his administrative arrest and subsequent detention had been in contravention of Article 5 § 1 (c) of the Convention and that the Town Court's failure to specify a time-limit when remanding him in custody had amounted to a gross and obvious irregularity that had rendered his pre-trial detention from 18 July to 15 September 2008 unlawful.

119. The Government contested that argument. They submitted that on 16 July 2008 the applicant had been arrested in strict compliance with the Russian Administrative Code for his failure to comply with the policemen's legitimate request for presentation of his identification document. He had resisted them and tried to abscond. His administrative arrest had been duly recorded and had not exceeded the statutory maximum of 48 hours. On 17 July 2008 the town police charged the applicant with the offence of drug possession. On 18 July 2008 the Town Court had authorised the applicant's pre-trial detention. The fact that the Town Court had not specified the period of detention should not be construed as contravening applicable Russian laws or the Convention. The Town Court had not discerned any reason to remand the applicant in custody for a period shorter than the statutory maximum of two months.

2. The Court's assessment

(a) General principles

120. The Court reiterates at the outset that Article 5 of the Convention protects the right to liberty and security. This right is of primary importance "in a democratic society" within the meaning of the Convention (see, amongst many other authorities, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12; *Assanidze v. Georgia* [GC], no. 71503/01, § 169, ECHR 2004-II; and *Ladent v. Poland*, no. 11036/03, § 45, 18 March 2008).

121. Everyone is entitled to the protection afforded by this right, namely the right not to be deprived, or continue to be deprived, of their liberty, save in accordance with the conditions specified in paragraph 1 of Article 5 of the Convention (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 77, ECHR 2010). Where the "lawfulness" of detention is in issue, including the question of whether "a procedure prescribed by law" has been followed, the Convention essentially refers to national law. It requires at the

same time that any deprivation of liberty be in keeping with the purpose of Article 5, namely to protect the individual from arbitrariness (see *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008).

122. No detention which is arbitrary can be compatible with Article 5 § 1 of the Convention, the notion of “arbitrariness” in this context extending beyond a lack of compliance with national law. While the Court has not previously formulated a comprehensive definition of what types of conduct on the part of the authorities might constitute “arbitrariness” for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. Moreover, the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved. One general principle established in the case-law is that detention will be “arbitrary” where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see *Mooren v. Germany* [GC], no. 11364/03, §§ 77-78, 9 July 2009).

(b) Application of the principles to the present case

(i) The applicant’s arrest on 16 July 2008 and detention from 16 to 17 July 2008

123. Turning to the circumstances of the case, the Court observes that, as established by the national judicial authorities, on 16 July 2008 the applicant was arrested in the course of a special operation conducted by the regional police department for combatting organised crime. The operation targeted the applicant specifically as a person suspected of extorting money from P. After the arrest, the specialised police unit charged and detained the applicant on the grounds of an administrative offence (failure to comply with a lawful order issued by the police).

124. The Court also takes into account that, as explained by the Government, following the administrative arrest, the police had the right to detain the applicant for a further 48 hours and that the applicant was re-arrested on the criminal charge of heroin possession within that period.

125. The Court cannot, however, subscribe to the Government’s view that the applicant’s arrest and detention on 16 and 17 July 2008 were lawful because they were based on the provisions of the Russian Administrative Code. The Court considers it necessary to look beyond appearances and the language used and concentrate on the realities of the situation (see *Kafkaris*, cited above, § 116, with further references, and *Doronin v. Ukraine*, no. 16505/02, § 55, 19 February 2009).

126. Although an arrest and subsequent detention for the failure to comply with the order issued by the police would generally fall under Article 5 § 1 (b) of the Convention, the Court considers that the applicant was deprived of his liberty for the purposes of bringing him before the

competent legal authority on suspicion of having committed the crime of extortion. His deprivation of liberty from 16 to 17 July 2008 therefore fell within the ambit of Article 5 § 1 (c) of the Convention. Even accepting as established the fact that in the course of the special operation the applicant did indeed refuse to present his identification document to the police, had resisted them and tried to abscond, the authorities' decision to classify the applicant's conduct as an administrative misdemeanour could not, in the Court's view, exempt them from complying with the procedural guarantees associated with the applicant's *de facto* status as a criminal suspect.

127. Furthermore, the Court observes that, immediately after the arrest, the applicant was subjected to a search and the police found heroin on him. Nevertheless, the applicant continued to be detained on the administrative charges for a further day before the relevant criminal case was opened against him. No extortion charges were brought at all.

128. It is not the Court's task to assess the strategy chosen by the authorities. The situation in the present case, however, gives rise to the strong impression that the police used the administrative arrest to ensure the applicant's availability as a criminal suspect, but did this without safeguarding his procedural rights, in particular the right to legal assistance.

129. In the Court's view, such conduct on the part of the police undermined the administration of justice and was arbitrary. The fact that the judicial authorities were aware of the situation and did nothing to rectify it is also a matter of serious concern to the Court.

130. The above considerations are sufficient for the Court to conclude that the applicant's arrest on 16 July 2008 and subsequent detention until 17 July 2008 were not "lawful" or "in accordance with a procedure prescribed by law". There has accordingly been a violation of Article 5 § 1 of the Convention.

(ii) The applicant's detention from 18 July to 15 September 2008

131. As regards the applicant's complaint that, in contravention of the applicable laws, the District Court failed to specify a time-limit for his remand in custody on 18 July 2008, the Court notes that it has already examined similar complaints in a number of cases against Russia and found a violation of Article 5 § 1 of the Convention. The Court has established that the Russian rules of criminal procedure required that, when deciding that a defendant should be placed in detention, the court should specify its length. In its opinion, the failure to do so amounted to a "gross and obvious irregularity" capable of rendering the applicant's ensuing detention arbitrary and therefore "unlawful" within the meaning of Article 5 § 1 (see, for example, *Logvinenko v. Russia*, no. 44511/04, §§ 35-39, 17 June 2010; *Fedorenko v. Russia*, no. 39602/05, §§ 52-57, 20 September 2011; and *Rakhmonov v. Russia*, no. 50031/11, §§ 50-53, 16 October 2012).

132. Having examined the evidence in its possession, the Court sees no reason to reach a different conclusion in the present case. Consequently, the Court finds that the applicant's detention on the basis of the court order of 18 July 2008 was not "in accordance with a procedure prescribed by law". There has accordingly been a violation of Article 5 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

133. The applicant complained that his pre-trial detention had not been justified by relevant and sufficient grounds. He relied on Article 5 § 3 of the Convention, which reads, in so far as relevant, as follows:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

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

B. Merits

1. Period to be taken into consideration

135. As noted above, the applicant was detained from 16 July 2008, when he was arrested, to 17 December 2009, when he was convicted by the trial court. Accordingly, the total length of the applicant's detention amounted to 1 year, 5 months, and 2 days.

2. Whether there were relevant and sufficient grounds justifying the applicant's detention

136. The Government submitted that the applicant's detention had been in strict compliance with national legislation. The authorities had relied on relevant and sufficient reasons when deciding to detain him.

137. The applicant maintained his complaint.

138. The Court has examined applications against Russia raising similar complaints under Article 5 § 3 of the Convention on numerous previous occasions. It found violations of that Article on the grounds that the domestic courts had extended an applicant's detention by relying essentially on the gravity of the charges and using stereotyped formulae without addressing his or her specific situation or considering alternative preventive

measures (see, among many other authorities, *Mamedova v. Russia*, no. 7064/05, 1 June 2006; *Pshevecherskiy v. Russia*, no. 28957/02, 24 May 2007; *Shukhardin v. Russia*, no. 65734/01, 28 June 2007; *Belov v. Russia*, no. 22053/02, 3 July 2008; *Aleksandr Makarov v. Russia*, no. 15217/07, 12 March 2009; *Logvinenko v. Russia*, no. 44511/0417 June 2010; and *Valeriy Samoylov v. Russia*, no. 57541/09, 24 January 2012).

139. Having duly considered the material in its possession, the Court finds that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Accordingly, the Court considers that by failing to address specific facts or consider alternative preventive measures, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient" to justify the applicant's being remanded in custody for approximately a year and a half. In those circumstances it is not necessary to examine whether the proceedings were conducted with "special diligence".

140. There has accordingly been a violation of Article 5 § 3 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

141. The applicant complained under Article 6 of the Convention about his exclusion from the trial. Article 6, in so far as relevant, reads as follows:

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

...

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

...

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

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

A. Admissibility

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

B. Merits

The parties' submissions

143. The applicant maintained his complaint. He submitted that, following his removal from the courtroom on 17 December 2009, certain evidence had been examined in his absence. The fact that the applicant and his lawyer had attended the appeal hearing had not remedied the deficiency as regards the trial.

144. The Government pointed out that the applicant had been removed from the courtroom for repeated disruptive behaviour and for showing disrespect towards the court.

The Court's assessment

145. Since the requirements of paragraph 3 of Article 6 of the Convention constitute specific aspects of the right to a fair trial guaranteed under paragraph 1, the Court will examine the applicant's complaints under these provisions taken together (see, among other authorities, *Vacher v. France*, 17 December 1996, § 22, *Reports of Judgments and Decisions* 1996-VI).

146. The Court reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, his or her entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance. Furthermore, it must not run counter to any important public interest (see, among other authorities, *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II).

147. Turning to the circumstances of the present case, the Court observes that on the last day of the trial the court decided to remove the applicant from the courtroom. As a result, certain evidence was examined in the applicant's absence, which fact might raise a question as to the overall fairness of the criminal proceedings against the applicant.

148. The Court notes that, in the course of the trial, the applicant repeatedly disrupted the proceedings. He burnt pages from the case file, insulted and threatened witnesses and other parties to the proceedings, ignoring the warnings of the presiding judge. The Court further notes that, on the last day of the trial, the applicant was removed from the courtroom after resuming his unruly behaviour.

149. In this connection, the Court reiterates that it is essential for the proper administration of justice that dignity, order and decorum be observed in the courtroom as the hallmarks of judicial proceedings. The flagrant disregard by a defendant of elementary standards of proper conduct neither

can nor should be tolerated (see *Idalov v. Russia* [GC], no. 5826/03, § 176, 22 May 2012).

150. The Court accepts that the applicant's behaviour was of such a nature as to justify his removal and the continuation of his trial in his absence. The Court is also satisfied that, prior to the removal, the applicant had been fully and fairly informed that his conduct was wrong and intolerable, and had been warned of the possible consequences of his misbehaviour. Accordingly, for the Court there is no doubt that the applicant, by persisting in his reprehensible conduct, waived his right to be present at the trial.

151. Lastly, the Court notes that applicant's waiver was attended by minimum safeguards. The applicant's lawyer took part in the hearing and duly conducted the applicant's defence.

152. Accordingly, there has been no violation of Article 6 §§ 1 and 3 (c) and (d) of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

153. 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

154. The applicant claimed 940,000 euros (EUR) in respect of non-pecuniary damage.

155. The Government considered the applicant's claim excessive. In their opinion, the finding of a violation would constitute sufficient just satisfaction.

156. The Court observes that it has found a combination of violations in the present case. The applicant was subjected to ill-treatment in custody. The investigation into his allegations of ill-treatment was ineffective. The applicant was detained and transported in deplorable conditions. His arrest and detention from 16 to 17 July 2008 was unlawful. His detention was not justified by sufficient grounds. In such circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant the amount sought, namely EUR 26,000, in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

157. The applicant also claimed EUR 9,150 for the costs and expenses incurred before the Court. In particular, he submitted that his representatives had spent nine hours studying the case file, six hours drafting letters to the applicant and various State agencies and discussing the matter with the applicant by telephone, nineteen hours preparing an application form and attachments to it, and twenty-seven hours preparing observations on behalf of the applicant.

158. The Government considered the applicant's claims unnecessary and unsubstantiated.

159. 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, taking account of the documents in its possession, the above criteria and the fact that legal aid has been granted to the applicant, the Court considers it reasonable to award the sum of EUR 4,000 in respect of the proceedings before it, in addition to the sum paid by way of legal aid.

C. Default interest

160. The Court considers it appropriate that the default interest rate 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 strike the applicant's complaint under Article 3 of the Convention concerning alleged ill-treatment on 24 June 2012 out of its list;
2. *Declares* the remainder of the complaints admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb on account of the applicant's ill-treatment in custody on 21 May 2009, 29 October 2010, and 29 September and 1 October 2012;
4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of ineffective investigation into the

applicant's allegations of ill-treatment occurring on 21 May 2009, 29 October 2010, and 29 September and 1 October 2012;

5. *Holds* that there has been no violation of Article 3 of the Convention on account of the alleged ill-treatment on 25 September 2009;
6. *Holds* that there has been a violation of Articles 3 and 13 of the Convention on account of the conditions of the applicant's detention and transport;
7. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's arrest on 16 July 2008 and ensuing detention from 16 to 17 July 2008;
8. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention authorised by the court order of 18 July 2008;
9. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
10. *Holds* that there has been no violation of Article 6 of the Convention;
11. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
12. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 December 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President