



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

FIFTH SECTION

CASE OF GOGALADZE v. GEORGIA

(Application no. 8971/10)

JUDGMENT

STRASBOURG

18 July 2019

FINAL

18/10/2019

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

In the case of Gogaladze v. Georgia,

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

Angelika Nußberger, *President*,

Ganna Yudkivska,

André Potocki,

Síofra O'Leary,

Mārtiņš Mits,

Gabriele Kucsko-Stadlmayer,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 June 2019,

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

PROCEDURE

1. The case originated in an application (no. 8971/10) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Georgian national, Mr Nodar Gogaladze (“the applicant”), on 7 December 2009.

2. The applicant was represented by Mr Z. Rostiasvili and Ms I. Brelidze, lawyers practising in Tbilisi. The Georgian Government (“the Government”) were represented by their Agent, Mr L. Meskhoradze of the Ministry of Justice.

3. The applicant alleged, in particular, that he had been subjected to ill-treatment following his arrest, and that the investigation into the matter had been ineffective.

4. On 12 March 2015 notice of the complaints under Articles 3 and 13 of the Convention concerning the alleged ill-treatment and the related investigation was given 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

5. The applicant was born in 1986.

A. The applicant's arrest and alleged ill-treatment

6. At around midnight on 13 February 2008 the applicant was arrested by the Borjomi police officers on suspicion of attempted rape of a minor. According to the arrest and search of person report, the applicant had scratches on his right wrist and elbow at the time of the arrest.

7. Following the applicant's arrest a drug test was performed by the drug specialist at an unspecified time, and the applicant was placed in a temporary detention centre. According to the external-visual-examination report drawn upon the applicant's placement there at 1.30 a.m. on the same day, he had scratches on his right wrist and elbow. The report – signed by the applicant – indicated that the scratches had been the result of him falling down before his arrest, and that he had no complaints in respect of the police.

8. According to the material available before the Court, the applicant was questioned as a suspect between 11.35 a.m. and 12.45 p.m. on 13 February 2008. He denied any wrongdoing. The applicant was questioned again between 5.20 and 6.30 p.m. on 14 February 2008 as an accused. He denied having coerced the minor but admitted to some aspects of the sexual contact between them.

9. At an unspecified time on 14 February 2008 a prosecutor visited the applicant in the temporary detention centre to inquire why he had not signed the document containing charges against him. The interview was attended by the applicant's lawyer. The applicant explained his refusal to sign the document in question by the fact that he disagreed with the charges brought against him. The record of the interview with the prosecutor was signed by the applicant and his lawyer.

10. On 13 and 15 February 2008 an ambulance was called for the applicant. According to the reports, the applicant was diagnosed with neurosis. He was given relevant medication.

11. On 15 February 2008 the applicant was transported to the Borjomi Regional Court for a hearing regarding the measures of restraint to be used against him pending the investigation. The external-visual-examination report drawn up by a duty officer and signed by the applicant upon the latter's transfer indicated that "no injuries [had been] received during the placement in the cell." It also noted that the applicant had had no complaints in respect of the staff of the temporary detention centre.

12. On 15 February 2008 the first-instance court ordered the applicant's pre-trial detention for two months. The applicant was transported from the courtroom to Tbilisi prison no. 5.

13. Upon arrival at Tbilisi prison no. 5 on 15 February 2008, the applicant was examined by a doctor who drew up a medical report, stating that the applicant had a bump on his head and red-skin maceration (ძავერება) on the bridge of his nose ("the medical report"). The medical

report indicated that the applicant had no complaints in respect of the police. On the same day, the doctor, the investigator, and the officer on duty at Tbilisi prison no. 5 drew up a report repeating the observations of the doctor. Both documents stated, without further details, that according to the applicant he had received the injuries “as a result of feeling unwell during his placement at the temporary detention centre.” Neither of the documents bore the applicant’s signature.

14. On 20 February 2008 the applicant was transferred to Tbilisi prison no. 8. During the external visual examination, a doctor of that prison found a bump on the applicant’s head and red-skin maceration on his nose.

15. On 7 March 2008 an investigator interviewed the applicant in Tbilisi prison no. 8 in relation to the doctor’s findings (see paragraph 14 above). According to the investigator’s report, which was signed by the applicant, the latter had received the injuries “when he had felt unwell” in the temporary detention centre and had no complaints.

16. On 1 April 2008 a prosecutor interviewed the applicant in the presence of his lawyer. According to the applicant’s account, he was physically and verbally assaulted by police officers at the police station, upon his arrest. Specifically, five police officers inflicted blows to his head there, including in the office of the drug specialist where a drug test was being performed. He did not remember telling anyone about the beating.

B. Investigation into the alleged ill-treatment

17. On 4 April 2008 following the applicant’s allegations of ill-treatment, a criminal investigation was opened by the Akhaltsikhe Regional Prosecutor’s Office into possible abuse of power.

18. On 18 May 2008 a prosecutor questioned two police officers who had arrested the applicant. According to them, the applicant had reportedly been beaten by the uncle of the victim of attempted rape (“the victim’s uncle”). They further noted that at the time of the arrest the applicant had had scratches on his hand. The police officers stated that no physical or verbal ill-treatment had been inflicted upon the applicant.

19. On 3 June 2008 the applicant was granted victim status in respect of his allegation of ill-treatment. According to the applicant’s statement given on that date, on 13 February 2008 police officers had insulted him and hit him on the head in the car transporting him to the police station. The ill-treatment had continued at the police station as the police officers had told the applicant to tell the truth about the incident. He had received numerous blows to the head. He had then been placed in a cell at the temporary detention centre. That very night he had started experiencing headaches and dizziness. He had vomited, and an ambulance had been called. The paramedics had not asked about his injuries but had given him some medication. The ambulance had been called again on 15 February 2008 as

he had been feeling unwell. A prosecutor had met with him during his time at the temporary detention centre. The applicant had not told him about the ill-treatment out of fear of the police who had threatened to subject his family members to the same treatment that he had been accused of. He had eventually changed his statement, admitting to certain aspects of the crime with which he had been charged owing to the threats coming from the police officers. Upon his placement in Tbilisi prison no. 5, his injuries had been noted by a doctor conducting his external visual examination. However, out of fear of the police officers who had previously threatened him and his family, he had explained those away by stating that he had fallen at the temporary detention centre. As regards the scratches on his right hand, he had stated that he had got them in a forest, two days before the arrest.

20. On 10 May 2010 the applicant repeated his statement of 3 June 2008 but specified that he had had his nose injured in the drug specialist's office as a result of a blow to his head, as he had been sitting at a table, looking down, and a police officer had slammed his head against the table. He was then placed at the temporary detention centre. On 1 October 2013 the applicant was questioned again and he repeated his statement of 10 May 2010.

21. On 9 June 2008 the victim's uncle was questioned. He confirmed having slapped the applicant before his arrest but noted that he could observe no injuries on him.

22. On 15 June 2008 the specialist who had carried out a drug test at the police station on 13 February 2008 stated that he had not observed any injuries on the applicant's face and that the applicant had not been ill-treated while in his office. He asserted that he had taken three photographs of the applicant at the end of the latter's examination which could confirm the absence of any injuries on the applicant's face. The photographs had been intended to be sent to the Ministry of Interior.

23. On 24 August 2008 the neighbor of the victim of attempted rape stated that he saw the victim's uncle slap and kick the applicant as a result of which the latter fell down and either his nose or his lips were bleeding.

24. On 26 August 2008 an inspector of the temporary detention centre stated that the applicant had had no injuries during his detention in the cell other than the scratches on his hand.

25. On 7 October 2008 a prosecutor from the Akhaltsikhe district prosecutor's office ordered a forensic medical examination in respect of the applicant.

26. On 9 October 2008 the forensic medical examination was carried out by a State forensic expert based on the applicant's medical records ("the first forensic examination"). The resulting report referred to the injuries as described in the medical report drawn up at Tbilisi prison no. 5 (see paragraph 13 above), noting that the exact location of the bump on the head

had not been specified. The expert concluded that the injuries had been inflicted by a blunt object, and they could have been inflicted during the period indicated by the applicant. The expert stated that a panel was to be convened to determine whether the injuries could have been self-inflicted, and if they could have caused the headaches and dizziness of which the applicant had complained.

27. On 11 December 2008 the prosecutor who had met the applicant in the temporary detention centre was questioned. According to him, he had visited the applicant because the latter had refused to sign the indictment. He had asked the applicant if he had had any complaints but he had had none. Nor had he had any signs of ill-treatment. The applicant had merely asserted that he had been innocent. The applicant's lawyer had attended the meeting.

28. On 16 and 17 January 2009 two investigators were questioned. According to them, on 15 February 2008 they transported the applicant from the temporary detention centre to the Borjomi Regional Court and from that court immediately to Tbilisi prison no. 5, and stayed with the applicant at all times throughout that period. They did not inflict any injuries upon him. Nor did they notice any signs of injuries on the applicant prior to their discovery during the examination at Tbilisi prison no. 5. The investigators noted that the applicant had explained that he had received those injuries as a result of falling in the temporary detention centre and had no complaints.

29. On 17 February 2009 the prosecutor ordered a forensic medical examination by a panel of experts. Two questions were presented to the panel: whether the material presented before the experts had been sufficient to assess the injuries inflicted at the relevant time, and if the injuries in question could have caused the headache, nausea, and dizziness of which the applicant had complained.

30. Between 24 February and 20 March 2009 the expert examination was carried out by a panel of experts ("the second forensic examination"). According to the resulting report, owing to the lapse of time since the infliction of the injuries and the absence of neurological examinations of the applicant done at that time, it was impossible to establish the link between the applicant's injuries and the headaches, nausea, and dizziness that the applicant had been complaining of.

31. On 30 October 2009 the applicant received a response from the regional prosecutor's office to a query of 26 October 2009 that he had lodged, stating that the investigation was ongoing.

32. On 2 and 8 July 2014, after several years of inactivity, the investigator questioned police officers who had been present at the police station where the applicant had been brought following his arrest. The only injuries they had identified were the scratches on the applicant's hand. They denied having physically or verbally ill-treated the applicant.

33. On 15 July 2014 the applicant's lawyer at the time of his arrest and the first judicial hearing concerning his pre-trial detention stated that she had met the applicant in the temporary detention centre, where the applicant had not had any visible injuries and had expressly denied being ill-treated. Nor had he had any signs or complaints during the pre-trial hearing of 15 February 2008.

34. On 15 July 2014 the inspector that had been on duty in Tbilisi prison no. 5 and the doctor who had assessed the applicant upon his entry in that prison confirmed that the applicant had had a red-skin maceration on the bridge of his nose, and a bump on his head, without specifying the latter's exact location. They noted that the applicant had not had any complaints and had noted that the injuries had been received while he had felt unwell at the temporary detention centre.

35. On 15 July 2014 an investigator who had interviewed the applicant in Tbilisi prison no. 8 on 7 March 2008 (see paragraph 15 above) stated that the purpose of the interview had been the medical report of 20 February 2008 (see paragraph 14 above). According to him, on the day of the interview there had been no visible signs of injuries, and the applicant had explained that he had received those "while he [had] felt unwell at the temporary detention centre".

36. On 23 July 2014 the investigating authorities questioned the secretary of the Borjomi Regional Court, who stated that she had not noticed any injuries on the applicant during his pre-trial hearing of 15 February 2008, and that he had not raised any complaints.

37. On an unspecified date the investigating authorities obtained medical records relating to the ambulance service provided to the applicant on 13 and 15 February 2008. The record of 13 February 2008 noted neurosis as a diagnosis. The record from 15 February 2008 stated that the applicant had had vegetative neurosis and contained information regarding the medication that had been prescribed.

38. On 9 September 2014 the paramedics who had visited the applicant in the temporary detention centre on 13 February 2008 (see paragraphs 10 and 19 above) stated that they had neither noticed any injuries on the applicant's face nor had the applicant made any complaints to that end.

39. As is apparent from the case-file material submitted to the Court by the Government, on 29 January 2016 the investigation was closed by a prosecutor on the grounds of the absence of a crime. It does not appear that the applicant appealed against the decision, which was amenable to a one-time appeal before a higher-ranking prosecutor. The decision of the latter was final and not subject to an appeal before a court.

II. RELEVANT DOMESTIC LAW

40. The relevant legal provisions concerning the obligation of authorities to investigate allegations of ill-treatment in force at the material time are set out in the following judgments: *Mikiashvili v. Georgia*, (no. 18996/06, § 54, 9 October 2012) and *Dvalishvili v. Georgia*, (no. 19634/07, § 28, 18 December 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained that he had been ill-treated following his arrest, and that no effective investigation had been carried out in that connection. He relied on Article 3 of the Convention, which reads as follows:

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

42. The Government contested that argument.

A. Admissibility

43. The Government submitted, without elaborating on the effectiveness of the remedy, that the applicant had not challenged the prosecutor's decision of 29 January 2016 (see paragraph 39 above).

44. In this context, the Court observes that a hierarchical complaint before a higher prosecutor, without a possibility of obtaining a judicial determination of the matter, is not an effective remedy because the litigants are unable to participate in such proceedings (see *Medvedev v. Russia*, no. 9487/02, § 38, 15 July 2010, with further references, and *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, § 112, 13 January 2009). The Court therefore dismisses the Government's objection.

45. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor are they inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

46. The applicant submitted that he had been physically and verbally ill-treated following his arrest. In particular, he received blows to his head and was insulted by the police officers at the police station. Responding to the Government's submissions (see paragraph 47 below), the applicant stated that his partial confession to the crime on 14 February 2008 following a statement dated 13 February 2008 where he had denied any wrongdoing was a clear indication that he had been coerced to confess to the crime, and violence was used between these two points in time. No policeman would give a statement of confession to that end. In any event, as the injuries were discovered on 15 February 2008 at the time when the applicant was under control of the police, the injuries in question must have been inflicted by them. The applicant further submitted that the related investigation had not been effective.

47. The Government submitted that the injuries complained of were not of such a nature to reach the minimum level of severity under Article 3 of the Convention and, in any event, the applicant's allegations of ill-treatment could not be proven beyond reasonable doubt. They noted the applicant's complaint that he had been subjected to ill-treatment prior to his placement at the temporary detention centre on 13 February 2008. However, he could have sustained the injuries in issue prior to his arrest as the victim's uncle had slapped and kicked him before his arrest. Furthermore, as regards the criminal investigation launched into the matter which did not establish misconduct on the part of the police officers, it had been thorough and effective. It had considered all the evidence available in the case file, including the statements of various persons who had seen the applicant between 13 and 15 February 2008. The persons interviewed as part of the criminal investigation had not observed the injuries complained of until the applicant's placement in prison on 15 February 2008. Therefore, the investigation carried out in respect of the applicant's allegations was in compliance with the requirements of Article 3 of the Convention.

2. The Court's assessment

(a) General principles

48. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of 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). In assessing the evidence on which to base the decision as to whether there has been a violation of Article 3, the Court adopts the standard of proof "beyond

reasonable doubt”. However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). Where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

49. The Court has explained that 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. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; *Rivas v. France*, no. 59584/00, § 38, 1 April 2004; *Turan Cakir v. Belgium*, no. 44256/06, § 54, 10 March 2009; *Mete and Others v. Turkey*, no. 294/08, § 112, 4 October 2011; and *Tiziana Pennino v. Italy*, no. 21759/15, § 35, 12 October 2017). In the absence of such an explanation, the Court can draw inferences which may be unfavourable for the Government (see, among other authorities, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 152, ECHR 2012, and *Samesov v. Russia*, no. 57269/14, § 47, 20 November 2018). That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them (see, *Bouyid v. Belgium* [GC], no. 23380/09, § 83, ECHR 2015).

50. 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. That investigation should be capable of leading to the identification and punishment of those responsible (see *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). 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 *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII). The general principles which apply in determining whether such an investigation was effective for the purposes of Article 3 were restated by the Grand Chamber in, among other authorities, *Mocanu and Others*

v. Romania ([GC], nos. 10865/09, 45886/07 and 32431/08, § 316-26 ECHR 2014 (extracts)).

(b) Application of the above principles to the present case

51. The Court observes that there is no dispute between the parties that the applicant sustained injuries such as a bump on his head and skin maceration on the bridge of his nose (“the injuries”). However, they disagree as to the seriousness, possible timing and causes of those injuries, as well as whether the criminal investigation launched into the matter had been effective.

52. While the applicant’s position before the Court regarding the manner in which the injuries were inflicted (see paragraph 46 above) may not be sufficiently consistent with his account given at domestic level (see paragraphs 19-20), the Court reiterates the values protected by Article 3 of the Convention and the States’ obligation to provide a plausible explanation of how injuries were inflicted upon an individual who had been taken into police custody in good health (see paragraphs 48-49 above). In this connection, the Court observes that the presence of injuries which, according to the applicant, had been inflicted by police officers was confirmed by the medical report of the doctor who had examined the applicant upon the latter’s placement in Tbilisi prison no. 5 on 15 February 2008, two days after his arrest (see paragraph 13 above). Their existence was never as such called into question (see paragraph 51 above). The evidence available to the domestic authorities, including the statements of the police officers who had arrested the applicant, demonstrated that the applicant had not had those particular injuries before his arrest (see paragraphs 6-7, 18, and 32 above). Therefore his allegations – as set out in the complaint lodged with the domestic authorities – that he had been subjected to treatment breaching Article 3 of the Convention by police officers were arguable. The authorities were thus required to conduct an effective investigation.

53. The Court notes that a criminal investigation was opened into possible abuse of power by police officers three days after the applicant’s allegations of ill-treatment. Even accepting that the applicant was responsible for some delay in beginning the investigation as he made his complaint approximately a month and a half following the alleged infliction of the injuries (see paragraph 16 above), the Court does not lose sight of the fact that once it had been initiated, the investigation was accompanied by significant shortcomings. In particular, the Court cannot overlook the fact that the first forensic examination to evaluate the applicant’s injuries was ordered only more than six months after the initial allegations (see paragraph 26 above). The forensic expert confined his assessment to the medical documentation available to him. While the expert recommended that a panel of experts evaluate the matter with a view to concluding

whether the injuries identified in the medical documentation could have been self-inflicted, the second expert examination to that end was commissioned with a further delay of more than four months (see paragraph 29 above). The passage of time was one of the reasons why the panel of experts could not answer the questions presented to it (see paragraph 30 above).

54. Furthermore, the Court notes the unusual length of the investigation, for which the Government provided no explanation. In particular, the investigation was opened on 4 April 2008, and closed on 29 January 2016. Therefore, almost eight years elapsed between the applicant's complaint and the prosecutor's decision to terminate the investigation. As the Court has emphasised on previous occasions, although there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see, among other authorities, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 323, ECHR 2014 (extracts), and *Bouyid*, cited above, § 133).

55. As regards the scope of the investigation, despite the recommendation by the forensic expert (see paragraph 26 above), the scope of the second expert examination was limited to the questions presented by the investigator, which did not include the issue of whether the applicant's injuries could have been self-inflicted (see paragraph 30 above). Nor was the question of whether the injuries could have been inflicted prior to the arrest, with a delayed appearance, tested by experts. Furthermore, while the expert who had implemented a drug test in respect of the applicant at the police station stated that he had taken three photographs of the applicant with the intention of sending them to the Ministry of Interior (see paragraph 22 above), the investigating authorities do not appear to have received or sought to obtain those photographs. Even assuming that the evidence available to the investigating authorities disproved the applicant's version of the events as to the exact timing and circumstances in which the injuries had been sustained, the Court observes that no attempt at all was made by the investigating authorities to explore other possible causes of the injuries.

56. These considerations are sufficient for the Court to conclude that the applicant's complaint involving law-enforcement officers using force and causing injuries to a person under their control was not the subject of an effective investigation, as required under the procedural aspect of Article 3 of the Convention (see paragraph 48 above).

57. Against this background, the Court notes that the shortcomings identified in respect of the criminal investigation entailed, in practice, a failure to shed light on important aspects of the impugned events in the

context of the substantive limb of Article 3. In view of the evidence, including the arrest and search-of-person report, indicating that the applicant did not have the injuries complained of prior to his arrest (see paragraphs 6-7, 18, and 32 above), a presumption arises that the applicant sustained the injuries complained of while under the authority of the police. As to whether the Government satisfactorily established that the applicant's injuries were caused otherwise than by – entirely, mainly, or partly – the treatment he underwent while in police custody (see *Ribitsch*, cited above, § 34), the Court pays particular regard to the fact that the Government offered only one possible explanation. In particular, their sole hypothesis as to the possible source of the applicant's injuries being beatings by civilians prior to his arrest (see paragraphs 18, 21, 23, and 47 above) is not convincing precisely on account of the failure of the investigation to test that hypothesis and establish whether the signs of such beating could have manifested themselves after two days (see paragraph 55 above).

58. In conclusion, the Court cannot consider that the Government have discharged their obligation to provide a plausible explanation of how those injuries were caused (see *Tiziana Pennino*, cited above, §§ 54-55; *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, § 104, 12 December 2017; *Samesov*, cited above, § 61; and *Tillov v. Russia* [Committee], no. 2120/10, § 33, 5 March 2019).

The foregoing considerations are sufficient for the Court to conclude that there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

59. The applicant also complained that no effective remedies had been available to him in respect of his complaints under Article 3 of the Convention. He relied on Article 13 of the Convention.

60. The Court notes that this complaint is linked to the ones examined above, and must therefore likewise be declared admissible.

61. Having regard to the finding of a violation of Article 3 of the Convention (see paragraphs 51-58 above), the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 of the Convention in this case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

64. The Government submitted that there was no causal link between the damage claimed and the violation alleged by the applicant.

65. The Court observes that the applicant must have sustained non-pecuniary damage on account of the violation of Article 3 of the Convention which cannot be compensated for solely by the finding of a violation. Making its assessment on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

66. The applicant also claimed EUR 3,540 for the costs and expenses incurred before the domestic courts.

67. The Government submitted that the claim was not causally linked to the applicant's complaint before the Court.

68. 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, or in connection to the violation found. The Court finds no correlation between the violation found before it and the domestic judicial proceedings. It therefore rejects the claims for costs and expenses.

C. Default interest

69. 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. *Declares* the complaints under Articles 3 and 13 of the Convention admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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 18 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President