



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

1959 · 50 · 2009

FIRST SECTION

CASE OF YEVGENIY KORNEV v. RUSSIA

(Application no. 30049/02)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Yevgeniy Kornev v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 30049/02) 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 Yevgeniy Gennadyevich Kornev (“the applicant”), on 15 July 2002.

2. The applicant was represented by Ms S. Almukhametova, a lawyer practising in Kurgan. The Russian Government (“the Government”) were represented by their Agent, Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been beaten up by policemen and that the supervisory-review proceedings had been unfair because of the authorities’ failure to ensure his presence at the hearing.

4. On 15 May 2007 the President of the First Section decided to give notice of the application. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Kurgan.

A. Criminal proceedings on the charge of kidnapping

6. On 27 December 2000 the Ketovskiy District Court of the Kurgan Region found the applicant guilty of kidnapping for profit and sentenced him to five years' imprisonment conditional on three years' probation. Neither the applicant nor the prosecutor appealed.

7. On an unspecified date the applicant asked the Kurgan Regional Court for supervisory review of the judgment of 27 December 2000. He alleged that the court had erred in defining his actions as kidnapping for profit. He further challenged the findings of the trial court as to the circumstances of the matter. He claimed that he had freed the kidnapped victim of his own will and should have been exonerated from the kidnapping charges as provided for in the Russian Criminal Code.

8. By a letter of 10 October 2003, the Kurgan Regional Court informed the applicant that the supervisory-review proceedings had been instituted and that the Presidium would examine his application on 20 October 2003. According to the stamp on the letter, it reached the penitentiary establishment where the applicant was serving a prison sentence on 23 October 2003. The applicant indicated that the letter had been handed over to him on 27 October 2003.

9. On 30 October 2003 the applicant sent written submissions to the Kurgan Regional Court.

10. In December 2003 the applicant received the text of the Presidium's decision on his application for supervisory review. The hearing had taken place on 20 October 2003. The court had reviewed the applicant's case and granted his application in part. It had reclassified the charges as simple kidnapping. The sentence, however, had remained unaffected.

B. Criminal proceedings on the charge of extortion

11. On 7 August 2001 the applicant was arrested, together with Mr T. and Mr Z., by officers of the Organised Crime Unit on suspicion of extortion.

12. On 10 August 2001 the applicant was formally charged and remanded in custody.

13. On 21 January 2002 the Kurgan Town Court of the Kurgan Region convicted the applicant and Mr Z. of extortion and sentenced the former to six years' imprisonment. The applicant appealed.

14. On 26 March 2002 the Kurgan Regional Court upheld the conviction on appeal.

C. Alleged ill-treatment and ensuing proceedings

15. According to the applicant, on 7 August 2001 during and after the arrest he was beaten up by the police officers.

16. On 8 August 2001 the applicant was placed in the temporary detention facility (*IIBC*) located within the police station. On admission he was examined by an officer on duty and a paramedic, who did not observe any injuries on his body. The applicant did not bring an oral or written complaint about the alleged beatings.

17. On 10 August 2001 the applicant was transferred to remand centre no. 43/1 of Kurgan. On arrival he was examined by a general practitioner who noted several bruises in the lumbar region measuring 1 by 1 cm and 3 by 2 cm. A relevant entry was made in the applicant's medical file.

18. It appears that on the same day the administration of the remand centre prepared a report concerning the applicant's injuries and forwarded all the relevant materials to the prosecutor's office for further inquiry. According to a certificate issued by the remand centre on 16 August 2007, the copies of those materials stored at the remand prison had been destroyed after the expiry of the time-limit for their storage on 20 January 2006 and 27 March 2007.

19. On 5 March 2002 the applicant complained to the Kurgan Regional Prosecutor that he had been beaten up by police officers on 7 August 2001.

20. On 27 March 2002 the deputy prosecutor of Kurgan issued a decision refusing to institute criminal proceedings into the applicant's allegations of ill-treatment. The prosecutor based his findings on the statements made by the alleged perpetrators, who denied the applicant's allegations, and the medical documents from the applicant's file. In particular the prosecutor stated as follows:

"The inquiry conducted did not confirm the [applicant's] allegations. The police officers Ch., M. and K. ... denied that they had put any pressure on [the applicant]. Upon arrival at [the temporary detention facility], he did not complain that he had been beaten up by the police officers... According to [the applicant's] medical file, upon his arrival at [the remand centre]... several bruises were noted in the lumbar spine area. However, according to the certificate, issued by the head of [the temporary detention facility], upon his placement [there] [the applicant] had been examined and questioned by an officer on duty as to whether he had any injuries. [The applicant] had not complained of his condition or had any visible injuries. Nor had the results of the applicant's examination by a paramedic on 8 August 2001 been any different. When transferred to [the remand centre], [the applicant] did not complain of his condition either. Accordingly, the injuries noted at [the remand centre] cannot have been caused by the [police officers] in the circumstances described by [the applicant]."

21. The applicant complained to a court, claiming that the scope of the prosecutor's inquiry had been insufficient because he had never been interviewed by a prosecutor with regard to his allegations of ill-treatment.

22. On 31 December 2002 the Kurgan Town Court upheld the prosecutor's decision, finding that the scope of the inquiry had been adequate given the lack of evidence supporting the applicant's allegation of ill-treatment. In particular, the court found as follows:

"The Kurgan prosecutor's office carried out a proper investigation into the allegations concerning the use of unlawful investigation techniques by the police officers. Messrs M., Ch., and K. were questioned. They explained that they had not put any physical or psychological pressure on [the applicant] during his arrest. [The applicant] did not confess to the crime. It is true that on [10] August 2001 after his transfer from [the temporary detention facility] to [the remand prison] bruises on the small of [the applicant's] back were detected. However, earlier, when [the applicant] had been brought to [the temporary detention facility], he had been examined and questioned by an officer on duty. At that time [the applicant] had no injuries and did not complain of the alleged ill-treatment or his condition. Having regard to those facts, the Kurgan prosecutor's office drew a justified conclusion that the [bruises] detected upon the applicant's arrival at [the remand prison] could not have been caused by the policemen in the circumstances described by [the applicant]. There are no other materials in the court's possession to prove that the policemen had committed any unlawful acts *vis-à-vis* [the applicant]."

23. On 1 July 2003 the Kurgan Regional Court dismissed the applicant's appeal against that decision.

II. RELEVANT DOMESTIC LAW

A. Supervisory-review proceedings

24. The parties to the criminal proceedings, including the defendant and his or her counsel and the prosecutor, may ask a superior court for supervisory review of judgments rendered by the courts of first or second levels of jurisdiction (Article 402 of the Code of the Criminal Procedure (the "CCrP")).

25. In the event that the court decides to open supervisory-review proceedings, it should notify the interested parties of the date, time and place of the hearing within 30 days. The parties to the proceedings should inform the court if they wish to participate in the hearing. The parties present at the hearing may make oral submissions to the court (Article 407 of the CCrP).

26. The court may uphold, amend or quash any of the earlier judgments on the matter, discontinue the proceedings or remit the matter for fresh consideration to a trial or appeal court (Article 408 of the CCrP). In particular, a judgment will be quashed if there is an inconsistency between the conclusions reached by the court in the judgment and the facts established (Articles 409 and 379 of the CCrP).

27. The court is not bound by the scope of the application for supervisory review and may consider the matter in its entirety. It may

commute the sentence or reclassify the offence as a less serious one (Article 409 of the CCrP). It cannot, however, increase the sentence or reclassify the charges as a more serious offence (Article 405 of the CCrP).

B. Investigation of criminal offences

28. In response to a complaint of a criminal offence, the investigator is under obligation to verify the complainant's allegations (Article 144 of the CCrP).

29. Should there be sufficient grounds to believe that a crime had been committed, the investigator initiates a criminal investigation (Article 145 of the CCrP).

30. The complainant may appeal against the investigator's refusal to open a criminal investigation to the investigator's superior, a prosecutor or a court (Article 148 of the CCrP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained that he had been beaten up by police officers on 7 August 2001. 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.”

32. The Government denied the applicant's allegations. They submitted that he had not been subjected to any form of ill-treatment while in custody. They referred to the documents indicating that the applicant had had a medical examination the day after the alleged incident and that no injuries had been detected. The bruises the applicant mentioned had been documented only on 10 August 2001 and a proper investigation had been instituted to follow up on the applicant's complaint of 5 March 2002. The prosecutor and then the courts had dismissed the applicant's allegations as unsupported by evidence and found no case to answer against the alleged perpetrators. The Government opined that, even though it was impossible to determine the origin of the bruises, it was certain that they came into being later than 8 August 2008. Given that the applicant had bruises in the lumbar spine area, they had probably been caused by an accidental fall or a bump into a blunt object. In any event, they reasoned that the injuries the applicant had sustained were not sufficiently serious to attain “a minimum level of severity”. Nor could they amount to “inhuman or degrading treatment”.

33. The applicant maintained his claims.

A. Admissibility

34. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

1. Alleged ill-treatment

35. The Court has held on many occasions that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336; see also, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch*, cited above, § 34, and *Salman*, cited above, § 100).

36. Turning to the circumstances of the instant case, the Court observes that the parties did not deny the fact that the applicant did sustain the injuries while he was in custody. Accordingly, the Government were under an obligation to provide a plausible explanation of how those injuries were caused.

37. The Court notes that the Government did no more than suggest that the applicant could have hurt himself after having fallen over or having bumped into a blunt object. In the absence of any evidentiary basis for this conjecture, the Court considers that the Government failed to rebut the presumption of their responsibility for the injuries inflicted on the applicant

while in charge of the State. Accordingly, the responsibility for the ill-treatment lay with the domestic authorities.

38. The Court further reiterates that 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 in principle 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).

39. The Court considers that the degree of bruising found by the doctor who examined the applicant and the subsequent decision of the remand centre administration to report those injuries to the prosecutor's office (see paragraph 17) indicate that his injuries were sufficiently serious to amount to ill-treatment within the scope of Article 3 (cf. *Assenov*, cited above, § 95).

40. It follows that there has been a violation of Article 3 of the Convention under its substantive limb.

2. Adequacy of the investigation

41. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

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

43. An investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their

decisions (see *Assenov*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq.; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). 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.

44. Furthermore, the investigation must be expedient. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV). Consideration was given to the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, *Reports* 1998-IV, § 67), and the length of time taken to complete the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

45. Turning to the facts of the present case, the Court observes that the authorities did carry out an inquiry into the applicant's allegations. It is not convinced, however, that the inquiry was sufficiently prompt, thorough and effective to meet the requirements of Article 3.

46. The Court notes that the materials submitted by the Government disclose a number of significant omissions in the way the inquiry was conducted.

47. It appears that the prosecutor's office was duly notified by the administration of the remand prison of the seriousness of the applicant's injuries (see paragraph 18). However, the prosecutor took no action until the applicant lodged a formal complaint some seven months later.

48. As regards the scope of the inquiry, the Court notes that the prosecutor confined himself to the questioning of the police officers involved. At no point did he talk to the applicant or organise a confrontation between him and the police officers. Nor did the prosecutor examine Mr T. and Mr Z., who had been arrested together with the applicant and could undoubtedly have contributed to establishment of the truth.

49. The Court further observes that no attempt was made to resolve the inconsistency between the applicant's allegations and the testimonies of the police officers on the basis of the medical data. The applicant was subjected only to a brief visual examination upon arrival at the remand centre. No expert opinion has been commissioned as to the possibility of the bruises having been caused by the alleged ill-treatment or to rule out such a possibility.

50. The Court finds it particularly striking that the authorities did not make any effort to establish the cause of the applicant's injuries.

51. Lastly, the Court observes that the subsequent judicial proceedings did not remedy the deficiencies of the prosecutor's inquiry. The courts merely upheld the prosecutor's findings without even ensuring the applicant's participation in the proceedings.

52. Having regard to the above, the Court finds that the authorities failed to carry out an effective investigation into the applicant's allegations of ill-treatment. Accordingly there has been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

53. The applicant complained under Article 6 that, owing to belated notification, he was denied the opportunity to attend the supervisory-review hearing before the Presidium of the Kurgan Regional Court and his submissions were disregarded. The relevant parts of Article 6 read as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by a ... tribunal established by law...

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

...

(c) to defend himself in person ...”

54. The Government submitted that, when lodging the application for supervisory review of his case, the applicant did not ask the court to ensure his presence at the hearing. They further conceded that, due to postal delays, the applicant belatedly received the notification of the supervisory-review hearing and was prevented from applying for participation once the decision to review his case was made. The Government also noted that, firstly, the State was not required to provide a perfectly functioning postal system (see *Zagorodnikov v. Russia*, no. 66941/01, § 31, 7 June 2007, and, *mutatis mutandis*, *Foley v. the United Kingdom* (dec.), no. 39197/98, 11 September 2001) and that, in any event, the applicant failed to exhaust the domestic remedies available to him. He did not make a supervisory-review complaint against the judgment of 20 October 2003.

55. The applicant maintained his complaint.

A. Admissibility

56. The Court notes the Government's argument that the applicant has failed to exhaust domestic remedies by failing to apply for supervisory review of the judgment rendered by the Presidium of the Kurgan Regional

Court on 20 October 2003. In this connection, the Court reiterates that an application for supervisory review is not a remedy to be exhausted under Article 35 § 1 of the Convention (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, 29 January 2004). Therefore, the Government's objection as to the non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

1. General principles

58. The general principles concerning the right of the accused to participate in the hearing and waiver of the right to appear are well established in the Court's case-law and have been summarised as follows (see *Hermi v. Italy* [GC], no. 18114/02, ECHR 2006-...):

“58. In the interests of a fair and just criminal process it is of capital importance that the accused should appear at his trial (see *Lala v. the Netherlands*, judgment of 22 September 1994, Series A no. 297-A, p. 13, § 33; *Poitrimol v. France*, judgment of 23 November 1993, Series A no. 277-A, p. 15, § 35; and *De Lorenzo v. Italy* (dec.), no. 69264/01, 12 February 2004), and the duty to guarantee the right of a criminal defendant to be present in the courtroom – either during the original proceedings or in a retrial – ranks as one of the essential requirements of Article 6 (see *Stoichkov v. Bulgaria*, no. 9808/02, § 56, 24 March 2005)...

60. However, the personal attendance of the defendant does not take on the same crucial significance for an appeal hearing as it does for the trial hearing (see *Kamasinski*, cited above, p. 44, § 106)...

62. ... even where the court of appeal has jurisdiction to review the case both as to facts and as to law, Article 6 does not always require a right to a public hearing, still less a right to appear in person (see *Fejde v. Sweden*, judgment of 29 October 1991, Series A no. 212-C, p. 68, § 31). In order to decide this question, regard must be had, among other considerations, to the specific features of the proceedings in question and to the manner in which the applicant's interests were actually presented and protected before the appellate court, particularly in the light of the nature of the issues to be decided by it (see *Helmers v. Sweden*, judgment of 29 October 1991, Series A no. 212-A, p. 15, §§ 31-32) and of their importance to the appellant (see *Kremzow*, cited above, p. 43, § 59; *Kamasinski*, cited above, pp. 44-45, § 106 *in fine*; and *Ekbani*, cited above, p. 13, §§ 27-28)...

64. However, where an appellate court has to examine a case as to the facts and the law and make a full assessment of the issue of guilt or innocence, it cannot determine the issue without a direct assessment of the evidence given in person by the accused for the purpose of proving that he did not commit the act allegedly constituting a criminal offence (see *Dondarini v. San Marino*, no. 50545/99, § 27, 6 July 2004)...

73. 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, the entitlement to the

guarantees of a fair trial (see *Kwiatkowska v. Italy* (dec.), no. 52868/99, 30 November 2000). However, such a waiver must, if it is to be effective for Convention purposes, be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance (see *Poitrimol*, cited above, pp. 13-14, § 31)...

76. In view of the prominent place held in a democratic society by the right to a fair trial (see, among many other authorities, *Delcourt v. Belgium*, judgment of 17 January 1970, Series A no. 11, pp. 14-15, § 25 *in fine*), Article 6 of the Convention imposes on every national court an obligation to check whether the defendant has had the opportunity to apprise himself of the date of the hearing and the steps to be taken in order to take part where... this is disputed on a ground that does not immediately appear to be manifestly devoid of merit (see, *mutatis mutandis*, *Somogyi v. Italy*, no. 67972/01, § 72, ECHR 2004-IV)..."

2. Application of the above principles to the instant case

59. The Court observes at the outset that on 20 October 2003 the Presidium of the Kurgan Regional Court re-opened the applicant's case, reviewed it and reclassified the charges against him. The Court notes, accordingly, that the supervisory-review proceedings in the instant case concerned the determination of a criminal charge against the applicant and finds the above principles applicable (see, among recent authorities, *Alekseyenko v. Russia*, no. 74266/01, § 55-57, 8 January 2009).

60. In his application for supervisory review, the applicant contested his conviction on factual and legal grounds. He claimed, *inter alia*, that he should have been exonerated from the kidnapping charges. Accordingly, the Presidium of the Kurgan Regional Court had to make an assessment of the question of the applicant's guilt or innocence. The Court considers that that question could not, as a matter of a fair trial, have been properly determined without a direct assessment of the evidence given in person by the applicant, who claimed that he had liberated the kidnapped victim and was entitled to a non-guilty verdict on that account.

61. As regards the Government's contention that the applicant waived his right to appear before the court, the Court cannot accept it. The applicant's failure to ask the supervisory-review court to ensure his presence at the time when he lodged his application could not have been regarded by the domestic authorities as an unequivocal waiver of his right. Pursuant to the Russian Code of the Criminal Procedure, it was first incumbent on the supervisory-review court to inform the applicant that his request for supervisory review had been granted and communicate to him the time, date and place of the scheduled hearing (see paragraph 25 above). The Court notes that the Presidium of the Kurgan Regional Court did send such notice to the applicant. However, the applicant received it only after the supervisory-review hearing had already taken place.

62. In this connection, the Court reiterates that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (see, among other authorities, *Airey v. Ireland*,

9 October 1979, § 24, Series A no. 32). It considers that the right to a hearing would be devoid of substance if a party to the case were not apprised of it in such a way as to have an opportunity to attend it, should he or she decide to exercise the right to appear established in the domestic law.

63. Lastly, it does not follow from the judgment of 20 October 2003 that the Presidium of the Kurgan Regional Court even checked whether the applicant had had an opportunity to apprise himself of the hearing and the steps to be taken in order to participate in it.

64. Having regard to the entirety of the proceedings before the supervisory-review court, its role, and the nature of the issues determined by it, the Court reaches the conclusion that there were no special features to justify the court's failure to ensure the applicant's participation in the hearing. Nor can it be said that in the present case the applicant has waived his right to appear before the supervisory-review court. Accordingly, there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

65. Lastly, the applicant complained under Article 5 of the Convention of the unlawfulness of his arrest on 7 August 2001. He complained under Articles 6 and 13 of the Convention that the proceedings on the charge of extortion, which ended with his conviction on 26 March 2002, were not conducted in accordance with the applicable laws, that the courts assessed evidence in an arbitrary manner and that the appeal court failed to rectify the errors allegedly committed by the trial court.

66. However, having regard to all the material in its possession, the Court finds that the events complained of do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded pursuant to Articles 35 § 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed 2,000,000 euros (EUR) in respect of non-pecuniary damage.

69. The Government considered the applicant's claim excessive.

70. The Court considers that the applicant must have suffered distress and frustration as a result of the police brutality, lack of effective investigation in response to his complaint about it and the State authorities' failure to ensure his participation before the supervisory-review court. However, the Court accepts the Government's argument that the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

71. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

72. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the applicant's ill-treatment by the police and the effectiveness of the ensuing investigation and the applicant's absence from the supervisory-review hearing admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's allegations of ill-treatment by the police;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to carry out an effective and thorough investigation into the applicant's allegations of ill-treatment by the police;
4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

5. *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 Russian roubles at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President