



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

THIRD SECTION

CASE OF LOPATA v. RUSSIA

(Application no. 72250/01)

JUDGMENT

STRASBOURG

13 July 2010

FINAL

13/10/2010

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

In the case of Lopata v. Russia,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Anatoly Kovler,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 22 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 72250/01) 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 Aleksandr Konstantinovich Lopata (“the applicant”), on 26 March 2001.

2. The applicant was represented by Ms D. Vedernikova and Mr P. Leach, lawyers with the European Human Rights Advocacy Centre (EHRAC). The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been subjected to torture and convicted on the basis of a forced confession, that the investigation of the torture had not been effective and that the authorities had interfered with his right of individual petition.

4. By a decision of 3 May 2005, the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and resided before his arrest in the village of Akhunovo, in the Bashkortostan Republic.

A. The applicant's arrest and placement in custody

1. The applicant's alleged 14-day detention in August 2000

7. On 3 August 2000 the applicant was arrested along with several other village residents and placed in the temporary detention centre of the Uchaly police station (ИВС Учалинского ГРОВД, “the police station”). He was allegedly beaten and pressurised to confess to the murder of a certain Mr D. in the village of Akhunovo. The applicant remained in detention for fourteen days; the legal basis for his detention remains unclear. After fourteen days of detention he was released.

2. The applicant's arrest in September 2000

8. On 5 September 2000 the applicant was again arrested and taken to the police station. On the same day he was questioned by Kh.A., an investigator at the Uchaly district prosecutor's office (“the district prosecutor's office”), V.G., a senior operational officer of the Ministry of the Interior of the Bashkortostan Republic, Ya.M., the deputy head of the police station, and I.M., head of the criminal police. According to the applicant, throughout the interview they put pressure on him to confess to D.'s murder. In particular, V.G. explained to him in detail why he had killed D, saying that the applicant had committed the crime because he had found his daughter and D. making love. The applicant denied having murdered D.

9. According to the Government, on 5 September 2000 Kh.A. formally explained to the applicant the rights of an accused, including the right to free legal assistance, and assigned a certain Ur. to represent him. A copy of the related record produced by the Government is signed by Kh.A. and does not bear the signature of either the applicant or Ur.

10. On 6 September 2000 the applicant retained private defence counsel, A.A., to represent him. It appears that on that day and on the following day she visited him in the police station.

11. On 8 September 2000 Kh.A., who was in charge of the investigation into D.'s murder, authorised the applicant's detention on remand. The applicant was accused of murdering D., a friend of the applicant's daughter, on the night of 29-30 July 2000.

B. Alleged ill-treatment of the applicant

1. The applicant's description

12. In a six-page typed and undated attachment to the supervisory review application lodged with the Supreme Court of the Russian Federation in April 2001, the applicant presented the following description of the ill-treatment to which he had allegedly been subjected on 8-9 September 2000. His submissions may be summarised as follows.

13. At about 3 p.m. on 8 September 2000 the applicant was brought to an office in the Uchaly police station where V.G. and Ya.M. were already present. Kh.A. was not there. V.G. and Ya.M. pressurised the applicant to write a voluntary "confession statement" (*явка с повинной*) and promised in exchange to ask the investigator to reclassify the applicant's offence as involuntary manslaughter in a fit of passion. The applicant did not admit to being guilty and refused to make any statements to that effect.

14. Ya.M. and V.G. started beating the applicant. They hit his head against the wall, twisted his arms, punched his neck and kicked him in the groin. The beatings alternated with admonitions to him to confess. On three occasions the applicant was placed with his hands against the wall, legs wide apart, and V.G. hit his ankles so that the applicant's legs slid apart and the applicant fell. The applicant refused to confess and told the police officers that he would not tell them anything in the absence of his lawyer, which triggered a new series of beatings. The applicant was then taken back to his cell for a respite.

15. At about 9 p.m. R.Kh., deputy head of the criminal police, took the applicant from his cell to I.M.'s office on the second floor. Officers Ya.M. and V.G. were in the room and R.Kh. stayed outside. The applicant was shown a confession statement written by someone else and was ordered to confess too. After he refused, police officers switched on the television and started punching him in the face and kicking his ankles. This lasted for approximately twenty minutes, then V.G., using the remote control unit, set the television to switch on in one hour; this signalled an hour-long pause in the beatings. The applicant was handcuffed and taken back to the cell by R.Kh. who had waited outside.

16. An hour later the applicant was taken back to the office. This time I.M. joined V.G. and I.M., while R.Kh. stayed outside. The applicant refused to write a confession statement. The officers then turned the applicant to face the wall, took a truncheon out of a cupboard, pulled the applicant's trousers down and threatened to rape the applicant with the truncheon. Once the applicant lowered his arms to pull his trousers up, he received a series of truncheon blows to his head, back and legs. He fell and broke his lip against the cupboard. After a series of punches and kicks the

officers set the timer for one hour and I.M. placed the applicant in the cell, having hit his head against the cell door.

17. When the applicant was brought back again, the officers were drinking beer and offered one to the applicant. The applicant had a drink and then he was sent back to the cell to “think about [his] confession”.

18. Later on, the applicant was taken out of the cell several times and led to different offices where Ya.M., I.M., V.G. and R.Kh., taking turns, tortured him in various ways. The applicant's handcuffed hands were twisted so that he strangled himself, and he received strong blows to his left ear. In particular, V.G. put his hand on the applicant's right ear and with another hand started punching him, with force, on the left ear. After the third punch the applicant felt liquid flowing out of his left ear.

19. At about 5 a.m. on 9 September 2000 police officers escorted the applicant to the investigator's office in the centre and told him to write down what he had been doing on 29 July 2000. It appears that the applicant did something wrong and the officers stuffed the “spoiled” sheet of paper in his mouth and twisted his limbs in all directions.

20. Finally, the applicant gave in and wrote a confession statement along the lines described to him by V.G. during the first interrogation on 5 September 2000. The officers read the statement and continued to beat him to get a more detailed account. The applicant wrote that at about 1.30 a.m. on 30 July 2000 he had gone out to look for his daughter and discovered her having sex with a man, his daughter lying on the ground under the man. The applicant had taken a log, hit the man on the head and had then sent his daughter back home. The applicant had not been able to hide the body immediately because his scooter had been broken.

21. On 9 September 2000 at about 6.30 a.m. the applicant was escorted to the cell. On the same day at 11 a.m. Ya.M. and V.G. woke the applicant up and told him that he would be transported to a detention facility in Ufa. He objected to the trip; his right ear was blocked and his left ear oozed blood and other fluids. At about 4 p.m. Kh.A. called the applicant and asked him whether he was ready to testify. The applicant refused to speak without his counsel, A.A. The investigator told the applicant that it was complicated to find the applicant's lawyer because it was Saturday. The applicant was escorted back to the cell.

22. On 10 September 2000 the applicant stayed in the cell.

23. On 11 September 2000 I.M., V.G. and the director of the temporary detention centre took the applicant in a private car, a light coloured Zhiguli, to remand centre SI-1/2 of Beloretsk. The applicant was not examined by a medical officer and was placed directly in cell no. 13k, from which he was transferred to cell no. 43k. He remained there for three days. Three days later he was placed in cell no. 30k. According to the applicant, he was taken to the remand centre in a private car in order to hide his injuries.

24. The applicant's description also gave further details on the layout of the rooms, doors, furniture and objects in the police station where the ill-treatment allegedly took place.

25. In his application form to the Court of 8 June 2001 the applicant gave a similar, albeit more concise, description of the treatment allegedly inflicted on him in the police station.

2. Relevant medical documents

(a) The applicant's medical record

26. The copy of the applicant's medical record produced by the Government reads, in so far as relevant:

“...11 September [2000]. Complaints about pain in the left acoustic meatus...

Cutaneous coverings: clean.

Underwent delousing.

State [of health] satisfactory.

Ds[diagnosis]: acute chronic otitis on the left [side] [*обострение хронического отита слева*]...

...

25 October 2001. ...The left ear does not hear from a distance of 5 m[etres].

Ds: deafness in the left ear.”

(b) Forensic medical report no. 1060 of 18 September 2000

27. According to forensic report no. 1060 dated 18 September 2000 and issued following investigator Kh.A.'s request for the applicant's medical examination (see below), on 14 September 2000 expert G. examined the applicant in the presence of A.M. with a view to establishing whether the applicant had any injuries. The report, in its relevant part, reads:

“...present during the examination: convoy [officer] A.M. ..

Examination started 14 September 2000.

Examination finished 18 September 2000.

...

Circumstances of the case: ...from the decision ordering the examination it follows that [the applicant] submitted that police officers had applied physical force to him.

Complaints: about pain in the left ear.

Objectively: at the time of examination no bodily injuries established....

Conclusions

At the time of examination no bodily injuries were established, thus it is impossible to comment on the degree of damage to health...”

(c) Documents concerning the applicant's treatment in the Uchaly town hospital

28. On 21 September 2000 the applicant's lawyer complained to the district prosecutor's office that the applicant had not received treatment for pain in his left ear. On the following day the district prosecutor ordered the applicant's immediate transfer to the Uchaly town hospital for examination by an otolaryngologist and eventual treatment.

29. On 26 September 2000 the applicant's lawyer requested the town hospital to provide her with all relevant information and medical records in connection with the treatment of the applicant's allegedly broken eardrum, with a view to submitting those documents to the court. In particular, she asked the hospital to indicate the exact diagnosis, the treatment received and the consequences of the disease for the applicant's health.

30. In an undated reply the hospital's head doctor informed the applicant's lawyer that the applicant had been examined by an otolaryngologist who had diagnosed him with acute suppurative left-side “tubotympanitis” [*туботимпанит*] and otitis media. The letter further stated that in order to provide further information, in particular, on the duration of the treatment and the consequences of the diseases for the applicant's health, he needed to be examined by the otolaryngologist in person.

(d) Medical certificate of the Akhunovo village hospital

31. According to a medical certificate of 7 February 2005 from the Akhunovo village hospital, the applicant did not apply to the hospital for medical assistance in the period from 1997 to 2000.

(e) Certificate of the head of colony UYe-394/3

32. A certificate from the head of colony UYe-394/3 Mr M., dated 8 January 2004 and compiled on the basis of the applicant's medical file, in so far as relevant, reads:

“Upon admission to facility [SI-2 in Beloretsk] on 11 September 2000 [the applicant] was examined by the duty medical officer, Sh., to whom the former complained about pain in his left ear; according to a record in the [applicant's] medical file, he was diagnosed with acute chronic otitis on the left [side]...; at the time of the examination cutaneous covering were clean and the state of health satisfactory.

[The applicant's name] does not appear at the relevant period in the medical records, the log of injuries and the log on accidents and crimes.”

3. Statements by witnesses

(a) Statements by the applicant's cellmates in SI-1/2 in Beloretsk

33. The applicant submitted a written statement by I.R., dated 21 April 2001, which reads:

“...I, I.R[.], was held in SI-1/2 under investigation, when on 11 September 2000 [the applicant] was placed in my cell. On his face were visible cut lips and a bruise under the left eye; the left ear was swollen and oozed blood. I asked [the applicant] what had happened to him. He answered that officers of the Uchaly police station had obtained his confession in that way. [The applicant] undressed and showed bruises on his body. There were many bruises on his body, on the front and back. In sum, he had been beaten up very severely. From a conversation with [the applicant] I understood that he heard almost nothing because his left ear had been damaged.

Until this moment nobody asked me about those events. However, since [the applicant] has asked me now, I consider it my duty to confirm that [the applicant] had traces of beatings which were visible to the naked eye. I can confirm this statement afterwards.

Written in my own hand.

[Signature]”

34. A written statement of 24 April 2001 by V.Z., addressed to the Supreme Court of the Russian Federation and produced by the applicant, reads:

“...In September 2000 I, V.Z.[.], was held under investigation in SI-1/2 in cell no. 13. I remember that on 11 September 2000 [the applicant] was put in our cell. He had been beaten up, which was visible to the naked eye. R., who was also present, asked him what had occurred to him. [The applicant] answered that this was the way confessions were obtained in the Uchaly police station. His lip was cut, his left ear oozed matter, he had a bruise under the left eye. Then he showed bruises on his body and his legs.

Written in my own hand.

[Signature].”

(b) Submissions by the applicant's lawyer A.A.

35. In her complaint to the district prosecutor's office about the applicant's alleged ill-treatment, dated 14 September 2000 (see paragraph 39 below), A.A. submitted:

“...On 12 September 2000 ... I ... went to remand centre SI-1/2 in Beloretsk and saw injuries and traces of torture on [the applicant].

Bodily injuries: abrasions between the right eye and the ear, below the lower lip on the right; left ear oozes liquid with blood; a bruise of 15-17×8-10 cm in the area of the solar plexus; bruising and swelling to the left foot; bloody abrasion at the right knee; marks from handcuffs; a bruise underneath the right eye; a lip cut/split on the inside...”

36. In her complaint to the Uchalinskiy Town Court dated 17 September 2000 (see 40 below) the applicant's lawyer mentioned the following injuries:

“...on 12 September I saw abrasions on the [applicant's] face, a cut inside lip, a bruise under the right eye, bruising and swelling on the left foot, a huge bruise in the abdomen area, a bruise on the back in the kidney area, a bloody abrasion on the right knee; he also complained that his eardrum had been broken, that blood with matter and liquid is flowing constantly, and that all muscles, ligaments and bones hurt because he had been subjected to the so-called “lastochka” (“swallow”) treatment – having placed him on his abdomen, [they] pulled his hands and legs towards the spine.”

(c) Statement by the applicant's brother

37. According to a written statement by the applicant's brother, in June 2004 he visited the applicant for two days in colony UYe-393/4 in Ufa. The applicant complained to him about recurring pain in his right collarbone, deafness in the left ear, and dull pain in the kidney area. The applicant associated those health problems with his beatings at the Uchaly police station in September 2000. According to the applicant's brother, he saw a bump of a size of a hazelnut on the applicant's collarbone. The collarbone frequently ached at night and when the weather changed. The applicant could not hear with his left ear and had recurrent purulent discharge from it. He also complained about recurring pain in his kidneys and, according to the applicant's brother, went to the toilet frequently.

C. Investigation of the alleged ill-treatment

1. Investigation by the district prosecutor's office

38. On 13 September 2000 the applicant, questioned by Kh.A. in the presence of his lawyer, stated that he had not murdered D. and that his confession had been obtained from him under duress by officer Ya.M., “a police officer from Ufa”, “a police major” and “a chubby police officer”.

39. On 14 September 2000 the applicant's lawyer complained to the district prosecutor's office, requesting that a criminal case for torture be opened against I.M., Ya.M. and two other unidentified police officers. She indicated that on seeing the applicant on 12 September 2000 she had noticed numerous injuries on his body and described them in detail (see paragraph 36 above). She also submitted that the applicant had been tortured by

pulling his hands and feet back towards the spine. She stressed that the police officers had intentionally taken the applicant to remand prison SI-2 in Beloretsk on 11 September 2000 to hide his injuries and to hide her client from her and that the investigator in the murder case had colluded with the perpetrators in hindering her access to her client by pretending that on that day the applicant had been at an “on-site verification of his statements” in order to make her believe that he was still in Uchaly and not in Beloretsk. Lastly, she requested a medical examination of the applicant.

40. On 17 September 2000 the applicant's lawyer asked the Uchalinskiy District Court (“the District Court”) to release the applicant. In her complaint she also referred to his alleged ill-treatment in police custody, reiterating in detail the injuries she had noticed on him on 12 September 2000. She emphasised that the police officers had hidden her client from her and on 11 September 2000 had taken him to SI-2 in Beloretsk where no medical officer had examined him upon admission. She submitted that although on 15 September 2000 prosecutor G. had ordered the applicant's medical examination, she had serious doubts about its outcome because forensic expert F. was on holiday and thus the examination would be carried out in Beloretsk, whilst police officers from the Uchaly police station had already visited the applicant in the remand prison in Beloretsk and had threatened him with “grave complications” if he “misbehaved”.

41. On an unspecified date the district prosecutor's office launched an inquiry into the applicant's allegations of ill-treatment. In the course of the inquiry the district prosecutor solicited written explanations from officers I.M., Ya.M., R.Kh. and V.G.

42. In a written explanation to the district prosecutor, dated 21 September 2000, Ya.M. submitted that on 9 September 2000 he and “other officers” had conducted “a conversation” with the applicant at the temporary detention centre. During the conversation the applicant wrote a confession, describing in detail the circumstances of the murder committed by him.

43. In his written statement dated 22 September 2000 I.M. submitted that on 9 September 2000 he and other officers had “a conversation” with the applicant in the isolation ward of the police station, in the course of which the applicant had voluntarily written a confession. According to I.M., the police officers had not gone to the isolation ward on 8 September 2000 and had not “worked with the applicant” on that date.

44. In an undated written statement to the district prosecutor V.G. submitted that on 9 September 2000, during a conversation with the applicant in the isolation ward, the latter had written a confession after V.G. and other police officers had presented him with “certain information”.

45. In his written explanation dated 23 September 2000 R.Kh. submitted that he had not “worked with the applicant” and had not taken a confession statement from him. He stated that he had had dealings with the applicant

earlier, when the latter had been arrested in connection with an administrative offence.

46. All of the police officers denied having used “unlawful methods” or torture against the applicant and claimed that his allegations had been libellous.

47. By a decision of 24 September 2000 the deputy district prosecutor refused to institute criminal proceedings against the police officers who had allegedly ill-treated the applicant. The decision read as follows:

“On 14 September 2000 lawyer A.A. complained to the Uchaly district prosecutor's office that from 3 p.m. on 8 September 2000 until 7 a.m. on 9 September 2000 her client had been beaten up by police officers in the premises of the Uchaly police station.

The inquiry established that [the applicant] had, indeed, been held in the Uchaly police station as an arrestee from 8 to 9 September 2000. However, it has not been established that physical violence was applied to him. Despite [the applicant's] submission that police officers had severely beaten him on practically all parts of his body, the officers questioned [in that connection] submitted that they had not applied any violence to him; moreover, according to the forensic expert's report of 14 September 2000, no injuries had been found on [the applicant].

Thus, [the applicant's] allegations about his beating by police officers raise serious doubts as to their truthfulness.”

48. Lastly, it was stated that the decision was to be notified to the applicant and that he was to be informed of his right to appeal against it to a higher-ranking prosecutor or a district court.

49. By a letter of 4 October 2000 the deputy district prosecutor replied to the applicant's lawyer that he had examined her complaint about the applicant's alleged ill-treatment and that on 24 September 2000 he had refused to institute criminal proceedings in that connection. The letter further stated that it was open to the applicant to challenge the refusal before a higher-ranking prosecutor or a district court.

2. Further complaints about the ill-treatment

50. On an unspecified date the applicant's lawyer lodged with prosecutor of the Bashkortostan Republic a further complaint about the applicant's ill-treatment and the continuing threats to him by officers V.G. and I.M.

51. On 3 October 2000 the applicant's lawyer complained to the prosecutor of the Bashkortostan Republic about various violations of the applicant's rights at the pre-trial stage, reiterating the ill-treatment complaint. She further claimed that the forensic expert who had failed to discover any physical injuries on the applicant's body during the examination on 14-18 September 2000 had committed a criminal offence because, apart from the obviously visible physical injuries, the applicant's kidneys and bladder had also been damaged during the beatings. Lastly, she

mentioned that although she had asked the district prosecutor for a correct medical examination of the applicant, she had not succeeded in obtaining this.

D. Alleged restriction on the applicant's communication with counsel

52. According to the applicant's counsel, on 8 September 2000 she obtained permission from the head of the Uchaly police station to visit the applicant. However, after a phone call by A.M., she was refused access to her client. On the same day she complained about that situation to the district prosecutor's office.

53. Following A.A.'s complaint, the district prosecutor's office questioned convoy officer Zh.G. and officer Ya.M. The former submitted in an undated written explanation that at about 11.30 a.m. on 8 September 2000 A.A. had come to the temporary detention centre and picked a permission form to visit the applicant. The applicant being with investigator Kh.A., Zh.G. and other convoy officers refused to allow her to visit her client without the investigator's permission. A.A. then went to see the investigator and did not come back. In his undated written explanation Ya.M. denied having refused the applicant's lawyer access to her client and submitted that since the applicant was under the district prosecutor's office responsibility, his lawyer should have obtained Kh.A.'s permission to visit her client.

54. On 25 September 2000 the deputy district prosecutor responded to the applicant's lawyer, stating that he had examined the matter and that no irregularities had been observed.

55. In her complaint of 3 October 2000 to the prosecutor of the Bashkortostan Republic the applicant's lawyer claimed that the hindrance of her visit to the applicant had breached his defence rights. In particular, she submitted as follows:

“... On 8 September [2000] I personally went to the prosecutor's office to find investigator Kh.A., because I was not allowed to visit [the applicant] without his permission.

The prosecutor exclaimed that he himself was looking for Kh.A... I told [the prosecutor] that I was not allowed to see my client in the temporary detention centre but no reaction followed. Moreover, the deputy prosecutor who received my related complaint on the same day disregarded it and reacted to it only on 25 September 2000. [In his reply] it is alleged that I went to the temporary detention centre at 11 a.m. and then left. However, I have a record to the effect that head of the police authorised me to visit my client; at the same time, while I was already in the temporary detention centre, [convoy officers] refused to escort [the applicant] to me, referring to the lack of permission from investigator Kh.A. However, there is a record that the investigator had a “conversation” with [the applicant] from 4 to 9 p.m. on that day. During that period, on the night from 8 to 9 September, from 3 to 7 a.m., [the applicant] was severely beaten up by officers Ya.M., I.M., R.Kh. and V.G., an officer of the Ministry

of the Interior of Bashkortostan, the latter having applied the most sophisticated methods”.

56. There is no indication that the applicant's lawyer received any reply to her complaint.

E. The applicant's trial

1. Trial

57. On an unspecified date the applicant's case was sent for trial to the Uchalinskiy District Court of the Bashkortostan Republic (“the District Court”).

58. According to the hearing transcript, at the first hearing on 4 January 2001 the applicant's lawyer complained that the applicant's confession had been obtained under duress. She further averred that she had been refused access to her client on 8 September 2000 and that his confession had been obtained in her absence. She requested the court, among other things, to obtain from the prosecutor's office the case file concerning the inquiry into the applicant's alleged ill-treatment; to question the police officers allegedly involved in the applicant's beatings and the expert who had examined the him on 14 September 2000, arguing that it had hardly been possible that he had found no traces of ill-treatment whereas she had seen them on the applicant; to obtain from the police station the detainees' interrogation log; to establish how many times the applicant had been brought for questioning from his cell on 8-9 September 2000, and to obtain from remand centre SI-1/2 documents concerning the applicant's medical examination upon admission there. The court granted the request in respect of the inquiry file, the questioning of the police officers and the interrogation log and dismissed the remainder.

59. At trial the applicant pleaded not guilty. He denied having murdered D. and claimed that his confession statement had been given as a result of ill-treatment. He submitted that from 3 p.m. on 8 September 2000 to 7 a.m. on 9 September 2000 officers I.M., Ya.M. and “a police officer from Ufa” had beaten him up and had stuffed his mouth with paper so that his screaming would not be heard. On 11 September 2000 he had been brought to remand prison SI-2 in Beloretsk where he had not been examined by a medical officer. On 14 September 2000 the applicant was brought for a medical examination but the expert had compiled his report on the basis of written documents, without examining him.

60. The applicant's underage daughter also revoked her statements given on 5 September 2000 in the presence of M., a child-protection inspector of the Uchaly education department. On that day she had testified that on the night of 29 July 2000 they had been sitting together with D. on a beam. She

had been sitting on his nap and they were having sex. When her father had suddenly appeared, she had pretended that she had been simply sitting near D. Having seen her, her father had chased her home and she left. On the following day her father had been nervous and mentioned to her mother that apparently a corpse had been discovered. At trial M. testified before the court that the applicant's daughter had given her testimony voluntarily, without any pressure from the investigator. Following a court-ordered handwriting examination, the expert confirmed that the signature on the applicant's daughter's interview transcripts was hers.

61. The court heard thirty-one persons. Witness N., who gave a statement opposing the prosecution's version of the events, in that she stated that she had seen a private car near the crime scene on the night of the murder, claimed that a “police officer from Ufa” had threatened that if she gave statements exculpating the applicant, she would be thrown in jail. Witness Kh., who claimed to have seen a group of persons at the crime scene on the night of the murder, throwing something on the ground, and a car parked nearby, submitted that she had been summoned to the police station and that a certain officer S. asked her whether the applicant's wife had bribed her for her deposition. Kh. also claimed that she had been offered money if she was silent about what she had seen on the night of the murder. Officer Z. confirmed that on 1 August 2000, that is on the day after the discovery of D.'s corpse, the crime scene had been cleaned on the order of the village administration.

62. The court interviewed officers I.M., R.Kh. and V.G. Officer I.M. stated that on 9 September 2000 he had been on leave and had not been present during the applicant's questioning. V.G. stated as follows:

“...I was not present when [the applicant] was questioned; I only joined the others when they were questioning him...

...

I saw [the applicant]; talked to him about D.'s murder...

...

I don't remember whether I visited him in the temporary detention centre. Probably, I did visit him and talk to him...”

63. It appears that R.Kh. did not deny having questioned the applicant and that the court did not question Ya.M. as a witness. All of the police officers flatly denied having used any “unlawful methods” on the applicant.

64. In her final statement the applicant's lawyer drew the court's attention to various discrepancies in the prosecution case. She also stressed that the police officers accused by the applicant of ill-treatment had lied: whilst in court they had claimed that on 9 September 2000 they had not interviewed the applicant and that there were no records in the relevant logs

about them taking him from his cell for questioning, yet in their statements in the course of the prosecutor's inquiry they had expressly submitted that they had talked to the applicant on 9 September 2000 and that he had confessed to them on that day. She stated that the applicant had not been examined by a medical officer on his transfer to remand prison SI-2 in Beloretsk, although he had complained about pain in his ear and had had bruises on his face. Furthermore, investigator Kh.A. and expert G., who had examined the applicant, had previously worked together in Beloretsk and were friends; consequently, despite the fact that the latter had seen the injuries, he had compiled his report as indicated to him by Kh.A.

2. Conviction at first instance

65. By a judgment of 15 January 2001 the District Court found the applicant guilty of D.'s murder, referring, in the first place, to his confession, which it found to be corroborated by the pre-trial statement of his daughter, statements by witnesses and the forensic evidence. In particular, the court referred to a statement of L., who mentioned having heard the voices of D. and the applicant's daughter close to the crime scene on the night of the murder; a statement of G., who testified to having seen D. and the applicant's daughter kissing on that night, and the victim's post mortem report establishing several injuries to his head.

66. The court dismissed the applicant's allegation that his confession had been obtained as a result of ill-treatment, referring to the statements by police officers I.M., Ya.M. and V.G. and expert report no. 1060, which had not recorded any injuries on the applicant's body.

67. The trial court did not address the applicant's argument that his confession had not only been obtained under duress but also in the absence of his lawyer. The applicant was sentenced to nine years' imprisonment.

68. The applicant appealed against the conviction. In his statement of appeal he submitted, in particular, that his confession statement was inadmissible as obtained under duress and in the absence of a counsel. He submitted that officers I.M., Ya.M. and V.G. had committed perjury before the trial court. Furthermore, he claimed that he had been secretly transferred to remand centre SI-1/2 where he had not been properly examined by a doctor in order to hide the marks of beatings. The applicant's transfer had permitted the police officers to deprive him of access to counsel and to delay his medical examination. Moreover, the expert who had performed his examination on 14 September 2000 had been on friendly terms with the investigator and had issued the expert opinion which the latter had needed.

3. Appeal judgment of 15 March 2001

69. On 15 March 2001 the Supreme Court of the Bashkortostan Republic dismissed the appeal. As regards the use in evidence of the

applicant's confession allegedly obtained under duress, the Supreme Court held that the investigators and the trial court had carefully examined the applicant's allegations and had correctly dismissed them as unfounded. In particular, the trial court had questioned the police officers, who had denied any use of violence against the applicant, and the expert had concluded that he had not had any injuries. The confession had been written by the applicant in his own hand; he had in his own hand certified that it had been given without any physical or psychological pressure. The appellate court's judgment was silent on the applicant's complaint that his confession had been obtained in the absence of his lawyer.

F. Alleged intimidation of the applicant

70. On 15 October 2003 the Court gave notice of the application to the respondent Government.

1. Letter from the applicant's brother

71. On 18 January 2004 the Court received a faxed letter from the applicant's brother (who had initially represented the applicant before the Court) in which he indicated that the applicant had been intimidated and forced to withdraw his application. In a letter of 21 January 2004 the applicant's brother provided further details. His description ran as follows:

“...I have to inform you about a conversation between [my brother] and a Captain of the Department who did not show his documents and did not identify himself. It took place on 6 January 2004. The Captain first asked [my brother] and then ordered [him] to describe in writing the events of 2000. He said: 'You must write it in the way I want you to. [My brother] answered: 'I won't write or sign anything without a lawyer. Captain: 'I don't care about you or your lawyer; it will be as I say. You are pawns. I will arrange it so that you die here in two weeks but you will give me the statement I want'.

We are very concerned about one issue. Why did the representatives [to the European Court] not come from Moscow themselves, and why did a Captain show up and ask [the applicant] to write [an explanation]?”

72. On 13 February 2004 the Court requested comments from the respondent Government.

73. On 5 April 2004 the Government informed the Court that on 6 January 2004 Captain G., an employee of the Federal Service for Execution of Sentences in the Bashkortostan Republic (“the regional department of the FSES”), had had a “conversation” with the applicant “in order to clarify the circumstances that had given rise to his application to the European Court”. Without providing any further details, the Government enclosed a copy of applicant's written explanation of 3 March 2004, addressed to the head of the regional department of the FSES.

2. The applicant's explanation of 3 March 2004

74. The explanation, in so far as relevant, reads:

“I arrived in facility SI-2 in Beloretsk on [illegible] September 2000. I arrived in IK-3 [UE 394/3] in May 2001 and have been serving my sentence in brigade no. 4, I am working as a welder....I have no complaints about officers of the [prison] administration and of the penitentiary system of the Bashkortostan Republic. I was not subjected to physical or psychological pressure by penitentiary officers of the Bashkortostan Republic.”

75. On 17 November 2004 the applicant retained lawyers of the European Human Rights Advocacy Centre (EHRAC) to represent him before the Court.

3. The applicant's written statement of 11 July 2005

76. It appears that on 8 July 2005 the applicant's wife concluded an agreement with Ch.M., a lawyer, under which the latter was to visit the applicant in prison and to interview him about his conversation with Captain G.

77. On 16 July 2005 the applicant's representatives forwarded to the Court the applicant's written statement of 11 July 2005 which, in so far as relevant, reads:

“..On 6 January 2004, after lunch, I was called for a conversation to an office located in the industrial zone of the furniture department where I was working. The person present in the office introduced himself as Captain G. (I don't remember his name or patronymic). From our conversation I realised that he was aware of my application to the European Court. He explained his presence by saying that he could help me... He said that if I was lucky, my case would be examined and he would possibly come back for a conversation with me.

I told him in brief about the essence of my complaint [to Strasbourg], in particular, that I had been ill-treated on 8-9 September 2000 at the Uchaly police station by four police officers. I specified that I had been brought to SI-2 in Beloretsk in a private car and that I had been admitted there while the head of the facility had been absent (at lunch) [and] that no medical examination had been conducted.

[G.] wanted me to write down that I had undergone a medical examination on admission to SI-2 in Beloretsk. I told him that that was not true and pushed away the piece of paper. He did not like it. He started threatening me, saying “I will make life hell for you!” I answered that I would not write anything along the lines indicated by him and wrote down that I had not killed anyone to which he said: “I don't need that”. He destroyed the first piece of paper, which I had drafted to his dictation, and kept the second. ...

During our conversation which lasted for about 30-40 minutes [G.] asked me when I had been arrested, whether I had been beaten up in SI-2 in Beloretsk, [and] whether I had been brought to Ufa and beaten there. He was mostly interested in the time spent by me in SI-2 in Beloretsk because I had not been examined there, although I had numerous visible injuries and I had been hidden from my counsel at that time. I have not seen [G.] since our conversation.

78. The applicant's statement went on to mention that on 3 March 2004 he was visited by a certain lieutenant colonel and a lieutenant from the regional office of the FSES. They asked him how he had managed to send the application to the European Court and about its contents, in particular, the circumstances of his alleged ill-treatment and whether he had been examined by a medical officer in SI-2. The applicant provided the relevant explanations in writing. They concerned only the beatings in 2000 and contained no complaints about detention facility UE-394/3. After the departure of the two persons the applicant had to quit his job and was transferred to basement no. 14, where conditions were worse than in other parts of the colony.

79. According to the applicant's statement of 11 July 2005, on 3 March 2004 he received a further visit by a prosecutor, for whom he also wrote an explanation concerning the circumstances of his ill-treatment at the Uchaly police station. The prosecutor reassured him that he would examine the matter.

80. On 5 July 2005 the applicant received yet another visit by a prosecutor who did not introduce himself. He interviewed the applicant about the same events as his previous visitors.

81. Lastly, the applicant noted that he felt uncomfortable in connection with his application to the Court and feared that it would have repercussions on his further stay in facility UE-394/3.

4. Written statement by Ch.M

82. An undated written statement by Ch.M. produced by the applicant's representatives, in so far as relevant, reads as follows:

"I, Ch.M., lawyer of the Bashkortostan Bar Association, on 8 July 2005 concluded an agreement with [the applicant's wife] with a view to visiting her husband in colony 394/3.

On 11 July 2005 from 9.30 to 11.30 a.m. I had a conversation with [the applicant], during which I asked him... about intimidation in connection with his application [to the Court].

During our conversation [the applicant] behaved in a constrained manner, asking me not to refer to many circumstances in my explanation; sometimes he began whispering. He explained his behaviour by the presence (during the whole of our conversation) of two officers from the internal security department who did not conceal their interest in our conversation. ...Bearing this in mind I consider it necessary to clarify and supplement his written statement by the details which he did not include therein.

During the conversation [the applicant] explained that Mr G., who had visited him on 6 January 2004, interviewed him about the reason for his application to the Strasbourg Court, to which [the applicant] replied that the thrust of his complaint was that on 8-9 September 2000 he had been severely beaten by officers of the Uchaly

police station. During the beating he had been instructed to write a confession, which he had refused to do, and the beatings had continued.

G. expressed doubts that the police officers had acted in that way, saying that they could not have inflicted bodily injuries on [the applicant]. G. had also asked him in what condition he had been brought to SI-2 in Beloretsk. [The applicant] explained that he had had numerous bodily injuries... The officers of remand centre SI-2, in particular the doctors, had seen his injuries but, following instructions from certain persons, had intentionally failed to examine him and had not opened a medical record in respect of the applicant. G. replied that that was impossible because [the applicant's] medical record did not refer to any bodily injuries. [The applicant] explained that he had not been examined on admission to SI-2 and at that point G. became angry and started pressuring [the applicant], saying that he should not write about it.

During the conversation with G., [the applicant] started compiling the first explanation. G. had been instructing him what to write, in particular that the police officers had not beaten him up and that he had been examined on admission to SI-2 in Beloretsk. Having heard that, [the applicant] pushed away the papers, saying that what G. had been telling him to write was not true. G. had not liked [the applicant's] behaviour and started threatening him with reprisals, saying that he would make life hell for him and that it would happen soon. However, [the applicant] had said that he would not sign the explanation along the lines indicated by G. and would write his own, which he had done, adding at the end of the explanation that he had not killed anyone. G. again threatened [the applicant] with reprisals, after which he had to take the last explanation. ...

[The applicant] explained... that after his withdrawal from work he had been feeling lonely, offended and cut off from communication with other persons. Even when he had later been re-admitted to work, he had been still stressed by the fear of losing it again..."

83. In a letter to his relatives, dated 24 July 2005, a copy of which had been produced by his representatives, the applicant submitted, among other things, that on 19 July 2005 he had been summoned to the colony special purpose unit and handed, against signature, a refusal to prosecute the police officers allegedly involved in his ill-treatment. During the conversation the applicant had allegedly been told that he was the one who should be criminally prosecuted for giving false statements.

G. Additional inquiry into the applicant's alleged ill-treatment

84. On an unspecified date in 2005 the Internal Security Department of the Ministry of the Interior of the Bashkortostan Republic initiated an internal inquiry into the applicant's allegations of ill-treatment. In the course of the inquiry officers V.G., I.M. and R.Kh. gave written explanations. In their explanations, dated 4 July 2005, V.G. and R.Kh. denied having applied unlawful methods to the applicant.

85. I.M.'s statement of 4 July 2005, in so far as relevant, reads:

“...Neither I nor any other officer applied unlawful methods [to the applicant]. ..

I remember that [the applicant's] medical examination was carried out in Beloretsk and not in Uchaly with a view to having it objectively conducted, otherwise [the applicant's] defenders would subsequently have complained about the “biased” conclusions of the 'local' expert.”

86. In an explanation of 4 July 2005 A.M. submitted that in 2000 he had been the head of the Uchaly temporary detention centre in the Uchaly police station. In September 2000, following investigator Kh.A.'s order, A.M., driver S. and “another police officer” collected the applicant in SI-2 in Beloretsk and escorted him for a medical examination. In a forensic bureau in Beloretsk, in the presence of A.M., S. and the third police officer, an expert had removed the applicant's clothes and examined him, while asking him all relevant questions. They had stayed in the bureau for about an hour. A.M. had not seen any visible injuries on the applicant.

87. On 30 June 2005 the deputy head of the Minister of the Interior of Bashkortostan discontinued the inquiry, having found no indication of a violation of the applicant's rights under Article 3 of the Convention.

88. By a decision of 4 July 2005 the Uchaly district prosecutor's office refused to initiate criminal proceedings against expert G. in connection with the applicant's medical examination no. 1060, having found no evidence of crime in his acts. The decision, in so far as relevant, read:

“G. personally carried out examination [no. 1060]. Despite the fact that from 28 August to 30 September [2000] he was supposed to be on leave, he had to come back to work due to the absence of expert B. on 13-18 September 2000. During the above period of time and in addition to [the applicant's] medical examination, G. carried out medical examinations of a further 14 persons and 16 postmortem examinations, which follows from the relevant registration logs and G.'s own explanation.

[The applicant's] and his lawyer's submissions that G. intentionally compiled a false report attesting to the lack of injuries are unsubstantiated.”

89. It is not entirely clear what prompted the initiation of the inquiry concerning the applicant's medical examination and whether the applicant was informed of its results.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Investigation of the allegations of ill-treatment

90. Article 21 § 2 of the Russian Constitution prohibits torture.

91. The RSFSR Code of Criminal Procedure (“RSFSR CCP”, in force at the material time) established that a criminal investigation could be initiated by an investigator upon the complaint of an individual or on the

investigative authorities' own motion (Articles 108 and 125). A prosecutor was responsible for general supervision of the investigation (Articles 210 and 211). He could order a specific investigative action, transfer the case from one investigator to another or request that the proceedings be re-opened. If there were no grounds to initiate a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect which had to be notified to the interested party.

92. A prosecutor, investigator or judge was obliged to consider complaints and information about any crime committed and to initiate or refuse a criminal investigation, or to transmit the case to a competent authority (Article 109). A prosecutor's refusal to initiate a criminal investigation could be appealed to a higher prosecutor; a judge's refusal could be challenged at a higher court (Article 113 § 4).

93. On 29 April 1998 the Constitutional Court of the Russian Federation invalidated Article 113 § 4 of the CCP in so far as it did not allow judicial review of a prosecutor's or investigator's refusal to institute criminal proceedings. The Constitutional Court ruled that Parliament was to amend the legislation on criminal procedure inserting a possibility of such judicial review. It also held that until such amendments, the national authorities, including courts, should apply directly Article 46 of the Constitution requiring judicial review of administrative acts, including a refusal to initiate criminal proceedings. The ruling was published in May 1998.

94. In a ruling of 14 January 2000 the Constitutional Court declared unconstitutional several provisions of the RSFSR CCP authorising the courts to initiate, of their own motion, criminal proceedings. In the same ruling the Constitutional Court reiterated that a court could carry out judicial review of the lawfulness and reasonableness of an investigating authority's decision to open a criminal case, to refuse to initiate criminal proceedings or to discontinue such proceedings, in particular, upon a complaint of a person who considered that his or her constitutional rights had been breached by such a decision. The ruling was published in February 2000.

B. Access to counsel

95. Under Article 47 § 1 of the Code, in force at the material time, counsel could be admitted to the proceedings from the moment of announcing/listing charges, or – for an arrested or detained suspect – from the moment of giving him or her access to the arrest record or detention order. If a privately-retained counsel did not appear within twenty-four hours, the authority in charge of the case was allowed to suggest that the person retain another counsel, or to appoint counsel (Article 47 § 2). On 25 October 2001 the Constitutional Court indicated that Article 47 § 4 did not require any special permission for meetings with counsel. In the same decision the Constitutional Court invalidated one provision of the

1995 Custody Act in so far as the authorities applied it as requiring counsel who wanted to see his client to obtain special leave from the authority in charge of the criminal case.

C. Confession statements

96. Article 51 of the Russian Constitution provides that no one may be required to incriminate himself or herself and his or her spouse and close relatives.

97. Article 111 of the RSFSR CCP required that a confession statement be recorded in detail in a separate document, signed by the person who gave the confession and by the investigator or prosecutor who took the confession.

D. Reopening of criminal proceedings

98. Article 413 of the Russian Code of Criminal Procedure, setting out the procedure for re-opening of criminal cases, in so far as relevant, reads:

“1. Court judgments and decisions which have become final are to be quashed and proceedings in a criminal case are to be re-opened in the event of new or newly discovered circumstances.

...

4. New circumstances are:

...

(2) a violation of a provision of the European Convention for the Protection of Human Rights and Fundamental Freedoms committed by a court of the Russian Federation during examination of a criminal case and established by the European Court of Human Rights, pertaining to:

(a) application of a federal law which runs contrary to the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(b) other violations of provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms;

(c) other new circumstances.”

III. RELEVANT INTERNATIONAL DOCUMENTS

99. For a summary of the relevant international documents on access to counsel see *Pishchalnikov v. Russia* (no. 7025/04, §§ 39-42, 24 September 2009).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

100. The applicant complained under Article 3 of the Convention that on 8-9 September 2000 police officers had ill-treated him and that the authorities had failed to conduct an effective investigation into the alleged ill-treatment. Article 3 reads as follows:

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

A. Submissions by the parties

1. *The Government*

101. The Government submitted that they had no objection to the presentation of factual circumstances of the case, subject to certain clarifications. They claimed that the applicant's allegations that the police officers had ill-treated him with a view to obtaining his confession were unsubstantiated. Firstly, the confession contained the applicant's handwritten note that he had given it without any pressure on the part of the police. Secondly, according to the expert report of 18 September 2000, no injuries on the applicant's body had been recorded. Furthermore, at the time of the applicant's admission to remand centre SI-1/2 on 11 September 2000, the facility doctor had noted “acute chronic otitis” but had not recorded any abrasions. The Government claimed that the authorities had questioned the head of remand centre SI-1/2 and the forensic expert who had examined the applicant on 14 September 2000. The former had claimed that during his detention the applicant had only applied to the remand centre medical unit in connection with influenza and had received the relevant treatment. The latter confirmed that the applicant had not had any bodily injuries. The Government further submitted that, according to the statement by officer A.M., of remand centre SI-1/2 (see paragraph 86 above), the applicant had not had any injuries during his detention there. Moreover, the applicant and

his lawyer had never appealed to a prosecutor or a court against the refusal to initiate a criminal investigation into their allegations. In any event, the domestic authorities had investigated the applicant's allegations during an inquiry and in the criminal proceedings against him and had dismissed them as unfounded. The Government invited the Court to reject the applicant's complaint as unfounded and also for failure to exhaust the domestic remedies.

2. The applicant

102. The applicant submitted that he had exhausted domestic remedies. In particular, he had complained about the ill-treatment, through his lawyer, to the district prosecutor's office and the Uchalinskiy District Court on 14 and 17 September 2000 respectively. Furthermore, courts at two instances had examined his allegations of ill-treatment in the criminal proceedings against him. He stressed that the trial court had questioned the police officers involved in the beatings, had examined the materials of the inquiry and forensic report no. 1060. Having assessed the evidence and the applicant's and his lawyer's submissions, it had dismissed the ill-treatment complaint as unfounded. Moreover, the appellate court found that "the agents of the preliminary investigation and the [trial] court [had] carefully looked into these arguments and justifiably rejected them as being without substance".

103. On the merits, the applicant claimed that the ill-treatment to which he had been subjected on 8-9 September 2000 had been designed to cause both physical injury and mental suffering, in violation of Article 3. He pointed out that the Government had not contested the summary of facts prepared by the Court's Registry on the basis of his original submissions and that they had merely asserted that his allegations were unsubstantiated and had not been corroborated by medical reports. The applicant maintained that he had not had any health-related complaints since he had come to Bashkortostan in 1997 or before his interrogation in September 2000, as was confirmed by a certificate from the local hospital. As a consequence of the beatings, he suffered from pain in the kidney area and collar bone, and deafness of the left ear. As he had been taken into police custody in good health, the State was required to provide a plausible explanation of how the injuries were caused, failing which a clear issue arose under Article 3. The applicant further submitted that the medical documents drawn up after he had been tortured, such as the expert report of 14-18 September 2000, had not reflected the truth about his physical condition at that time and that the subsequent medical examination had not indicated the causes of his otitis. The applicant referred to statements by I.R. and V.Z. and to his lawyer's letter of 14 September 2000, which corroborated his version of events and on which the Government had failed to comment. Relying on the Court's judgment in *Afanashev v. Ukraine* (no. 38722/02, §§ 62-63, 5 April 2005),

the applicant argued that the medical evidence confirming the after-effects of the beatings, such as the deafness in the left ear and the otitis; statements by witnesses, such as his cellmates and lawyer; his own detailed and consistent account of events (the fact that he had described in minute detail the ill-treatment he was subjected to, the layout of the rooms, doors, furniture, ranks and names of the police officers); and the authorities' failure to explain the origin of his injuries, had, cumulatively, proven that he had been ill-treated by the police during his detention on 8-9 September 2000. Finally, he noted that he had consistently denied his involvement in the murder (during the interviews on 3 August and 5 September and the meetings with his lawyer on 6 and 7 September) and that it was hard to imagine that he would have suddenly decided to confess on 9 September when his counsel had been absent.

104. As regards the procedural requirement of Article 3, the applicant claimed that the investigation carried out into the alleged ill-treatment had been manifestly inadequate and ineffective. There had been no confrontation between him and the police officers. In fact, he had not been questioned in person about the alleged ill-treatment. No specific questions had been put to the police officers. As to the medical report of 18 September 2000, the applicant disagreed with its conclusions and saw as the only possible explanation of it the doctor's bias or pressure from the police officers not to record the actual injuries. The prosecutor had not taken any steps to establish the truth: thus, he had not interrogated possible witnesses about the applicant's state of health at the material time. In any event, the investigation had not been impartial because Kh.A., who had been at the same time responsible for the investigation of the murder, had been aware of the beatings, and had been an official of the prosecutor's office.

B. The Court's assessment

1. The Government's preliminary objection

105. The Court observes that in its decision on the admissibility of the application it decided to join the Government's preliminary objection as to the applicant's failure to exhaust domestic remedies to the merits of the case. The Government claimed, in particular, that the applicant had not exhausted the domestic remedies because he had not appealed to a prosecutor or a court to challenge the prosecutor's refusal to institute criminal proceedings against the police officers.

106. As regards the first limb of the Government's objection, the Court has previously held that an appeal against a refusal to institute criminal proceedings to a higher-ranking prosecutor does not constitute an effective remedy within the meaning of Article 35 of the Convention (see *Belevitskiy*

v. Russia, no. 72967/01, § 60, 1 March 2007). It finds no reasons to depart from those findings in the present case.

107. As to the second limb of their objection, the Court observes that the applicant complained to the trial and appellate courts in detail not only about the alleged police brutality but also about various alleged defects in the investigation (see paragraphs 58, 64 and 68). The courts at two instances did not refuse to entertain his complaints for failure to comply with any formal requirements. They took cognisance of the merits of those complaints by interviewing the applicant and the police officers and examining the inquiry materials and upheld the conclusions of the prosecutor (see *Vladimir Fedorov v. Russia*, no. 19223/04, § 47, 30 July 2009). The Government did not argue that in pursuing this avenue of judicial review, the applicant had removed from the courts the option of examining the relevant issues (compare *Akulinin and Babich v. Russia*, no. 5742/02, § 32, 2 October 2008). In those circumstances, where the courts have already embarked on the analysis of the applicant's complaints, the Court does not find it unreasonable that the applicant did not lodge the same complaints with the same courts (see *Vladimir Fedorov*, cited above, § 49). Bearing this in mind, the Court considers that it has not been established with sufficient certainty that the remedy advanced by the Government could have been effective in the particular circumstances of the present case (see *Vladimir Fedorov* and *Akulinin and Babich*, both cited above, §§ 49 and 32, respectively).

108. In the light of the foregoing, the Court dismisses the Government's preliminary objection as to non-exhaustion of domestic remedies.

2. The alleged breach of Article 3 under its procedural limb

(a) General principles

109. The Court reiterates its settled case-law to the effect that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. 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.

110. The investigation of arguable allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-

founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates apt to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. The investigation into the alleged ill-treatment must be prompt. Lastly, there must be a sufficient element of public scrutiny of the investigation or its results; in particular, in all cases, the complainant must be afforded effective access to the investigatory procedure (see, among many other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports of Judgments and Decisions* 1998-VIII; *Mikheyev v. Russia*, no. 77617/01, §§ 107-108, 26 January 2006; and *Petropoulou-Tsakiris v. Greece*, no. 44803/04, § 50, 6 December 2007).

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

111. Turning to the circumstances of the present case, the Court considers that the applicant's statement to investigator Kh.A. on 13 September 2000 and his lawyer's complaint to the district prosecutor's office, including her detailed description of the injuries allegedly noticed on her client (see paragraphs 38 and 39 above), amounted to an "arguable claim" of ill-treatment at the hands of the police and warranted an investigation by the domestic authorities in conformity with the requirements of Article 3 of the Convention.

112. It transpires that shortly after the applicant's complaints the district prosecutor's office opened an inquiry into his alleged ill-treatment. Accordingly, the Court is satisfied that the authorities promptly launched the investigation. The inquiry was completed within several days with a refusal to institute criminal proceedings against the police officers. Shortly thereafter the trial and appellate courts also examined the applicant's allegations of ill-treatment and dismissed them. Hence, the question before the Court is not so much whether there has been an investigation but whether it was effective (see *Krastanov v. Bulgaria*, no. 50222/99, § 59, 30 September 2004).

113. As can be seen from the prosecutor's refusal to institute criminal proceedings against the police officers, it was based on their written explanations and on forensic report no. 1060.

114. As regards the forensic report, it is observed that its entry concerning the presence of only one police officer during the applicant's examination (see paragraph 27 above) seems to contradict A.M.'s statement

that the applicant was examined in the presence of three police officers (see paragraph 86 above) – a discrepancy for which no explanation was offered by the Government. In this connection the Court emphasises that it has already pointed out that medical examinations of presumed victims of ill-treatment should be conducted outside the presence of police officers and other government officials in order to attain the required standards of independence and thoroughness (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X; *Karademir v. Turkey*, no. 32990/96, § 53, 30 October 2001).

115. In any event, the Court has serious reservations concerning the accuracy and reliability of report no. 1060 and the way in which the applicant's medical examination was conducted. It is particularly surprising that although the expert mentioned the applicant's "complaints about pain in the left ear", he did not consider it necessary to question the applicant about the symptoms and the origin of his condition, or to examine his ear and to write down the applicant's explanations and his own findings (see *Akkoç*, *ibid.*; *Pishchalnikov*, cited above, § 59; compare *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94, § 642, 13 November 2003).

116. As to the police officers' statements, the Court cannot but observe that the prosecutor in charge of the inquiry did not consider it necessary to interview them in person, let alone arrange for their confrontation with the applicant, and confined himself to obtaining their written explanations instead.

117. The Court is further struck by the fact that the prosecutor did not interview the applicant about the circumstances of the alleged ill-treatment. He likewise made no attempts to question the applicant's lawyer or the medical personnel of the remand centre, where the applicant was admitted shortly after the alleged ill-treatment, or to identify and interview the applicant's cellmates in the police station or the remand centre. Even if the applicant's cellmates' names were not known to the prosecutor, he was expected to take steps on his own to identify them (see, among other authorities, *Akulinin and Babich*, cited above, § 53, and *Vladimir Fedorov*, cited above, § 73).

118. In the Court's view, the above-mentioned shortcomings critically undermined the effectiveness of the investigation and its ability to establish the relevant facts.

119. The Court further notes that although the trial court interviewed the applicant and some of the police officers about the circumstances of the alleged ill-treatment and examined the materials of the prosecutor's inquiry, it did not rectify most of the shortcomings enumerated above. Moreover, there were serious contradictions in the police officers' statements to the prosecutor and the trial court. In particular, whilst I.M. admitted before the prosecutor that he had interviewed the applicant on 9 September 2000, he claimed before the trial court that he had been on leave that day (see

paragraphs 43 and 62 above). Furthermore, while V.G. denied his presence during the applicant's questioning, he acknowledged at the same time that he had interviewed the latter (see paragraph 62 above). However, the trial court failed to address those discrepancies. In the same vein, it disregarded the concerns about the reliability of forensic report no. 1060 voiced by the applicant and his lawyer and did not react to their requests to have the forensic expert summoned to the court and interviewed. The appellate court, in its turn, upheld the prosecutor's and the trial court's conclusions and found that those State bodies had carried out a thorough check of the applicant's submissions.

120. Having regard to the foregoing, the Court holds that there has been a violation of Article 3 of the Convention under its procedural limb.

3. The alleged breach of Article 3 under its substantive limb

(a) General principles

121. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others*, cited above, § 93).

122. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, §30, Series A no. 269). 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 *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

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

123. The Court observes that the applicant presented a very detailed description of the alleged ill-treatment. According to statements by the applicant's cellmates and his lawyer, they noticed several injuries on his body on the days following the alleged beatings. It is further noted that the police officers allegedly implicated in the ill-treatment denied having beaten the applicant up and the applicant's forensic examination did not establish any bodily injuries. Nor did the applicant's medical record contain reference to any injuries on his body.

124. The Court has further regard to its findings concerning numerous deficiencies in the domestic investigation into the applicant's alleged ill-treatment and, in particular, those concerning his medical examination (see paragraphs 114-119 above).

125. Having regard to the parties' submissions and all the materials in its possession, the Court considers that the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to treatment contrary to Article 3, as alleged. In this respect it particularly emphasises that its inability to reach any conclusions as to whether there has been treatment prohibited by Article 3 of the Convention derives in a considerable part from the failure of the domestic authorities to react effectively to the applicant's complaints at the relevant time (compare *Gharibashvili v. Georgia*, no. 11830/03, § 57, 29 July 2008, with further references, and see *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 178, 24 February 2005, with further references).

126. Consequently, the Court cannot establish a substantive violation of Article 3 of the Convention in respect of the applicant's alleged ill-treatment while in police custody.

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

127. The applicant complained under Article 6 §§ 1, 2 and 3 of the Convention that he had been convicted on the basis of his confession statement given under duress and in the absence of legal counsel, and that the courts had not elucidated all the relevant facts. The Court will examine this complaint under Article 6 §§ 1 and 3 (c), which, in so far as relevant, provides:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal...

...

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

...

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

A. Submissions by the parties

128. The Government submitted that the confession statement had been hand-written by the applicant on 9 September 2000. Under the Russian rules on criminal procedure, this was not a procedural document that should or

could have been compiled in the presence of a lawyer. In contrast to the official record of an interrogation, a confession statement was a manifestation of the defendant's good will. The statement contained the applicant's hand-written and countersigned admission that he was advised about his right not to incriminate himself, guaranteed by Article 51 of the Russian Constitution. Referring to their submissions under Article 3 above, the Government claimed that the confession statement had not been given as a consequence of ill-treatment by police officers.

129. The applicant argued that the admission in court of evidence obtained by ill-treatment amounted to a breach of the right to a fair hearing. He claimed that during the investigation of a case, a confession by an accused was to be given in the presence of his lawyer or, in the absence of that, satisfactory procedures were to be available at the trial to check that it had not been given under duress. The applicant stressed that the Government had admitted that his confession had been given in the absence of a lawyer. He drew the Court's attention to the fact that his lawyer had been denied access to him on 8 September 2000, the very day of the alleged ill-treatment. At the same time, the Government did not refer to any legal provision prohibiting a lawyer's presence at the time of signing a confession statement. Nor did the Government specify any good cause for restriction on his right to benefit from the assistance of his lawyer. The applicant further submitted that no satisfactory procedures had been available at the trial to check that his confession had not been given under duress. The trial and appeal courts had grounded their findings on the medical report of 14-18 September 2000 and the prosecutor's decision of 24 September 2000, but they had had no evidence of his involvement in the crime other than his confession.

B. The Court's assessment

1. General principles

130. Article 6 § 1 of the Convention requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008; see also *Dayanan v. Turkey*, no. 7377/03, §§ 29-34, 13 October 2009). Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction - whatever its justification - must not unduly prejudice the rights of the accused under Article 6 (*ibid*). The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.

131. The Court further emphasises the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial (see *Salduz*, cited above, § 54). At the same time, an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure tends to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task is, among other things, to help to ensure respect for the right of an accused not to incriminate himself (see *Jalloh v. Germany* [GC], no. 54810/00, § 100, ECHR 2006-IX, and *Kolu v. Turkey*, no. 35811/97, § 51, 2 August 2005).

132. It is further reiterated that the Court's duty, under Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States in the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, this being primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140).

133. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair.

134. Thus, the Court has previously considered that, in determining whether the proceedings as a whole were fair, regard must be had to whether the rights of the defence have been respected, in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use (see *Panovits v. Cyprus*, no. 4268/04, § 82, 11 December 2008). In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (*ibid.*). Indeed, where the reliability of evidence is in dispute the existence of fair procedures to examine the admissibility of the evidence takes on an even greater importance (see *Allan v. the United Kingdom*, no. 48539/99, § 47, ECHR 2002-IX).

135. Lastly, the Court reiterates that a waiver of a right guaranteed by the Convention – in so far as it is permissible – must not run counter to any important public interest, must be established in an unequivocal manner and must be attended by minimum safeguards commensurate to the waiver's

importance (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II). Moreover, before an accused can be said to have impliedly, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be (see *Talat Tunç v. Turkey*, no. 32432/96, § 59, 27 March 2007, and *Jones v. the United Kingdom* (dec.), no. 30900/02, 9 September 2003).

2. Application of the above principles in the present case

136. Turning to the circumstances of the present case, the Court observes that upon his arrest on 5 September 2000 the applicant was interviewed by Kh.A. It appears that the interview was conducted in the absence of counsel and that the applicant denied having committed D.'s murder (see paragraphs 8 and 9 above). On the next day the applicant retained A.A., private counsel, who visited him in the police station.

137. It transpires that on 8 September 2000, that is on the day when the applicant made his confession which, he alleged, was obtained under duress, his lawyer A.A. was not able to get access to him (see paragraphs 53 and 55 above). It was not disputed between the parties that subsequently the applicant did not have access to his lawyer until 12 September 2000. In this connection the Court finds particularly worrying A.A.'s submissions, consistently made to various domestic authorities, that she was prevented from having access to her client on the days following 8 September 2000 and that the authorities in charge of the investigation into D.'s murder had intentionally misled her as to the applicant's whereabouts for that purpose (*ibid.*).

138. The Court further takes note of the Government's admission that the applicant's confession was obtained in the absence of his lawyer (see paragraphs 128 and 129 above). It also cannot but observe that as soon as the applicant gained access to A.A. and was interviewed in her presence on 13 September 2000, he retracted his confession, alleging that it had been obtained under duress and in the absence of legal assistance.

139. In so far as the Government argued that the lawyer's presence at the confession was not mandatory under the domestic law, the Court reiterates that it is not its role to decide in the abstract whether the applicable domestic law is compatible with the Convention or whether it has been respected by the national authorities, but to assess whether the requirements of Article 6 have been complied with (see *Ringeisen v. Austria*, 16 July 1971, § 97, Series A no. 13).

140. Without prejudice to its findings under the substantive aspect of Article 3 of the Convention, the Court further observes that it considered that the applicant had an "arguable claim" of ill-treatment at the hands of the police (see paragraph 111 above). Regrettably, the investigation conducted by the domestic authorities failed to elucidate the circumstances in which the applicant's confession had been obtained and the Court was

afforded no means of clarifying those circumstances so as to dispel any doubts in that respect.

141. Having regard to its foregoing considerations, the parties' submissions and the materials in its possession, the Court is led to conclude that there is no indication that the applicant validly waived his right to legal assistance from 8-9 September 2000 onwards (see *Savaş v. Turkey*, no. 9762/03, §§ 66-67, 8 December 2009).

142. The Court further observes that in the present case, in addition to the allegation of duress, the applicant also contended that his confession should have been excluded from the body of evidence at trial due to the absence of legal assistance at the time it was made.

143. As is apparent from the judgment of 15 January 2001, the trial court found the applicant guilty of murder on the basis of his confession, which it found to be corroborated by other evidence (see paragraph 65 above). The Court has already discussed the circumstances in which the confession was obtained and considers that they were such as to cast doubts on its reliability. It also transpires that although the trial and appeal courts dealt with the applicant's submissions concerning duress, the relevant court decisions contain no ruling on the issue of legal assistance, despite the fact that the applicant consistently raised this matter at both levels of jurisdiction (see paragraphs 58 and 67-69 above). Hence, the Court is not satisfied that the applicant's grievance received an appropriate response from the national courts and considers that fair procedures for making an assessment of the issue of legal assistance proved non-existent in the present case.

144. In the light of the foregoing, the Court concludes that the use of the applicant's confession statement obtained in circumstances which raised doubts as to its voluntary character, and in the absence of legal assistance, together with the apparent lack of appropriate safeguards at the trial, rendered the applicant's trial unfair.

145. There has accordingly been a violation of Article 6 § 1 of the Convention in conjunction with its paragraph 3 (c).

146. In view of its findings, the Court does not consider it necessary to examine the remainder of the applicant's complaints under Article 6.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

147. The Court, of its own motion, raised the issue whether the applicant had been subjected to intimidation which had amounted to a hindrance to the effective exercise of his right of individual petition, in breach of Article 34 of the Convention, in particular, in respect of the events of 6 January 2004. Article 34 provides:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols

thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

A. Submissions by the parties

148. The Government admitted that on 6 January 2004 Captain G., an official of the regional office of the FSES, had had a conversation with the applicant. They submitted, however, that the conversation had been aimed at “verifying the circumstances which had prompted the applicant to complain to the European Court” and “obtaining full information on the application with a view to subsequently preparing the Government’s memorandum for the proceedings before the Court”. No psychological or physical pressure had been exerted on the applicant, which was proved by his written statement of 3 March 2004 where the latter had submitted that he had no complaints about his colony administration and the officers of the regional department of the FSES.

149. The applicant noted the Government’s admission that the conversation between him and Captain G. had indeed taken place. With reference to his and Ch.M.’s statements of 11 July 2005, he claimed that, contrary to the Government’s assertion, G. had pressured him to amend his position concerning his complaints before the Court about the alleged beatings in police custody. In particular, the former had ordered him to write an explanation concerning the above events along the lines indicated by him and had threatened the applicant with reprisals after he refused to do so. The applicant asked the Court to take into account his vulnerable position as a prisoner whose well-being fully depended on the authorities, claiming that they had at their disposal various means to make his life in prison unbearable, such as depriving him of the possibility to work. The applicant’s general vulnerability as a prisoner had been further aggravated by the fact that at the material time he had not had a representative before the Court; he had retained lawyers of the EHRAC to represent him only 10 months after his conversation with Captain G. Moreover, during their conversation the latter unequivocally refused his requests for the presence of a lawyer. Lastly, with reference to the events of March 2004 and July 2005, the applicant submitted that he had been a victim of intimidation by the authorities.

B. The Court’s assessment

150. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see,

among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, § 105, *Reports* 1996-VI).

151. The expression “any form of pressure” must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy or having a “chilling effect” on the exercise of the right of individual petition by applicants and their representatives (see *Mechenkov v. Russia*, no. 35421/05, § 116, 7 February 2008, with further references).

152. Furthermore, whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case. In this respect, regard must be had to the vulnerability of the complainant and his or her susceptibility to influence exerted by the authorities (see *Akdivar and Others*, cited above, § 105, and *Kurt v. Turkey*, 25 May 1998, § 160, *Reports* 1998-III). The applicant's position might be particularly vulnerable when he is held in custody with limited contacts with his family or the outside world (see *Cotlet v. Romania*, no. 38565/97, § 71, 3 June 2003).

153. Turning to the circumstances of the case, the Court finds, this being not contested by the parties, that on 6 January 2004 an officer of the FSES had a conversation with the applicant about the latter's application to the Court.

154. According to the applicant, during the conversation G. pressured him to compile a statement which would contradict his previous submissions to the Court on one of the complaints submitted to it and threatened him with reprisals when he refused to do so. In this connection the Court notes that shortly after the conversation the applicant brought that fact to its attention through his brother (see paragraph 71 above). Subsequently, after the Court had given notice of the above events to the Government, the applicant reiterated his submissions, providing full details of his conversation with Captain G. (see paragraph 76 above). His description was complemented and confirmed by a written statement of Ch.M., who had visited the applicant in the colony (see paragraph 82 above). In sum, the applicant not only informed the Court about the conversation promptly, but also adduced several elements to support his submissions, remaining consistent in his account of the events.

155. The Government denied that any pressure had been put on the applicant during his conversation with Captain G. and claimed that it had been aimed at obtaining information on his complaints with a view to, in particular, preparing the Government's position before the Court. However, they have not furnished any documents, for example, a transcript of the conversation, which could have refuted the applicant's submissions or cast

doubt on his description of the course of the conversation (see *Popov v. Russia*, no. 26853/04, § 249, 13 July 2006).

156. Insofar as they argued that the conversation had been intended to “verify the circumstances prompting the applicant to submit his application” and could be understood to imply thereby that the domestic authorities intended to carry out an additional check on the applicant's allegations of ill-treatment (compare *Popov*, *ibid.*), the Court finds it peculiar that there was a one-year break between G.'s visit and the investigative steps taken in connection with the additional inquiry of 2005. In any event, nothing in the related documents allows the Court to link the domestic inquiry to the applicant's questioning by Captain G. In sum, the Court is not persuaded by the Government's arguments and is inclined to accept that the impugned conversation proceeded as described by the applicant.

157. The Court further notes that, according to the applicant, in addition to the meeting with Captain G., on 3 March 2004 he received two further visits by several state officials who questioned him about his application to the Court and the circumstances which had given rise to it, in particular the alleged ill-treatment (see paragraphs 78-80 above). The Government did not comment on those submissions or contest their truthfulness. However, they enclosed the applicant's written statement of 3 March 2004 which appears to confirm that on that day the applicant was again questioned about the alleged ill-treatment (see paragraph 74 above). In this respect the Court cannot but regard with suspicion a situation where, after an imprisoned applicant's complaint about pressure allegedly put on him by a prison officer and the Court's communication of that complaint to the Government, the latter submit a statement by the same applicant to the effect that he has now no complaints to make whatsoever.

158. As regards the applicant's submissions that he had to quit his job in the colony after the visits by the State officials, was transferred to premises with worse living conditions and was threatened with criminal prosecution for false statements, the Court observes that, although not contested by the Government, they appear not to be supported by other elements in the case file.

159. Nonetheless, the considerations enunciated in paragraphs 154-157 above are sufficient for the Court to conclude that the applicant can be reasonably considered to have felt intimidated following his conversation with Captain G., as well as by his ensuing repeated questioning by State officials, and that he could have experienced a legitimate fear of reprisals in connection with his application to the Court. Accordingly, he was subjected to illicit pressure, which amounted to undue interference with his right of individual petition.

160. The respondent State has therefore failed to comply with its obligations under Article 34 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

161. 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

162. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage. He further asked the Court to award him justice through a re-trial.

163. The Government submitted that as the applicant's rights had not been violated, his claims should be dismissed. In the alternative, they argued that a finding of a violation would constitute sufficient just satisfaction.

164. The Court firstly notes that in the present case it has found a violation of Article 6 § 3 (c) of the Convention in conjunction with Article 6 § 1. Inasmuch as the applicant's claim relates to the finding of that violation, the Court reiterates that when an applicant has been convicted despite a potential infringement of his rights as guaranteed by Article 6 of the Convention he should, as far as possible, be put in the position in which he would have been, had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be trial *de novo* or the reopening of the proceedings, if requested (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210 in fine, ECHR 2005-IV, and *Popov*, cited above, § 264). The Court notes, in this connection, that Article 413 of the Russian Code of Criminal Procedure provides that criminal proceedings may be reopened if the Court finds a violation of the Convention (see paragraph 98 above).

165. As to the applicant's claims in respect of non-pecuniary damage, the Court has found three violations of the Convention in the present case. In these 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 claimed in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

166. The applicant claimed 40,000 Russian roubles (RUB) in respect of his representation at the domestic level by A.A. and Ch.M.. He further submitted an itemised schedule of costs and expenses concerning his

representation before the Court, which included interviews, research and the drafting of legal documents submitted to the Court, at a rate of EUR 50 per hour for Ms Vedernikova and 100 pounds sterling (GBP) per hour for Mr Leach, as well as translation fees. The relevant amounts were broken down as follows: EUR 2,700 for Ms Vedernikova's services, to be paid into her account in Russia; GBP 766 for Mr Leach's services and GBP 1,831.65 in translation fees, to be paid to the EHRAC account in the UK. The aggregate claim in respect of costs and expenses related to the applicant's legal representation amounted to EUR 7,624.73.

167. The Government submitted that the applicant had failed to substantiate his claims in respect of A.A. services. They further argued that the applicant's representation by two counsel of EHRAC was not justified and objected to the applicant's request to have the related amounts paid directly to their accounts.

168. The Court reiterates that only legal costs and expenses found to have been actually and necessarily incurred and which are reasonable as to quantum are recoverable under Article 41 of the Convention (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324). It is further noted that the costs of the domestic proceedings can be awarded if they are incurred by the applicants in order to try to prevent the violation found by the Court or to obtain redress therefor (see, among many authorities, *Peck v. the United Kingdom*, no. 44647/98, § 127, ECHR 2003-I).

169. The Court accepts the Government's submission that the applicant failed to substantiate his claims in respect of A.A.'s services. At the same time it does not consider that the applicant's representation by two lawyers was excessive or that their rates were unreasonable. Lastly, the Court observes that it is its standard practice to rule that awards in relation to costs and expenses are to be paid directly into the applicant's representatives' accounts (see, for example, *Toğcu v. Turkey*, no. 27601/95, § 158, 31 May 2005; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 175, ECHR 2005-VII, and *Imakayeva v. Russia*, no. 7615/02, ECHR 2006-XIII (extracts)).

170. Having regard to the above-mentioned principles and to the documents in its possession, the Court awards the applicant EUR 5,700 in respect of costs and expenses, together with any value-added tax that may be chargeable to the applicant. Out of this amount, EUR 2,700 is payable into the bank account of the applicant's lawyer, Mr Leach, in the UK, as indicated by the applicant; EUR 2,700 is payable into the bank account of the applicant's lawyer Ms Vedernikova, in Russia, as indicated by the applicant, and EUR 300 is payable into the bank account of the applicant.

C. Default interest

171. 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. *Dismisses* the Government's preliminary objection as to the non-exhaustion of domestic remedies in respect of the applicant's complaints under Article 3 of the Convention;
2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
3. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb;
4. *Holds* that there has been a violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1 of the Convention;
5. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;
6. *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:
 - (i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;
 - (ii) EUR 5,700 (five thousand seven hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, of which EUR 2,700 (two thousand seven hundred euros) is payable into the bank account of the applicant's lawyer, Mr Leach, in the UK, as indicated by the applicant; EUR 2,700 (two thousand seven hundred euros) is payable into the bank account of the applicant's lawyer Ms Vedernikova, in Russia, as indicated by the applicant; EUR 300 (three hundred euros) is payable into the bank account of the applicant;

(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;

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

Done in English, and notified in writing on 13 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President