

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

THIRD SECTION

CASE OF KURKIN v. RUSSIA

(Application no. 51098/07)

JUDGMENT

STRASBOURG

19 January 2021

This judgment is final but it may be subject to editorial revision.



In the case of Kurkin v. Russia,

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

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 51098/07) 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 Gennadiy Nikolayevich Kurkin ("the applicant"), on 15 October 2007;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning the applicant's alleged ill-treatment and unlawful detention, the authorities' failure to carry out an effective investigation, the use by the trial court of a confession given by him as a result of his alleged ill-treatment and in the absence of a lawyer, and the lack of an effective remedy in respect of the ill-treatment complaint;

the parties' observations;

Having deliberated in private on 8 December 2020,

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

INTRODUCTION

1. The present application raises issues of the applicant's alleged ill-treatment and unrecorded detention at the police station, of the lack of an effective investigation into his ill-treatment complaint and of the alleged unfairness of the criminal proceedings on account of the use by the trial court of his self-incriminating statements allegedly obtained under duress.

THE FACTS

2. The applicant was born in 1972 and is detained in Belaya Gora. The applicant was represented by Mrs V.A. Bokareva, a lawyer practising in Moscow.

3. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. ALLEGED ILL-TREATMENT ON 18 AND 19 JULY 2006

5. At approximately 12.30 p.m. on 18 July 2006 officers of the Belevskiy district police station in Tula ("the ROVD") stopped the applicant on the street outside his apartment block and invited him to follow them for a "talk" in connection with the murder of a woman. According to the applicant's landlord, who saw the applicant follow the policemen to their car, he appeared sober and had no visible injuries (see paragraph 28 below).

A. The applicant's account

6. According to the applicant, on their arrival at the police station the police officers drew up an administrative offence report for drink driving. He remained at the police station until 19 July 2006. The policemen questioned him on 18 July 2006 urging him to confess to the murder. They beat him up, threatened to kill him by aiming a gun at his head and put a plastic bag over his head in an attempt to suffocate him. He spent the night at the police station handcuffed to a heating unit in such a way that he was unable to sit down.

7. The following day, 19 July 2006, allegedly as a result of the ill-treatment, the applicant wrote a "statement of surrender and confession" indicating that late in the evening of 16 July 2006 he and Ts. had robbed and murdered a woman. His arrest was then recorded and he was taken to the temporary detention facility of the police station ("the IVS").

8. According to a statement given by the applicant's aunt to the trial court, on the evening of 18 July 2006 she attempted to call the applicant but he did not answer. According to a statement given by Ts.'s mother to the trial court, at about 7 p.m. on 19 July 2006 she saw some policemen taking the applicant out of the ROVD building and escorting him to his car, apparently to inspect it (no reference to that investigative activity was made in the case file or trial court judgment). She saw bruises on his face.

B. The Government's account

9. According to the Government, on 18 July 2006 the applicant was questioned as a witness. He was informed of his rights, including the right to be represented by a lawyer. An interview record was drawn up (the copy provided by the parties is illegible in the part containing the exact time of questioning). Immediately afterwards he was released. On 19 July 2006 he returned to the police station and produced a statement of surrender and confession at his own initiative. No lawyer was present. No investigative activities with his participation took place on that date.

C. Relevant documents

10. At some point on 18 July 2006 (the exact time is illegible) an investigator drew up an interview record of the applicant's questioning as a witness. The applicant made no confession. No lawyer was present.

11. According to the custody register of the police station, at 7.40 p.m. on 19 July 2006 the applicant was placed in the IVS and his injuries were recorded (see paragraph 16 below).

12. According to the record of acceptance of the statement of surrender and confession *(протокол явки с повинной),* the applicant confessed at 8 p.m. that day. At 8.20 p.m. a record of his arrest was drawn up.

13. At 5.45 p.m. on 20 July 2006 he was questioned as a suspect in the presence of a State-appointed lawyer. He chose to remain silent and did not mention the alleged ill-treatment during his interview, allegedly out of fear.

14. On 21 July 2006 the Belevskiy District Court of the Tula Region ordered the applicant's arrest and detention pending the investigation.

15. The ROVD logbook contains no record of the applicant's presence on the ROVD premises on 18 to 19 July 2006.

D. The applicant's injuries

16. According to the IVS custody register of 19 July 2006, the applicant was examined at 7.40 p.m. on his arrival (see paragraph 11 above) by a medical assistant (feldsher), who noticed abrasions under both of his eyes and two abrasions on his chest.

17. At 4 p.m. on 21 July 2006 a forensic medical expert examined the applicant. The expert noted a comment by him that on 18 July 2006 he had been punched and hit ten times. According to forensic medical report no. 198, the applicant had a bruise on his left eyelid, which had been inflicted by a solid blunt object four to five days prior to the examination and had not caused any damage to his health.

II. THE AUTHORITIES' RESPONSE TO THE APPLICANT'S COMPLAINT OF POLICE ILL-TREATMENT AND UNRECORDED DETENTION

18. On 15 August 2006 the applicant complained to a prosecutor about the ill-treatment and the unrecorded detention from 18 to 19 July 2006.

19. Between 18 August 2006 and 3 June 2009 the investigators issued at least four refusals to bring criminal proceedings against the ROVD officers. The investigators concluded that the injuries had been inflicted prior to the apprehension. Three of the refusals were set aside by a superior prosecutor on account of a failure to examine all the existing evidence, in particular, the trial statements of the applicant, his landlord, Mr Ts. and Ts.'s mother.

20. The latest available decision not to open criminal proceedings dated 3 June 2009 referred to the transcript and findings of the trial court in so far as they concerned the question of ill-treatment (see paragraph 30 below). Otherwise, the refusal was based on medical documents and statements of the head of the Belevskiy criminal police, and two of the arresting officers who stated that the applicant had been apprehended on 19 July 2006 on suspicion of murder and that "officers of the ROVD and an investigator had worked with him" at the police station. They had denied either participating in or witnessing any instances of ill-treatment against him. The investigator found, with reference to Ts.'s statement given to the trial court (see paragraph 27 below), that a "bruise" recorded in the forensic expert report had been inflicted on the applicant by Ts. on 16 July 2006. None of the refusals addressed the complaint about the unrecorded detention.

21. The applicant appealed against two of the refusals to open criminal proceedings. By final judgments of 14 July and 16 December 2010 the Tula Regional Court refused to examine his complaints on procedural grounds.

III. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

22. At the pre-trial stage Ts. produced a statement of surrender and confession in respect of the murder and robbery indicating that he and the applicant had committed the crimes together. He stated that on the evening of 16 July 2006 the applicant, while under the influence of alcohol, had "turned to [him] and rushed at him". Ts. had "pushed [the applicant's] hands away from him and left the car".

A. Proceedings before the first-instance court

23. At some point during the trial the applicant and Ts. challenged their statements of surrender and confession of 19 July 2006 as having been extracted from them under duress. During the trial the applicant maintained the same version of events as in paragraph 6 above.

24. The policemen denied his allegations and testified that on 18 July 2006 the applicant had been brought to the police station for a "talk". They had seen bruises on his face; he had explained that he had had a fight with someone the day before. They had then let him leave. On 19 July 2006 they had again invited him to come to the police station, where he had made a voluntary confession.

25. An investigator of the district prosecutor's office submitted to the trial court that on 18 July 2006 he had invited the applicant and Ts. for a "talk". Both men had then left the ROVD, as at that point there had been no reason to retain them any longer. He had seen bruises on the applicant's face. On 19 July 2006 the applicant had told him that he had received the bruises on his face and chest during a fight with an acquaintance.

26. The head of the ROVD denied seeing any coercion on the dates in question. He did not remember if an administrative offence report had been drawn up in respect of the applicant on 18 July 2006, as numerous reports were drawn up by the police on a daily basis.

27. Ts. submitted that on 16 July 2006 the applicant had rushed at him to start a fight with him, and that Ts. had pushed him away with his hands. When questioned again several days later, Ts. stated that he had "hit [the applicant] several times with his hands" that day but had not seen if he had caused any injuries to him.

28. The applicant's landlord testified that she had seen the policemen taking the applicant to his car on 18 July 2006 and that he had had no visible injuries at that time. Ts.'s mother submitted that at approximately 7 p.m. on 19 July 2006 she had seen police officers taking the applicant out of the police station, and that he had had bruises on his face.

29. On 30 January 2007 the Tula Regional Court convicted the applicant and Ts. of murder and robbery and sentenced the applicant to sixteen years' imprisonment. The court did not address the admissibility of the statements of surrender and confession by the applicant and Ts. The court found them guilty based on various other items of evidence, such as their other pre-trial statements, indirect witnesses' statements, material and expert evidence. The court considered the applicant's not guilty plea given during the trial unreliable, as it was manifestly at variance with all other items of evidence.

30. The trial court found that the applicant's account of alleged unrecorded detention and police brutality was not corroborated by the evidence. It referred to an unspecified refusal to open criminal proceedings, the forensic report of 21 July 2006, and the police officers' submissions.

31. When determining the sentence, the court considered the applicant's statement of surrender and confession to be a mitigating factor.

B. Appeal proceedings

32. On 27 September 2007 the Supreme Court of Russia upheld the conviction. Referring to the decision not to open criminal proceedings taken upon the applicant's complaints, it found that the trial court had examined the allegations of ill-treatment in detail and had rejected them by a well-reasoned judgment. It endorsed the lower court's conclusions on the admissibility of the evidence, without specifically addressing the applicant's inadmissibility plea in respect of his statement of surrender and confession.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

33. For a summary of the relevant provisions concerning pre-investigative inquiries, see *Lyapin v. Russia* (no. 46956/09, §§ 99 et seq., 24 July 2014). For a summary of the relevant domestic law and practice on the issue of

surrender and confession in criminal proceedings, see *Turbylev v. Russia*, (no. 4722/09, §§ 50-56, 6 October 2015).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

34. The applicant complained under Articles 3 and 13 of the Convention that he had been ill-treated in police custody and that the investigation into his complaint in that regard had been ineffective. Articles 3 and 13 read as follows:

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

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

B. Merits

1. The parties' submissions

36. The applicant maintained his complaint.

37. The Government submitted that the allegations of police ill-treatment had not been proven in the domestic proceedings, which had complied with the requirements of Article 3 of the Convention. They argued that the applicant's injuries could have been caused by Ts. on 16 July 2006.

2. The Court's assessment

(a) Credibility of the applicant's allegations of ill-treatment at the hands of the police officers and the presumption of fact

38. The Court observes that on 18 June 2006 the applicant, who had been seen to be in good health, was taken to the police station for questioning (see paragraph 5 above). He then allegedly remained on the ROVD premises,

where he was allegedly beaten by the policemen. During that period a witness saw the applicant accompanied by some policemen and noticed bruises on his face (see paragraph 28 above). On 19 July 2006 the applicant had injuries to his face and chest, recorded by the IVS and the forensic expert. They could have been inflicted during a period which included 18 July 2006 (see paragraphs 16-17 above). The Court considers that his injuries could arguably have resulted from the violence allegedly suffered by him on 18 to 19 July 2006 at the hands of the police officers.

39. These factors are sufficient to give rise to a presumption in favour of his version of events and to satisfy the Court that his allegations of police violence were credible. Accordingly, the authorities had an obligation to carry out an effective official investigation into his allegation.

(b) Whether an effective investigation was carried out into the applicants' allegations of police ill-treatment

40. The Court observes that the applicant's consistent allegations of ill-treatment on the premises of the ROVD were summarily dismissed by a series of the refusals to initiate criminal proceedings, each time issued as a result of the pre-investigation inquiry. The Court reiterates that the mere carrying out of a pre-investigation inquiry under Article 144 of the Code of Criminal Procedure of the Russian Federation is insufficient if the authorities are to comply with the standards established under Article 3 of the Convention for an effective investigation into credible allegations of ill-treatment in police custody (see *Lyapin,* cited above, § 129).

41. The Court sees no reason to hold otherwise in the present case, which involves credible allegations of ill-treatment of which the authorities were promptly made aware. No attempt was made to explain the apparent discrepancies in the parties' versions of events either in the sequence of the pre-investigative inquiries and the subsequent court proceedings, or during the applicant's trial. The investigative authorities' decisions taken before and after the trial were unreservedly based on the "explanations" collected from the police officers. The applicant's complaint of unrecorded detention was not examined, despite the crucial importance of this aspect of the case for the establishment of the facts. Witness interviews were never carried out, and their relevant statements during the trial were not examined in detail, despite specific instructions of a superior prosecutor (see paragraph 19 above). Apparent contradictions in Ts.'s evolving description of his alleged fight with the applicant on 16 July 2006 (compare paragraphs 22 and 27 above) were not addressed either in the trial court analysis or the latest refusal to open criminal proceedings reproducing the trial court's findings (see paragraph 20 above). No attempt was made to reconcile Ts.'s statements with the applicant's injuries, or with a witness's statement to the effect that the applicant had had no injuries prior to the apprehension, or to distinguish between the injuries at various locations.

42. Accordingly, the Court finds that the State failed to carry out an effective investigation into the applicant's allegations of police violence.

(c) Whether the Government provided explanations capable of casting doubt on the applicant's version of events

43. The authorities' only explanation – that the applicant could have received his injuries in a fight with his co-accused prior to the arrest –lacks detail and is unconvincing. This explanation is based on statements of Ts. who had submitted different descriptions of the events of 16 July 2006 (see paragraphs 22 and 27 above), but that change in his version of events was not addressed in any way by the domestic courts. The authorities had never attempted to establish which injuries had been inflicted during the fight. Otherwise, the Court observes that the Government's denial of the State's responsibility for the applicant's injuries was based on the results of superficial domestic pre-investigation inquiries, which fall short of the requirements of Article 3 of the Convention. The Court holds that the Government have failed to discharge their burden of proof and produce evidence capable of casting doubt on the applicant's account of events, which it therefore finds established (see *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 83-85, 2 May 2017, and *Ksenz and Others v. Russia,* nos. 45044/06 and 5 others, §§ 102-04, 12 December 2017).

(d) Legal classification of the treatment

44. The Court takes into account the nature of the applicant's injuries, and also reiterates its settled approach that where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention, whatever the impact on the person in question (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 100-01, ECHR 2015). The Court accordingly finds that the police subjected the applicant to inhuman and degrading treatment.

(e) Conclusion

45. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs.

46. In the light of the above, the Court considers that it is not necessary to examine separately the complaint under Article 13.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

47. The applicant complained under Article 5 §§ 1 and 3 of the Convention that he had been unlawfully deprived of his liberty from 12.30 p.m. on 18 July to 21 July 2006 and belatedly brought before the judge who had ordered his pre-trial detention. The Court will first proceed with the examination of the complaint under Article 5 § 1 which reads as follows:

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

A. Admissibility

48. The Government claimed that the applicant had not lodged a complaint under Article 125 of the Code of Criminal Procedure or Chapter 25 of the Code of Civil Procedure.

49. The applicant submitted that he had duly lodged a complaint of unrecorded detention with the prosecutor and subsequently with the courts.

50. The Court has already dealt with the Government's objection concerning an action for damages in the case of *Ivan Kuzmin v. Russia* (no. 30271/03, §§ 78-79, 25 November 2010). It sees no reason to depart from those conclusions in the present case and rejects the Government's plea as to non-exhaustion in this part.

51. The Court further notes that the applicant actually complained to the prosecutor's office on several occasions about his detention from 18 to 19 July 2006, and raised the issue in the criminal proceedings against him. His complaints under Article 125 about the outcome of the two latest inquiries were rejected on procedural grounds (see paragraph 21 above). The non-exhaustion objection should therefore be dismissed (see, among others, *Golubyatnikov and Zhuchkov v. Russia*, nos. 44822/06 and 49869/06, §§ 75-76, 9 October 2018, and *Rakhimberdiyev v. Russia*, no. 47837/06, § 28, 18 September 2014).

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

B. Merits

1. The parties' submissions

53. The applicant stressed that the Government's version of events was at variance with witnesses' and police officers' statements.

54. The Government maintained that the applicant's allegations of unlawful detention from 18 to 19 July 2006 were unsubstantiated. They

submitted that on 19 July 2006 the applicant had gone voluntarily to the police station to confess and had then been arrested. With reference to the ROVD logbook, they argued that the applicant had not been taken there "between 12.30 [p.m.] on 18 July 2006 and 8.20 p.m. on 19 July 2006".

2. The Court's assessment

55. The parties agree that at 12.30 p.m. on 18 July 2006 the applicant was taken to the ROVD but dispute whether or not he left the police station that day. While the applicant stated that he had been detained at the police station from 18 to 19 July 2006, the Government maintained that on 18 July 2006 he had left the police station and returned the following day to make a statement of surrender and confession – either at the invitation of the policemen (see paragraph 24 above) or at his own initiative (according to the Government, see paragraph 54 above).

56. The Court is not persuaded by the Government's argument that the applicant's account of events can be dismissed by a mere reference to the lack of any record in the ROVD documents. For instance, his undisputed presence at the police station during his questioning as a witness (see paragraph 9 above) or during the preparation of the administrative offence report (see paragraph 23 above) were not recorded in the police station logbook or otherwise documented either (see paragraph 15 above).

57. The next indication of his presence at the police station can be found in the custody register confirming that at 7.40 p.m. on 19 July 2006 he was placed in the IVS. It is to be noted that the record of acceptance of the surrender and confession was drawn up, for an unknown reason, some twenty minutes after his placement in the IVS (see paragraphs 11 and 12 above), whereas the parties appear to agree that the applicant produced his statement of surrender before his placement in the IVS.

58. Be that as it may, the Court further finds it striking that the applicant's complaint concerning his alleged unrecorded detention from 18 until 19 July 2006 was not examined in any detail. It was formally dismissed by a sequence of refusals to institute criminal proceedings which did not explicitly address that grievance (four of which were subsequently set aside as based on an incomplete inquiry, see paragraphs 19-20 above). That shortcoming was not remedied by the domestic courts either in the proceedings under Article 125 of the Code of Criminal Procedure or during the applicant's trial. As a result, no attempt to establish the applicant's whereabouts on 18 July 2006 after his alleged release from the police station was ever made. The administrative offence report drawn up in respect of the applicant on 18 July 2006 was never examined in any proceedings, and the time of its compilation remains unknown. The witness statement to the effect that she had seen the applicant on 19 July 2006 at the police station was not assessed. The applicant's aunt's statement that she had unsuccessfully attempted to reach the applicant by telephone (see paragraph 8 above) was not verified either.

59. In sum, in the Court's view, the investigative authorities' response to the applicant's complaint was clearly unsatisfactory, which seriously undermined the reliability of their conclusions. Accordingly, the Court accepts the applicant's account of events, which was detailed, consistent and of which the authorities were promptly made aware.

60. Therefore, the Court finds that the applicant was arrested at around 12.30 p.m. on 18 July 2006 by police officers and unlawfully detained at the ROVD until his arrest was officially recorded at 8.20 p.m. on 19 July 2006. His unrecorded detention left him completely at the mercy of those holding him, putting his personal security at stake and rendering him vulnerable to ill-treatment (see *Fartushin v. Russia,* no. 38887/09, §§ 50, 53 and 54, 8 October 2015, and *Golubyatnikov and Zhuchkov*, § 83, cited above).

61. There has therefore been a violation of Article 5 § 1 of the Convention on account of the applicant's unrecorded detention.

62. This finding makes it unnecessary to examine the remainder of the applicant's complaint under Article 5 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

63. The applicant complained that his conviction had been based on the self-incriminating statements he had made as a result of his ill-treatment and in the absence of a lawyer. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

65. The applicant argued that there had been no exceptional circumstances justifying the absence of a lawyer at the time of his giving the statement of surrender and confession. His conviction had been based to a decisive extent on that statement, and his allegations of coercion had not been thoroughly examined by the courts. Their establishment of the facts had been based on the statements of the policemen who had ill-treated him.

66. The Government submitted that the applicant's guilt was proven by the extensive evidence collected in accordance with the law and duly examined by the court. The trial court had not referred to the statement of

surrender and confession as proof of his guilt, but had taken it into account as a mitigating factor.

2. The Court's assessment

67. The Court has on several occasions found that the admission of confession statements obtained in violation of Article 3 renders the criminal proceedings as a whole automatically unfair, irrespective of the probative value of those statements and irrespective of whether their use was decisive in securing the defendant's conviction (see *Turbylev*, cited above, § 90, and *Golubyatnikov and Zhuchkov*, cited above, § 113-16).

68. The Court sees no reason to depart from that approach in the present case, as it has already found that the applicant's confession was obtained as a result of the inhuman and degrading treatment to which he had been subjected in police custody (see paragraph 45 above). The Court accepts that the trial court decided on the applicant's guilt on the basis of evidence other than the applicant's statement of surrender and confession (see paragraph 29 above). However, the trial and appellate courts did not exclude the statement of surrender and confession as inadmissible evidence, and referred to it when convicting him of a crime to which he had confessed in that written statement, even though it was considered to be a mitigating factor (see paragraph 31 above). The Court concludes that the domestic courts' use of the applicant's statement of surrender and confession obtained in violation of Article 3 of the Convention, regardless of its impact on the outcome of the criminal proceedings, rendered the whole trial unfair (see *Sergey Ivanov v. Russia*, no. 14416/06, § 91, 15 May 2018).

69. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

70. In view of the above, the Court does not deem it necessary to examine separately the part of the applicant's complaint concerning the lack of access to a lawyer.

IV. COMPLIANCE WITH ARTICLE 34 OF THE CONVENTION

71. In his observations, the applicant submitted that on 10 December 2014 a letter from his representative containing a copy of the Government's observations and enclosures had allegedly been given to him already opened by the administration of remand centre SIZO-3 in Bugulma where he was detained at the material time, and that some enclosures had been missing; his representative had therefore had to resend a copy of the letter to him, which had generated a delay in his correspondence with the Court. He alleged a violation of Article 34 of the Convention, the relevant part of which reads as follows:

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

72. The Court observes that a complaint under Article 34 of the Convention is of a procedural nature and does not give rise to any issue of admissibility under the Convention. Nevertheless, having regard to the case materials, it considers that there is an insufficient factual basis on which to conclude that there was any unjustified interference by the State authorities with the applicant's exercise of the right of petition in the proceedings before it (compare and contrast with *Yefimenko v. Russia*, no. 152/04, §§ 131-32 and 162, 12 February 2013).

73. Accordingly, the Court considers that a breach of the State's obligation under Article 34 of the Convention has not been established.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 4,500,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

76. The Government contested the claim as excessive and unfounded.

77. Making its assessment on an equitable basis and having regard to the nature of the violations found, the Court awards the applicant EUR 33,800 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of his claims in respect of damage.

B. Costs and expenses

78. The applicant requested an amount to cover his lawyer's fees, which he had been unable to pay. He claimed EUR 4,500 for thirty hours' work at an hourly rate of EUR 150. No supporting documents were enclosed.

79. The Government argued that the amount claimed was excessive and did not correspond to the quality and nature of the representative's work and that in any event the applicant had not incurred any costs.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the absence of any documents, the Court rejects the claim for costs and expenses, finding that it has not been shown that the applicant has made, or is liable to make, any disbursements to his representative.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;

3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

4. *Holds* that there is no need to examine separately the complaints under Article 13 of the Convention in conjunction with Article 3, and under Article 5 § 3;

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

6. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

7. *Holds* that no breach of the State's obligation under Article 34 of the Convention has been established;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 33,800 (thirty-three thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Darian Pavli
Deputy Registrar	President