

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

THIRD SECTION

CASE OF SHLYCHKOV v. RUSSIA

(Application no. 40852/05)

JUDGMENT

STRASBOURG

9 February 2016

FINAL

09/05/2016

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



In the case of Shlychkov v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
George Nicolaou,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 19 January 2016,

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

PROCEDURE

1. The case originated in an application (no. 40852/05) 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 Sergey Anatolyevich Shlychkov ("the applicant"), on 16 September 2005.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya, a lawyer practising in Strasbourg. The Russian Government ("the Government") were represented by Mr Georgy Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged that he had been ill-treated in custody by the police, that there had been no effective investigation into the alleged ill-treatment and that his conviction had been based on a confession obtained under duress.

4. On 26 February 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Naro-Fominsk in the Moscow region. He is currently serving his sentence in IK-4 detention facility in the village of Udarnyy in the Republic of Mordovia.

A. Background events

6. At 8.20 p.m. on 6 March 2004 Ms E. was robbed in the street and was stabbed through the heart. She died of the wound shortly afterwards. The assailant took a mobile phone and 2,500 Russian roubles (RUB) from the victim's purse.

7. The Naro-Fominsk town prosecutor's office ("the town prosecutor's office") instituted a criminal investigation into E.'s killing. Having obtained from the mobile phone operator the call logs in respect of the victim's phone, the investigators established that at 9.50 pm on 6 March 2004 a phone call had been made to a number belonging to Ms A. from E.'s phone using the applicant's SIM card.

B. The applicant's arrest

1. The applicant's account

8. At 11 a.m. on 18 March 2004 the police arrived at the applicant's flat and ordered him to follow them to the police station.

9. Once at the police station, the applicant explained that on 6 March 2004 he had bought a used mobile phone from a stranger because a friend of his had earlier expressed an interest in purchasing a second-hand phone. In order to test the phone, he had inserted his SIM card and made a call to his then girlfriend, Ms A. He also claimed that on the same day he had played slot machines and won RUB 2,500. Then the officers questioning him showed him a call log from Ms E.'s phone, informed him of the killing and suggested that he confess to mitigate his sentence. The applicant refused to admit to the crime.

10. The officers proceeded to hit and kick him on his head, chest and flanks. The applicant fainted several times. The beatings went on for twelve hours. Eventually the applicant gave in and agreed to write down a "statement of surrender and confession" *(явка с повинной),* as dictated by the officers, admitting to the robbery and murder of Ms E.

11. An investigator of the town prosecutor's office, Mr A., questioned the applicant as a suspect and later went to the applicant's flat to seize a few items including the mobile phone contract for the applicant's SIM card.

12. The applicant was not provided with legal assistance on 18 March 2004.

2. The Government's account

13. The applicant was brought to the police station at 10 p.m. on 18 March 2004. Upon arrival the police officers asked him how he had obtained Ms E.'s phone and then showed him the call log. The applicant looked at the log and then asked the officers to leave him alone in the room.

He then wrote a statement of surrender and confession describing the circumstances of the crime. No physical force was applied to the applicant.

14. In the Government's submission, on 18 March 2004 the applicant complained to the town prosecutor's office; however, he did not raise the issue of ill-treatment.

15. At 12.30 p.m. on 19 March 2004 an arrest record was drawn up. It contained a handwritten note by the applicant that read as follows: "[I] agree with the arrest, rights are understood, [I have] no statement to make".

16. A handwritten statement signed by the applicant and dated 19 March 2004 affirmed that the applicant's rights had been explained to him; that he did not require legal assistance; that the "bodily injuries visible at [that] moment on [his] face and body [had been] inflicted on 11 March 2004 by [his] roommate Dima"; and that police officers had not used force against him.

C. Criminal proceedings against the applicant and complaints about the alleged ill-treatment

17. Between 12.40 a.m and 2.55 a.m on 19 March 2004 the applicant was questioned without a lawyer present.

18. In the early morning on 19 March 2004 the applicant was placed in a temporary detention centre (*Изолятор временного содержания*, hereinafter "IVS"). According to the Government, when placed in the IVS, the applicant did not make any health-related complaints. He had a bruise under his right eye. An entry in the IVS logbook was made by an ambulance doctor stating that the applicant was "in a post-epileptic-fit state".

19. Between 11.10 a.m. and 12.50 p.m. on 19 March 2004 the applicant was questioned in the presence of Mr B., a legal-aid lawyer. According to the Government, in the course of the interview he described how he had committed the crime. The record of the interview reads that the applicant found the knife used as the murder weapon at a market after a fire.

20. On 20 or 22 March 2004[1] the investigators carried out an investigative re-enactment. In the applicant's submission, the re-enactment was limited to bringing him to the crime scene and photographing him there. According to the Government, during the visit the applicant confirmed his statement made in the presence of the lawyer in the course of the second interview of 19 March 2004. He also selected a knife similar to that used to stab Ms E. from a selection of four knives available at a local shop.

21. On 20 March 2004 a judge of the Naro-Fominsk Town Court ("the Town Court") placed the applicant in custody. The applicant complained to the judge about his ill-treatment; she refused to take note of the allegations,

1. The parties disagree about the date.

however, stating that they could be examined in the course of the trial against the applicant.

22. On 25 March 2004 the applicant was formally charged with murder and robbery. He retracted his confession.

23. On 26 March 2004 the police transported the applicant to a remand prison. However, the staff on duty refused to admit the applicant as he had visible injuries. The applicant was returned to the IVS. On 29 March 2004 the police again tried to transfer him to the remand prison and were refused for the second time.

24. On 30 March 2004 the police brought the applicant to the Naro-Fominsk polyclinic where he underwent an X-ray examination which showed that there were fractures to three ribs with signs that the bones were beginning to heal. The following day the applicant was admitted to the remand prison.

25. According to the applicant, once in the remand prison, he complained about his ill-treatment to the town prosecutor's office.

26. According to the Government, the applicant raised the ill-treatment complaint on 17 June 2004. The town prosecutor's office carried out a pre-investigation inquiry on the basis of the complaint.

27. On 18 June 2004 Mr A., an investigator with the town prosecutor's office, refused to initiate criminal proceedings into the alleged ill-treatment. He observed that upon arrival at the IVS the applicant had had a bruise under his right eye and yet had made no complaints about his state of health, and noted that, according to the IVS logbook, an ambulance had been called for the applicant on account of an epileptic fit.

28. On an unspecified date the criminal case against the applicant was submitted for trial before the Moscow Regional Court ("the Regional Court").

29. The applicant first took cognisance of the decision of 18 June 2004 on 29 June 2004 while studying the case file in the criminal case against him.

30. The applicant complained about the town prosecutor's office's refusal of 18 June 2004 to the Russian Prosecutor General's Office, which forwarded it for examination by the Prosecutor's Office of the Moscow region. The latter forwarded the complaint to the town prosecutor's office (against which the complaint was directed). The applicant received no reply.

31. The applicant did not attempt to institute any judicial review proceedings, considering that they would be futile on account of the judge's reply of 20 March 2004.

32. On 27 July 2004 the Regional Court scheduled a trial hearing on 9 August 2004.

33. The applicant raised the matter of ill-treatment before the Regional Court at his trial.

34. On 20 October 2004 the Regional Court ordered an expert medical examination of the X-ray of 30 March 2004. It can be seen from the trial record of that date that N. informed the judge that he was not an expert in interpreting X-rays and asked for a period of two weeks to consult a colleague; the judge acceded to the request. On 4 November 2004 N. drew up a report stating that the rib fractures had been caused by blunt objects; by 30 March 2004 the knitting together of the fractures had commenced; the fractures had been "considerably old" and "no injuries corresponding to [those of] 11 and 18 March 2004 [had been] identified". The judge rejected the applicant's request for another expert report.

35. The Regional Court dismissed the record of the first interview of 19 March 2004 as inadmissible evidence for the reason that the interview had been conducted without a lawyer present.

36. On 3 December 2004 the Regional Court convicted the applicant of robbery and murder and sentenced him to twenty years' imprisonment. The court referred to the applicant's pre-trial confession, the record of his questioning by the investigator, his statements at the investigative re-enactment and other physical evidence.

37. The trial judge also examined in detail the evidence presented by the parties in relation to the allegation of ill-treatment, including the decision of 18 June 2004 and the expert medical report ordered in respect of the X-ray. The judge also heard evidence from an expert, N., as well as investigator Mr A. and several police officers. The judge refused to examine the IVS logbook which, according to the applicant, would support his assertion that there were injuries. Instead, the judge examined a letter from the deputy director of the IVS, according to which on his arrival there the applicant only had had a black eye which he had explained as having received before the arrest. The deputy director had also noted that the logbook entry concerning the call for an ambulance had been made for another person. The judge dismissed the applicant's allegations of ill-treatment and declared the relevant evidence (the confession statement, the interview record and the investigative re-enactment record) admissible.

38. On 6 December 2004 the applicant lodged an appeal reiterating the issue of his confession under duress without a lawyer present, as well as the weakness of the prosecution's case against him. He insisted on his innocence.

39. On 14 December 2004 the applicant lodged an additional appeal in which he claimed that the Regional Court had wrongly considered his previous conviction as an aggravating factor and yet had chosen to regard the surrender and confession as a mitigating factor. He asked for the first-instance judgment to be quashed on the grounds given in his appeal of 6 December 2004.

40. On the same date the applicant (through his counsel) lodged an appeal in which he insisted that the statement of surrender and confession

had not been genuine as he had been forcibly brought to the police station and detained there for twelve hours with no access to a lawyer.

41. On 16 March 2005 the Supreme Court of Russia upheld the first-instance judgment in a summary fashion.

42. The applicant further unsuccessfully sought supervisory review of his conviction.

43. On 5 April 2005 the applicant sent another complaint to the Prosecutor General's Office, which was forwarded to the town prosecutor's office.

44. On 12 May 2005 the deputy town prosecutor quashed the decision of 18 June 2004 and issued an instruction to carry out an additional pre-investigation inquiry.

45. On 15 May 2005 S., an investigator with the town prosecutor's office, refused to institute an investigation into the applicant's allegations of ill-treatment. He found it established that on 12 March 2004 a police officer in Naro-Fominsk had received a report of a violent fight; on 13 March 2004 he had invited the applicant to come in for a "preventative talk" and had noticed two bruises under the applicant's eyes. S. concluded that the bruise under the applicant's right eye had been a result of the injury inflicted long before the arrest. He also pointed out that the Regional Court had "carefully examined" the applicant's version of ill-treatment by police officers. The issue of the fractured ribs was not examined.

II. RELEVANT DOMESTIC LAW

46. For the summary of relevant domestic law see *Lyapin v. Russia* (no. 46956/09, §§ 96-102, 24 July 2014).

III. RELEVANT INTERNATIONAL MATERIALS

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT")

47. The CPT Standards 2002 (revised in 2011) (CPT/Inf/E (2002) 1-Rev. 2011) contain the following provisions (Extract from the 2nd General Report [CPT/Inf (92) 3]):

> "36. The CPT attaches particular importance to three rights for persons detained by the police: the right of the person concerned to have the fact of his detention notified to a third party of his choice (family member, friend, consulate), the right of access to a lawyer, and the right to request a medical examination by a doctor of his choice (in addition to any medical examination carried out by a doctor called by the police

authorities).[2] They are, in the CPT's opinion, three fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc.).

37. Persons taken into police custody should be expressly informed without delay of all their rights, including those referred to in paragraph 36. Further, any possibilities offered to the authorities to delay the exercise of one or other of the latter rights in order to protect the interests of justice should be clearly defined and their application strictly limited in time. As regards more particularly the rights of access to a lawyer and to request a medical examination by a doctor other than one called by the police, systems whereby, exceptionally, lawyers and doctors can be chosen from pre-established lists drawn up in agreement with the relevant professional organisations should remove any need to delay the exercise of these rights.

38. Access to a lawyer for persons in police custody should include the right to contact and to be visited by the lawyer (in both cases under conditions guaranteeing the confidentiality of their discussions) as well as, in principle, the right for the person concerned to have the lawyer present during interrogation.

As regards the medical examination of persons in police custody, all such examinations should be conducted out of the hearing, and preferably out of the sight, of police officers. Further, the results of every examination as well as relevant statements by the detainee and the doctor's conclusions should be formally recorded by the doctor and made available to the detainee and his lawyer."

48. The relevant part of the CPT's country report, following its visit to the Russian Federation of 21 May to 4 June 2012 (CPT/Inf (2013) 41), reads as follows:

"39. As repeatedly stressed by the CPT in the past, the prompt and proper medical examination of persons admitted to IVS establishments is essential, in particular in order to facilitate any subsequent investigative measures related to allegations of ill-treatment.

The Committee once again calls upon the Russian authorities to take immediate steps to ensure that:

- all persons admitted to IVS establishments are properly interviewed and physically examined by qualified health-care staff on the day of their admission or the following day; the same approach should be adopted each time a person returns to an IVS cell after having been taken out by operational officers (even for a short period of time);

- all medical examinations (whether they are carried out in hospitals or in law enforcement facilities) are conducted out of the hearing and – unless the health-care professional concerned expressly requests otherwise in a given case – out of the sight of law enforcement officials;

- the record drawn up following the medical examination of a detained person in a hospital or law enforcement establishment contains: (i) a full account of statements made by the person concerned which are relevant to the medical examination (including

2. This right has subsequently been reformulated as follows: the right of access to a doctor, including the right to be examined, if the person detained so wishes, by a doctor of his own choice (in addition to any medical examination carried out by a doctor called by the police authorities).

his/her description of his/her state of health and any allegations of ill-treatment), (ii) a full account of objective medical findings based on a thorough examination, and (iii) as far as possible, the health-care professional's conclusions as to the consistency between injuries observed and any allegations of ill-treatment made by the person concerned;

- whenever injuries are recorded which are consistent with allegations of ill-treatment made by a detained person (or which, even in the absence of allegations, are indicative of ill-treatment), the record is systematically brought to the attention of the competent investigative authorities, regardless of the wishes of the person concerned. Detained persons and their lawyers should be entitled to receive a copy of that record at the same time."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicant complained that on 18 March 2004 he had been ill-treated by police officers and that the domestic authorities had failed to conduct an effective investigation into the alleged ill-treatment. He relied on Article 3 of the Convention, which reads as follows:

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

50. The Government submitted at the outset that the applicant had failed to exhaust the effective domestic remedies available to him as he had not challenged the town prosecutor's office's refusal to investigate the alleged ill-treatment of 18 June 2004 before a court. They further stated that the applicant's allegations had not been supported by any medical certificates or other evidence and that the applicant had described the events in vague terms. The bruise under the applicant's right eye noted upon arrival at the IVS on 19 March 2004 had been a result of the fight with "Dima". They concluded that the complaint was manifestly ill-founded.

51. The applicant insisted that he had exhausted the domestic remedies available to him in the circumstances of the case referring to the following: firstly, he had learned of the refusal of 18 June 2004 on 29 June 2004 while studying the criminal case file shortly before the commencement of the trial against him; secondly, the Regional Court had examined the allegations of ill-treatment in detail – in particular, it had requested an expert medical report and had questioned several witnesses including the police officers allegedly involved; lastly, the issue of ill-treatment had been brought to the attention of the Supreme Court of Russia on appeal. The applicant further maintained his complaint about the ill-treatment and emphasised the lack of an effective investigation into it pointing out, in particular, that the investigative authorities had not even attempted to establish which injuries had been inflicted in the course of the fight with "Dima".

A. Admissibility

52. Turning to the Government's plea of non-exhaustion, the Court observes that the applicant indeed failed to seek judicial review of the town prosecutor's office's refusal to investigate the alleged ill-treatment of 18 June 2004. It reiterates, however, that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV).

53. It has not been disputed between the parties that the applicant raised his complaints of ill-treatment before the Regional Court during the trial proceedings against him, complaining of police brutality and the prosecutor's indifference to his claims. The Regional Court did not refuse to entertain his complaints for failure to comply with any formal requirements: it took cognisance of the merits of those complaints by examining the applicant, the police officers and other witnesses and examining the inquiry materials, and upheld the conclusions of the prosecutor's office. The Supreme Court of Russia endorsed the Regional Court's findings in that respect. The Government did not argue that in pursuing this avenue of judicial review, the applicant had removed from the domestic courts the option of examining the relevant issues. In those circumstances, where the courts have already embarked on the analysis of an applicant's complaints, the Court does not find it unreasonable that the applicant did not lodge the same complaints with the same courts (see *Akulinin and Babich v. Russia*, no. 5742/02, §§ 31-32, 2 October 2008; *Vladimir Fedorov v. Russia*, no. 19223/04, §§ 47-49, 30 July 2009; and *Lopata v. Russia*, no. 72250/01, § 107, 13 July 2010). In such circumstances the Court dismisses the Government's objection.

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

B. Merits

1. General principles

55. The Court has stated on many occasions that Article 3 of the Convention 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 and degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

56. Allegations of ill-treatment must be supported by appropriate evidence (see, among many other authorities, *Keller v. Russia*, no. 26824/04, § 114, 17 October 2013). 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 unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Bouyid v. Belgium* [GC], no. 23380/09, § 82, 28 September 2015).

57. In relation to detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see, with further references, *Bobrov v. Russia*, no. 33856/05, § 33, 23 October 2014). Where an individual claims to have been injured as a result of ill-treatment in custody, the Government are under an obligation to provide a complete and sufficient explanation as to how the injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336). In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (see, with further references, *Bouyid*, cited above, § 83).

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

59. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Zelenin v. Russia*, no. 21120/07, § 42, 15 January 2015).

60. An investigation into serious allegations of ill-treatment must be thorough. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and so forth (see, with further references, *Korobov and Others v. Estonia*, no. 10195/08, § 113, 28 March 2013). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity

of the persons responsible will risk falling foul of this standard (see *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006).

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

2. Application of the general principles to the present case

(a) Substantive limb of Article 3 of the Convention

62. The Court observes at the outset that the events of 18 March 2004, the date on which the applicant was allegedly subjected to ill-treatment, are disputed between the parties. However, it is common ground between them that the X-ray of 30 March 2004 showed that the applicant had three fractured ribs (see paragraph 24 above).

63. The Court notes that in the course of the proceedings before it the Government have not put forward any explanation as to the origin of the fractures in question as they chose to comment only on the bruise under the applicant's right eye. That compels the Court to establish the facts, drawing such inferences as it deems appropriate from that attitude (see *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 132, ECHR 2013 (extracts)).

64. The Court observes at the outset that the materials in its possession demonstrate that the applicant was not examined by a doctor or other medical professional upon placement in the IVS despite the fact that he had visible bruising on his face which was noted, in particular, by the deputy head of the facility (see paragraphs 18, 27 and 37 above). It emphasises in this connection that the CPT regards a right of access to a doctor for detained persons during their custody by law-enforcement agencies as one of the three fundamental safeguards against ill-treatment (see paragraph 47 above). In the absence of any explanation for such an omission put forward by the respondent Government, the Court cannot but conclude that the failure on the part of the IVS personnel to ensure that the applicant's injuries were immediately examined and documented by a doctor divested the applicant of an important safeguard against a breach of Article 3 of the Convention (compare *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII; *Barabanshchikov v. Russia*, no. 36220/02, § 46, 8 January 2009; *Davitidze v. Russia*, no. 8810/05, § 95, 30 May 2013; and *Zayev v. Russia*, no. 36552/05, §§ 85-86, 16 April 2015).

65. The Court further notes that the only medical evidence available in the present case, namely the X-ray examination of 30 March 2004, showed fractures of three ribs in an early stage of recovery (see paragraph 24 above). When dismissing the allegations of ill-treatment, the Regional Court relied heavily on the findings of N. who had concluded that the fact that the rib fractures had begun to knit by 30 March 2004 to be sufficient to refute the applicant's version of the events of 18 March 2004. The Court observes, however, that the Regional Court was made aware of the fact that N. regarded his expertise in reading X-rays insufficient to assess the rib fractures without external assistance (see paragraph 34 above). Moreover, N.'s assessment of the fractures as "considerably old" does not appear to be sufficiently precise to dismiss with certainty the claim that the applicant had sustained injuries twelve days prior to the X-ray.

66. In view of the above considerations, the Court concludes that the applicant presented a sufficiently detailed and consistent account of the beatings by the police officers on 18 March 2004 and, accordingly, raised an arguable claim of alleged ill-treatment.

67. Since no credible account of how the fractures to the applicant's ribs had been caused was given either at the domestic pre-investigation inquiry stage or before the Court, it considers that the respondent Government failed to discharge their burden of proof and that it was not satisfactorily established that the applicant's account of events was inaccurate or otherwise erroneous (see *Ryabtsev v. Russia*, no. 13642/06, § 74, 14 November 2013, and *Zelenin*, cited above, § 49). In such circumstances the Court does not deem it necessary to assess the Government's assertion that the injuries could have been inflicted in the fight with "Dima" on 11 March 2004.

68. Bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody, the Court concludes that the applicant's injuries, at least in part, were the result of treatment he underwent while in police custody for which the respondent State bore responsibility.

69. Having regard to all the circumstances of the ill-treatment, its physical and mental effects and the applicant's health, the Court finds that the accumulation of the acts of physical violence inflicted on the applicant amounted to inhuman and degrading treatment, in breach of Article 3 of the Convention.

70. There has therefore been a violation of the above provision under its substantive limb.

(b) Procedural limb of Article 3 of the Convention

71. The Court observes that it is not disputed by the parties that the State was under a procedural obligation, arising from Article 3 of the Convention,

to carry out an effective investigation into the applicant's allegations of ill-treatment.

72. The Court notes that the town prosecutor's office carried out a pre-investigation inquiry into the applicant's allegations. It is not convinced, however, that the inquiry in question was sufficiently thorough and effective to meet the requirements of Article 3 of the Convention.

73. Indeed, the Court has previously ruled that in the context of the Russian legal system a "pre-investigation inquiry" alone is not capable of leading to the punishment of those responsible, since the opening of a criminal case and a criminal investigation are prerequisites for bringing charges against the alleged perpetrators which may then be examined by a court. The Court drew strong inferences from the mere fact that the investigative authority had refused to open a criminal investigation into credible allegations of serious ill-treatment in police custody, regarding it as indicative of the State's failure to comply with its obligation under Article 3 of the Convention to carry out an effective investigation (see *Lyapin v. Russia,* no. 46956/09, §§ 135-36, 24 July 2014). Moreover, the Court found that as a result of their refusals to open a criminal case, the town prosecutor's office had never conducted a proper criminal investigation in which the whole range of investigative measures could be carried out, including questioning, confrontation, identification parade, search and seizure, and crime reconstruction (ibid., § 132).

74. In view of the above, the Court also considers in the instant case that the refusal to open a criminal case into the applicant's credible allegations of ill-treatment at the hands of the police officers on 18 March 2004 amounted to a failure to carry out an effective investigation as required by Article 3 of the Convention. This conclusion makes it unnecessary for the Court to examine in detail the pre-investigation inquiry conducted in the applicant's case, with a view to identifying specific deficiencies and omissions on the part of the investigators (see *Zelenin,* cited above, § 59).

75. The above considerations are sufficient for the Court to conclude that there has been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

76. The applicant complained under Article 6 of the Convention that he had been convicted on the basis of his confession given under duress and without a lawyer present. The Court will examine this complaint under Article 6 §§1 and 3 (c) of the Convention, 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 ..."

77. The Government submitted that the record of the first interview of 19 March 2004 conducted without a lawyer present (see paragraph 17 above) had been declared inadmissible evidence by the Regional Court and that accordingly in that part of the applicant's complaint was manifestly ill-founded. With regard to the statement of surrender and confession, the Government admitted that it had been made without a lawyer present; they noted, however, that the applicant had waived the right to legal assistance in writing and that in his appeal of 14 December 2004 he had invoked the fact of surrender and confession as a mitigating circumstance. The Government stated that the applicant's conviction had been based on various pieces of evidence, in particular, the record of the second interview of 19 March 2004 (see paragraph 19 above), the investigative re-enactment record, witnesses' statements and other unspecified evidence. They concluded that the applicant's complaint was manifestly ill-founded.

78. The applicant alleged that, because of the ill-treatment he had sustained at the hands of the police, he could not be said to have waived his right to legal assistance on 19 March 2004. Moreover, the statement of surrender and confession had been written on 18 March 2004, that is to say before the statement declining legal assistance had been put in writing. He concluded that there had been no clear and unequivocal waiver of his right to legal assistance in his case and that, consequently, his Convention right of access to a lawyer had been breached. He further pointed out that the self-incriminatory statement made under duress without the benefit of legal advice had served as the sole evidence of his guilt.

A. Admissibility

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

B. Merits

80. The Court reiterates that it is 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. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (see *Gäfgen v. Germany* [GC], no. 22978/05, § 163, ECHR 2010).

81. The right to silence and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6 of the Convention. Their rationale lies, *inter alia*, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6 of the Convention. The right not to incriminate oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see *Jalloh v. Germany* [GC], no. 54810/00, § 100, ECHR 2006-IX).

82. Confession statements obtained in violation of Article 3 of the Convention are inherently unreliable. Furthermore, their use in criminal proceedings is often a reason for which the acts of ill-treatment are committed in the first place. Taking such statements into consideration in finding a person guilty is incompatible with the guarantees of Article 6 of the Convention (see *Söylemez v. Turkey*, no. 46661/99, § 122, 21 September 2006).

83. The Court has found in earlier cases, in respect of confessions as such, that the admission of statements obtained as a result of torture (compare *Örs and Others v. Turkey*, no. 46213/99, § 60, 20 June 2006; *Harutyunyan v. Armenia*, no. 36549/03, §§ 63, 64 and 66, ECHR 2007-III; *Levinţa v. Moldova*, no. 17332/03, §§ 101 and 104-05, 16 December 2008; *Hajnal v. Serbia*, no. 36937/06, § 113, 19 June 2012), or of other ill-treatment in breach of Article 3 of the Convention (see *Söylemez*, cited above, §§ 107 and 122-24; *Iordan Petrov v. Bulgaria*, no. 22926/04, § 136, 24 January 2012; and *Nasakin v. Russia*, no. 22735/05, §§ 98-100, 18 July 2013) as evidence in establishing the relevant facts in criminal proceedings rendered the proceedings as a whole unfair. The use of evidence secured as a result of a violation of one of the core and absolute rights guaranteed by the Convention always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction (see *Gäfgen*, cited above, § 165).

84. In the present case, it is not disputed between the parties that the self-incriminating statement of surrender and confession made by the applicant without a lawyer present, following his arrest and placement in police custody, formed part of the evidence adduced against him in the course of the criminal proceedings. The Regional Court did not find the

statement inadmissible and referred to it when finding the applicant guilty and convicting him.

85. The Government, however, asserted that the applicant had waived his procedural rights, relying on his written statements of 19 March 2004 (see paragraphs 15-16 above). The Court reiterates in this connection 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). In the circumstances of the present case it finds it impossible to agree with the Government's waiver claim as the written statements of 19 March 2004 were clearly made after the statement of surrender and confession had been drawn up on 18 March 2004. Most importantly, the applicant cannot be said to have validly waived his privilege against self-incrimination in view of the Court's finding in paragraph 69 above that he had sustained the ill-treatment in violation of Article 3 of the Convention.

86. The Court therefore finds that the domestic courts' use of the applicant's surrender and confession statement as evidence in establishing the applicant's guilt – irrespective of the probative value of that statement and irrespective of whether its use was decisive in securing the applicant's conviction – has rendered the applicant's trial unfair.

87. There has therefore been a violation of Article 6 § 1 of the Convention.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

89. The applicant raised a number of other complaints under various Convention provisions. Having regard to all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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

91. The applicant claimed 40,000 euros (EUR) in respect of pecuniary damage for the cost of medical treatment that he would require as a result of the ill-treatment. In particular, he claimed that his hearing had been impaired and that he had developed heart pains. He also requested EUR 6,000 allegedly embezzled from him by a lawyer previously retained by him.

92. He further claimed EUR 300,000 in respect of non-pecuniary damage caused by the ill-treatment. He also claimed EUR 650,000 in compensation for his detention.

93. The Government stated that the claims in respect of pecuniary damage were not supported by evidence. They further asserted that the claims in respect of non-pecuniary damage were excessive.

94. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have suffered non-pecuniary damage on account of the breaches of his Convention rights which cannot be compensated for by mere findings of violations and awards the applicant EUR 19,500 under that head.

B. Costs and expenses

95. The applicant also claimed EUR 1,640 for the costs and expenses incurred before the Court corresponding to 24.5 hours' work on the part of his representative. An itemised schedule of these costs was submitted.

96. The Government asserted that the applicant's claims under this head were not supported by evidence.

97. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, and bearing in mind that the applicant was granted EUR 850 in legal aid for his representation by Ms Preobrazhenskaya, the Court considers it reasonable to award the sum of EUR 790 for costs and expenses incurred in the proceedings before it.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints about alleged ill-treatment in police custody, the ineffectiveness of the ensuing investigation and the use at the trial of the coerced confession obtained without a lawyer present admissible and the remainder of the application inadmissible;

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 has been a violation of Article 6 § 1 of the Convention in respect of the use of the applicant's surrender and confession statement as evidence;

5. *Holds* that it is not necessary to examine separately the applicant's complaint under Article 6 § 1 of the Convention concerning lack of access to a lawyer;

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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 19,500 (nineteen thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 790 (seven hundred and ninety euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 9 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Deputy Registrar	Luis López Guerra President