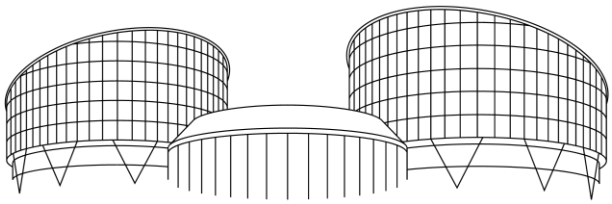

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TANGIYEV v. RUSSIA

(Application no. 27610/05)

JUDGMENT

STRASBOURG

11 December 2012

FINAL

29/04/2013

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

In the case of Tangiyev v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 20 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 27610/05) 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 Timur Khavazhiyevich Tangiyev ("the applicant"), on 22 June 2005.

2. The applicant was represented by lawyers of the Stitching Russian Justice Initiative ("SRJI"), an NGO based in the Netherlands with a representative office in Russia. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been subjected to ill-treatment in custody, that the ensuing investigation had been ineffective, that his conviction had been based on a forced confession and that the authorities had interfered with his right of individual petition.

4. On 30 September 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and is serving a prison sentence in the Vladimir Region.

A. The applicant's arrest and ensuing detention

6. On 11 April 2003 the police arrested the applicant in his house in the presence of his family. According to the applicant, in the course of the arrest, the police officers severely beat him up and burnt his body with cigarette butts and matches.

7. The applicant was taken to the Staropromyslovskiy police station by car. When questioned by the deputy prosecutor, the applicant admitted having been present during the murder of two law-enforcement officers, having been involved in a car-jacking and having been in possession of firearms. It appears that on the same day the Staropromyslovskiy District Court of Grozny authorised the applicant's placement in custody.

8. On an unspecified date the applicant was charged with several counts of murder, membership of an armed criminal gang, unlawful possession of firearms, theft and car-jacking.

9. When questioned in the presence of lawyer Ts. on 12 April 2003, the applicant reiterated his statement of 11 April 2003. According to the record of the questioning, he confirmed that he had made his statement voluntarily.

10. On 14 April 2003 the applicant was blindfolded and taken to a temporary detention centre of the ORB-2 (Operative investigation bureau). During the night he was taken to an office on the fourth floor. According to the applicant, police officers made him kneel and attached telephone cable to his fingers, subjecting him to electrocution. They also hit him with a rubber truncheon.

11. On the same date the applicant was questioned and confessed to killing A. and to his involvement in the killing of the Kham. brothers. Lawyer Ts. was present during the questioning. The applicant reiterated his confessions when questioned again, in the presence of the same lawyer, on 21 April 2003.

12. The applicant remained at the ORB-2 temporary detention centre for two months. He was repeatedly ill-treated by the same police officers. On an unspecified date the applicant signed a written confession.

13. The applicant's mother, who visited him at the beginning of June 2003, submitted a written statement that she had seen a purulent wound on the back of the applicant's head.

14. On 20 June 2003 the applicant was transferred to remand prison no. IZ-20/1 in Grozny. He was examined by a doctor who noted that the applicant had marks on the back of his head caused by beatings and three cigarette burns on his body. It also transpired from a report signed on 20 June 2003 by two officials of the remand prison and an employee of ORB-2 that the applicant had been handed over to the remand prison "with the following injuries from ill-treatment: (1) cigarette burns (many); (2) [injuries] on the back of the head."

15. The applicant's mother visited him again on 21 or 22 June 2003. In her written statement to the Court she testified that his entire body had been dark blue, and he had had numerous burn marks and a wound on the head.

16. On 11 October 2003 the applicant was transferred back to the Staropromyslovskiy temporary detention centre. On the same day he was brought before a judge. He retracted his confession, complained about ill-treatment and asked for another counsel.

17. According to the applicant, at 10 p.m. on 12 October 2003 he had been taken from his cell to the questioning room at the temporary detention centre. The police officers had handcuffed him, put a plastic bag on his head and started to beat him and torture him with electricity. They had told him that he should not have retracted his confession and that in the future he should always confirm his self-incriminating statements and show remorse. After the applicant had been returned to his cell he unsuccessfully attempted to take his life by slashing his wrists.

18. On 23 October 2003 the applicant was examined by the doctor of the remand prison, who noted that he had many abrasions on his left forearm.

19. On 10 January 2004, when questioned in the presence of lawyer B., the applicant chose to remain silent.

B. Trial and appeal proceedings

20. During the trial the applicant was represented by two lawyers. He retracted his confession and claimed that he had confessed under torture. He complained to the trial judge that his arrest and detention at ORB-2 had been unlawful, that he had been repeatedly ill-treated and threatened, and had finally been forced to confess. He pleaded not guilty.

21. On 5 October 2004 the Supreme Court of the Republic of Chechnya convicted the applicant as charged and sentenced him to twenty-four years' imprisonment. It based its decision on the applicant's confession, confessions of his co-defendants, witness statements to the investigator and the court, and ballistic expert reports concluding that the victims had been shot with the weapons found in the applicant's house.

22. In reply to the applicant's allegations of ill-treatment and forced confession, the court referred to the prosecutor's decision of 11 May 2004 (see paragraph 27 below). It reviewed the prosecutor's findings and found that they had been correct. In particular, the court agreed with the prosecutor that the medical examination had not confirmed the ill-treatment and that the witness statements had been unconvincing. The witnesses had not seen the beatings themselves and had been unable to name the police officers who had allegedly ill-treated the applicant. Moreover, despite the applicant's claim to the contrary, at least one of the witnesses, Vlad., had known the applicant prior to his arrest. The court also referred to the medical certificate of 22 April 2003 from which it transpired that the

applicant had no injuries. Lastly, it pointed out that the applicant had been assisted by counsel during the entire investigation. The court concluded that the prosecutor's decision of 11 May 2004 had been lawful, well-reasoned and justified.

23. The applicant appealed. He submitted, in particular, that he had given his confession under duress. He had been unlawfully held at ORB-2, where he had been ill-treated and forced to confess. The prosecutor's inquiry into his allegations of ill-treatment had been inadequate and ineffective.

24. On 8 June 2005 the Supreme Court of the Russian Federation upheld the conviction on appeal and reduced the sentence to twenty-three years and ten months' imprisonment. With respect to the allegations of ill-treatment, the court noted that there was no evidence that the applicant's confession had been given under duress.

C. Official inquiry into the alleged ill-treatment

25. In the course of the trial the applicant's counsel complained to the court that the applicant had been subjected to ill-treatment during the arrest and whilst in police custody. The court ordered the prosecutor to carry out an inquiry into the applicant's allegations.

26. The prosecutor's office of the Staropromyslovskiy District of Grozny conducted an inquiry. The prosecutor questioned the applicant, his co-defendants and co-detainees, and the alleged perpetrators.

27. On 11 May 2004 the prosecutor's office dismissed the applicant's allegations of ill-treatment as unsubstantiated. The investigator and the prosecutor's office summarised the findings of the conducted inquiries as follows:

> "When questioned, [the applicant] stated that on 11 April 2003 he was arrested ... In the course of the arrest, he was beaten up. [The police officers] burnt him with cigarettes and matches. Then he was taken to [the police station]. Several days later, with a knitted hat pulled over his face, he was taken to [ORB-2] and placed in cell no. 4. On the same night [the police officers] took him to an office on the fourth floor. He was made to kneel. They attached two telephone cables to his fingers and tortured him with electricity. They also beat him with a rubber truncheon. The torture continued every day and night with brief intervals. He had a scar on the back of his head ... On 13-14 October 2004 he was beaten up at [the temporary detention centre] because he had retracted his earlier testimony. He was beaten up by [police officers Bis., Has., Zhab. and Alis.]. The fact that he had been beaten up could be confirmed by Sul. and Khad.
>
> When questioned, [co-defendant] Ch. submitted ... that he had no knowledge as to whether [the applicant] had been subjected to any ill-treatment. When he saw [the applicant] at [ORB-2], he had no visible traces of beatings. He looked quite normal. [The applicant] complained to him through the wall separating their cells that he had been beaten up.

...

When questioned, Vlad. submitted that around the beginning of May 2003 he had been arrested by [the police] and placed in cell no. 4 at [ORB-2]. [The applicant] had been brought into the cell at night. He had had bruises on his face. [Vlad.] further submitted that ... [the applicant] had been taken for questioning during the night. He had not seen [the police officers] who had taken and then brought back [the applicant]. ... He had seen [the applicant] ... for the last time in the remand prison in Grozny. He had looked well. As regards the use of force against [the applicant] in the course of the preliminary investigation, he had been told about it by [the applicant] himself.

When questioned, Sul. submitted that he had been arrested [by police] in mid-March 2003 and had been detained in the temporary detention centre. In mid-April 2003 [the applicant] had been placed in the same cell. [The applicant] had been severely beaten. [Sul.] had seen a wound on [the applicant's] head and red spots on his chest. ... he further submitted that he had not witnessed how [the applicant] had been beaten; he had seen [the applicant] only afterwards.

...

When questioned, Khad. submitted that he had been detained in [ORB-2]. In mid-April 2003 he had heard the police officers mention the [applicant's] name. At that time, the vent in the door to his cell had been open. He had seen through the vent that [the applicant] had been undressed by the guards ... He had seen dark blue bruises on the [applicant's] back.

...

T., deputy head of the [temporary detention centre] in Grozny, submitted that on 11 October 2003, upon arrival at the temporary detention centre, [the applicant] had been examined by a doctor. [The applicant] had not complained about his condition. During the time of [the applicant's] detention in the temporary detention centre, he had never been questioned during the night. Any work with the suspects after 10 p.m. was prohibited ... Whilst in detention in the temporary detention centre, the applicant had slashed his wrists and received medical assistance.

When questioned, ... Bis. submitted that on 11 April 2003 during the [applicant's] arrest ..., his unit had cordoned off the perimeter to prevent the [applicant's] escape. The [applicant's] arrest had been carried out by the [criminal investigation unit of the police]. When [the applicant] had been arrested, they had removed the cordon. ... He had entered the house and had seen [the applicant] standing by the wall in the hallway with his arms up. [The applicant] had recognised him because they knew each other. ... He had not seen [the applicant] since. He had not used any force against the applicant.

... Khas. submitted that in April 2003 [the law-enforcement agencies] had carried out the arrest of [the applicant], who had been the leader of an organised criminal group. He had not taken part in the [applicant's] arrest. He did not know who had arrested him. He had not put any physical pressure on [the applicant]. It was impossible for him to have done so because he had not been involved in the [applicant's] arrest. ...

When questioned, [police officers] Zhab. and Alis. submitted that in the course of the arrest, [the applicant] had tried to resist and abscond. As a result, force had been used against him. They did not know who exactly had used force against [the applicant]. No physical or psychological pressure had been put on [the applicant] during the preliminary investigation and [the applicant's] detention. [The applicant] had testified voluntarily. The information given by the [applicant] had led to new evidence being obtained in respect of other participants in the criminal gang ... .

...

When questioned, Sh., the head of the on-call unit of ORB-2, submitted that no psychological or physical force had been used against the detainees in ORB-2. He further explained that the cells ... were equipped with metal doors with vents ... Those vents were kept closed. They were always closed when an arrestee was brought to the premises. This was done to prevent the detainees from seeing each other and communicating. The radio was on all the time. The sound was at full volume in order to be heard in the cells. It was impossible for the detainees to hear any conversation held in the corridor.

...

When questioned, police officer Ul. ... submitted that he and other police officers had arrested [the applicant]. They had had information implicating [the applicant] in the murder of the Kham. brothers and that he had been armed. At the time of the arrest, [the applicant] had been at home eating on the floor. When the applicant had seen the police officers, he had run to the bed trying to get a gun hidden under the pillow. In order to neutralise and arrest [the applicant], he had had to use force and combat techniques. When they had taken [the applicant] out of the house, they had pulled his T-shirt over his head in order to prevent him from fleeing. He had noticed small scars on the [applicant's] chest and belly. After the arrest, no force had been used against [the applicant]. [The applicant] had asked to be released and had promised to help the police. He had wanted to give information about all the members of the gang whom he knew personally.

...

According to the medical register of the temporary detention centre ... , [the applicant] had complained only about his dry cough ...

...

According to forensic report no. 399 of 5 May 2004 it had been impossible to determine the origin of the scars on the [applicant's] body because the wounds were infected. There was no forensic data substantiating the allegation that the injuries ... had been caused by electrocution. The deep scar on the front of the right forearm could have resulted from the removal of a lipoma. Multiple ... scars on the front of the left forearm had resulted from injuries caused by stabbing. The position of the scars did not exclude the possibility that they had been self-inflicted.

...

Vlad., Khad. and Sul. were suspects in the criminal investigation. Their statements that they had seen [the applicant] being ill-treated had been refuted by the evidence collected in the course of the present inquiry.

According to the certificate issued by ORB-2, Sul. had been detained there from 25 July to 5 August 2003 and could not have met [the applicant], who had been detained at ORB-2 from 16 April to 20 June 2003. ...

Khad. could not have heard the [applicant's] name pronounced by someone in the corridor because the radio was constantly on. Nor could he have seen [the applicant] from his cell, because the vents in the cell doors were always kept closed when a new arrestee was brought to the premises.

As regards the statement made by Vlad., it was [the applicant] himself who had told him about the alleged ill-treatment.

The statements made by Vlad., Khad. and Sul. should be interpreted as their attempt to falsely accuse the police officers in order to help [the applicant] ... to evade criminal liability.

Having regard to the above, it was established in the course of the inquiry that force had been used against [the applicant] only in the course of his arrest because he had tried to resist and flee. The actions of the police had been lawful. .... The force used against [the applicant] had not been excessive.

The [applicant's] allegations ... have not been substantiated by any evidence.

The [applicant's] allegations ... should be viewed as a line of defence aimed at misleading the courts and evading criminal responsibility."

28. On 16 July 2004 the applicant challenged the decision of 11 May 2004 before the Staropromyslovskiy District Court of Grozny. According to the Government, the appeal had been lodged by the two lawyers representing the applicant. On 20 July 2004 the statement of appeal was returned to the lawyers because lawyer D. had failed to sign it. According to the applicant, neither he nor his counsel had been informed accordingly; nor had they received the returned statement of appeal.

D. Developments in the case following its communication to the Government

29. According to the applicant, on 7 February 2010 his mother had been summoned to the prosecutor's office in Grozny. An official at the office had allegedly made threats to her in connection with the applicant's complaints to the Court. He allegedly said that the applicant had lodged too many complaints with the Court and that that might cause him problems.

30. On 8 February 2010 the house in which the applicant's family were temporarily living was set on fire.

31. The official investigation concluded that the fire had resulted from a malfunctioning gas heating system. The possibility of arson was ruled out.

32. On 17 February 2010 the prosecutor's office refused to open a criminal investigation into the matter. On 12 April 2010 that decision was quashed and the proceedings resumed in connection with the allegations made by the applicant's mother that she had been threatened by an official working at the prosecutor's office. The parties did not inform the Court of the outcome of the proceedings, nor did they provide copies of the relevant decisions.

II. RELEVANT DOMESTIC LAW

33. Article 413 of the Russian Code of Criminal Procedure, setting out the procedure for reopening of criminal cases, reads, in so far as relevant, as follows:

> "1. Court judgments and decisions which became final should be quashed and proceedings in a criminal case should be re-opened due to 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 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."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained that he had been subjected to ill-treatment while in custody and that the ensuing investigation had not been effective, in contravention of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

35. The Government submitted that the applicant had failed to exhaust domestic remedies in that he had not challenged the prosecutor's refusal to open a criminal case by applying to a court. In their view, the applicant, who had been represented by two lawyers well-versed in criminal matters, had chosen not to appeal against the prosecutor's decision in question, which must have been in line with his defence strategy.

36. The applicant asserted that he had exhausted domestic remedies because he had in fact lodged a complaint against the prosecutor's decision of 11 May 2004. However, he had never been informed of the outcome. He further pointed out that the Government's allegations concerning the dismissal of his appeal without consideration on the merits on 20 July 2004 were unsupported. The Government had not provided a copy of the relevant decision.

37. The Court reiterates its finding in earlier cases that in the Russian legal system the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003).

38. The Court further observes that the applicant did lodge a complaint against the prosecutor's decision of 11 May 2004. The Court also takes cognisance of the fact that no evidence has been submitted by the Government to confirm their assertion that that complaint had been left without consideration on the merits as a result of the applicant's failure to observe certain procedural formalities. The Court does not need to establish, however, the veracity of the parties' allegations in this respect, as the applicant's complaint was, nevertheless, reviewed by the trial and appeal courts. They examined the merits of the applicant's complaint, reviewed the prosecutor's findings, which had been summed up in the decision of 11 May 2004, questioned the applicant and ruled that there was no case to answer against them.

39. In this connection, the Court reiterates that non-exhaustion of domestic remedies cannot be held against the applicant if, in spite of the latter's failure to observe the formalities prescribed by law, the competent authority has nevertheless examined the substance of the claim (see, *mutatis mutandis*, *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007; *Skałka v. Poland* (dec.), no. 43425/98, 3 October 2002; *Metropolitan Church of Bessarabia and Others v. Moldova* (dec.), no. 45701/99, 7 June 2001; and *Edelmayer v. Austria* (dec.), no. 33979/96, 21 March 2000). The Court finds in the particular circumstances of the present case that, by raising before the trial and appeal courts a complaint concerning ill-treatment and the inadequacy of the investigation, the applicant provided the domestic authorities with the opportunity to put right the alleged violation.

40. It follows that the applicant cannot be said to have failed to exhaust domestic remedies because he did not lodge a separate judicial complaint against the assistant prosecutor's decision of 11 May 2004. Thus, the Government's objection as to the non-exhaustion of domestic remedies must be dismissed.

41. The Court also 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

1. The parties' submissions

42. The applicant submitted that agents of the State had subjected him to torture while in custody in order to make him confess to the crimes he was accused of committing. He also considered that the investigation in response to his complaints had fallen short of the standards set forth in Article 3 of the Convention.

43. The Government denied the applicant's allegations of ill-treatment and considered them unsubstantiated, referring to the findings of the inquiry conducted by the prosecutor in response to the applicant's complaint. The Government submitted that the investigation had been effective, thorough, prompt and independent.

2. The Court's assessment

(a) General principles

(i) Alleged ill-treatment

44. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. 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 *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

45. Where an individual claims to have been injured by 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).

46. The ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 94, *Reports of Judgments and Decisions* 1998-VIII).

(ii) Investigation into the allegations of ill-treatment

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

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

ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

49. An investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov 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 and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

50. Furthermore, the investigation must be expeditious. In cases examined under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita*, 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).

(b) Application of the principles to the present case

(i) Alleged ill-treatment

51. Turning to the circumstances of the present case, the Court observes that the parties did not dispute that the applicant had sustained the injuries while he was in custody. Accordingly, the Government were under an obligation to provide a plausible explanation of how those injuries were caused.

52. The Court accepts the Government's explanation as to the origin of the scars on the applicant's left forearm. The applicant did not dispute the fact that he had slashed his wrists on 12 October 2003. As to the other injuries (see paragraph 14 above), the Court notes that the Government, without providing details, simply reiterated the domestic authorities' findings that the applicant had sustained the injuries in the course of arrest and that the police officers had had to use force against him because he had resisted arrest.

53. The Court finds such an explanation unconvincing. In its view, the domestic authorities' findings lack any specific details and contain no

explanation as to why the police officers had to injure the applicant on the head in order to overcome his alleged resistance to arrest and to prevent him from fleeing. Nor was any explanation furnished as to the cause of the cigarette burns on the applicant's body. As regards the traces of other injuries detected on the applicant's body, the forensic expert was unable to determine their origin. By contrast, the applicant presented a consistent and detailed description of the ill-treatment which corresponds to the nature and location of the recorded injuries.

54. In these circumstances the Court considers that, even if the applicant did resist arrest, the Government's account provided only a very incomplete, and therefore insufficient, explanation of the injuries concerned.

55. On the basis of all the material placed before it, the Court concludes that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than – entirely, mainly, or partly – by the treatment he underwent while in police custody.

56. The applicant maintained that the ill-treatment to which he had been subjected amounted to torture. The Government did not comment. The Court observes that the applicant sustained injuries to his head and the wounds became infected. His body was burnt with cigarettes and matches. Such treatment must have caused him severe mental and physical suffering. Moreover, it appears that the use of force was aimed at debasing the applicant, driving him into submission and making him confess to criminal offences. Therefore, the Court finds that the ill-treatment to which the applicant was subjected was serious enough to be considered as torture.

57. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb.

(ii) Adequacy of the investigation

58. The Court observes that the Russian authorities did carry out an inquiry into the applicant's allegations. It is not convinced, however, that the inquiry was sufficiently prompt, thorough and effective to meet the requirements of Article 3 of the Convention.

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

60. It appears that the administration of the remand prison where the applicant was taken some nine days after his arrest was aware that the applicant had sustained serious injuries (see paragraph 14 above). However, they took no action in this respect. It was only about a year later that the prosecutor's office conducted an official inquiry into the applicant's allegations of ill-treatment. Accordingly, the Court considers that the authorities' attempt to elucidate the circumstances of the applicant's arrest and detention was belated.

61. As regards the scope of the inquiry, the Court notes that the prosecutor did not take into account the medical documentation prepared by the remand prison administration and corroborating the applicant's allegations of ill-treatment. Nor did he question the medical personnel of the remand prison or the applicant's relatives who had been present during the applicant's arrest. The forensic medical examination of the applicant was not conducted until a year after the events in question, by then precious time had been lost and it had been impossible to determine the cause or origin of the applicant's injuries.

62. Lastly, the Court observes that the subsequent judicial proceedings did not remedy the deficiencies of the prosecutor's inquiry. The courts merely upheld the prosecutor's findings without rectifying the omissions of the inquiry.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

64. The applicant complained that the investigation into his allegations of ill-treatment had been ineffective, in violation of Article 13 of the Convention, which provides:

> "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."

65. The Court observes that this complaint concerns the same issues as those examined above under the procedural limb of Article 3 of the Convention (see paragraphs 58-63 above) and should therefore be declared admissible. However, having regard to its conclusion above under Article 3 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

66. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair. In particular, he alleged that the domestic courts had violated his right not to incriminate himself and had had regard to his confession given under duress, that the trial court had not provided him with an opportunity to confront a number of witnesses, that the counsel representing him during the investigation stage had been assigned to him against his will; that he had not had sufficient time to study

the criminal case file; and that the trial court had been partial. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

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

A. Admissibility

67. The Court notes that this part of the application 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

1. The parties' submissions

68. The Government considered the applicant's allegations to be unsubstantiated. They submitted that before each questioning the applicant had been advised of his right not to incriminate himself. Except for one occasion, the applicant's lawyer had been present during the questioning. Each time, the applicant had said that he had made submissions voluntarily and once he had chosen to remain silent.

69. The applicant maintained his complaint. He claimed that he had not been advised of his right not to incriminate himself on the day of the arrest and that all his confessions, testimonies and statements had been made under torture.

2. The Court's assessment

70. The Court notes that in his original application and subsequent observations the applicant claimed that the criminal proceedings against him had been unfair, contrary to Article 6 of the Convention under several heads (see paragraph 66 above). Having examined the materials in its possession, the Court does not consider it necessary to examine all of them; the Court will concentrate on the applicant's allegation that the domestic courts, when they convicted him, had regard to confessions that he made under duress.

71. In this connection, 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, *inter alia*, *Gäfgen v. Germany* [GC], no. 22978/05, § 162, ECHR 2010).

72. Furthermore, particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3. The use of such 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).

73. 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; and *Levinţa v. Moldova*, no. 17332/03, §§ 101 and 104-05, 16 December 2008) or of other ill-treatment in breach of Article 3 (compare *Söylemez v. Turkey*, no. 46661/99, §§ 107 and 122-24, 21 September 2006) as evidence to establish the relevant facts in criminal proceedings rendered the proceedings as a whole unfair. This finding applied irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction (ibid.).

74. In the present case, the Court notes that the self-incriminating statements made by the applicant following his arrest and placement in police custody formed part of the evidence produced against him. The trial and appeal court did not find those statements inadmissible and referred to them when finding the applicant guilty and convicting him.

75. The Court further notes that it has already established that the applicant was subjected to torture during his arrest and whilst in police custody, that is, at the time when he was questioned and made statements implicating himself in the crimes with which he was subsequently charged (see paragraphs 51-57 above).

76. In such circumstances, the Court is not convinced by the Government's argument that the applicant's confessions should be regarded as having been given voluntarily in view of the fact that, during the questioning, he had been assisted by a lawyer and advised of his right to remain silent. It concludes that, regardless of the impact the applicant's statements obtained under torture had on the outcome of the criminal proceedings against him, such evidence rendered the criminal proceedings unfair. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

IV. ALLEGATION OF HINDRANCE IN THE EXERCISE OF THE RIGHT OF INDIVIDUAL PETITION UNDER ARTICLE 34 OF THE CONVENTION

77. The applicant alleged that, following communication of his complaints under Articles 3, 6 and 13 of the Convention, his family had been subjected to persecution by the Russian authorities. In particular, on 7 February 2010 an official at the prosecutor's office in Grozny had made threats to his mother and on 8 February 2010 someone had set the house where his family resided on fire. The Court will examine this complaint from the standpoint of the right of individual petition guaranteed by Article 34 of the Convention, which reads:

> "The Court may receive applications from any person... 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."

78. The Government considered the applicant's allegations unsubstantiated. In response, the applicant's representatives submitted a letter from his mother in which she agreed that the fire had not been caused by arson.

79. The Court reiterates that the right of individual petition under Article 34 of the Convention will operate effectively only if an applicant can interact with the Court freely, without being subjected to any form of pressure from the authorities to withdraw or modify his or her complaints (see *Akdivar and Others v. Turkey*, no. 21893/93, § 105, ECHR 1996-IV). 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 *Fedotova v. Russia*, no. 73225/01, §§ 48-51, 13 April 2006; *McShane v. the United Kingdom*, no. 43290/98, § 151, 28 May 2002; and *Tanrıkulu,* cited above, § 130).

80. The Court notes that the Government did not inform it of the progress in the investigation into the alleged arson, which was reopened in 2010 in connection with the interview of the applicant's mother in the prosecutor's office. In the circumstances of the case, the Court does not have enough evidence before it to conclude that any undue pressure or form of coercion was put on the applicant or his family in the course of the proceedings before the Court.

81. Accordingly, the Court cannot find that the Government failed to comply with their obligations set out in Article 34 of the Convention. It therefore concludes that there has been no hindrance to the applicant's right of individual petition.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

82. Lastly, the applicant complained that his detention from 11 April to 20 June 2003 had been unlawful and that he had been subjected to discrimination owing to his ethnic origin. He relied on Articles 5 and 14 of the Convention.

83. Having regard to all the material in its possession and in so far as it falls within its competence, the Court finds that the evidence discloses no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 120,000 euros (EUR) in respect of non-pecuniary damage.

86. The Government considered the amount claimed excessive.

87. The Court notes that it has found a combination of serious violations in the present case: the applicant was subjected to torture whilst in police custody; the investigation into his allegations of ill-treatment was ineffective; the criminal proceedings against him were unfair. In these circumstances, the Court considers that the applicant's suffering and anguish cannot be compensated for by a mere finding of a violation. However, the amounts claimed appear excessive. Making its assessment on an equitable basis and taking into account the gravity of the ill-treatment, the Court awards the applicant EUR 45,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

88. The applicant also claimed EUR 6,629.74 for the costs and expenses incurred before the Court. In particular, he claimed EUR 5,925 for the work carried out by his representatives, who spent 41.4 hours preparing the case and EUR 704.74 on office, translation and postal expenses. He submitted

receipts for 7,494 Russian roubles (RUB) in respect of translation services and for RUB 2,712.82 in respect of DHL mail.

89. The Government did not comment.

90. 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, the Court considers it reasonable to award the sum of EUR 2,260 covering costs under all heads, plus any tax that may be chargeable to the applicant, to be paid into the representatives' bank account in the Netherlands, as identified by the applicant.

C. Default interest

91. 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 concerning the alleged ill-treatment of the applicant in police custody and the ensuing investigation and unfairness of the criminal proceedings against him 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 on account of the applicant's allegations of ill-treatment in custody;

3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the authorities' failure to carry out an effective investigation into the applicant's allegations of ill-treatment in custody;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the unfairness of the criminal proceedings against the applicant;

6. *Holds* that the State has not failed to meet its obligation under Article 34 of the Convention;

7. *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 Russian roubles at the rate applicable at the date of settlement:

(i) EUR 45,000 (forty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,260 (two thousand two hundred and sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the Stichting Russian Justice Initiative's bank account in the Netherlands;

(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;

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

Done in English, and notified in writing on 11 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President