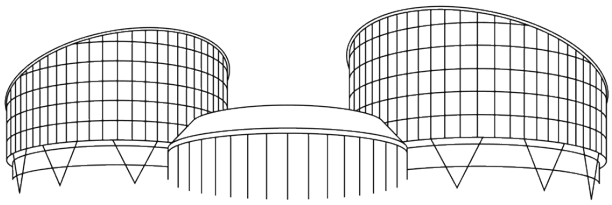

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 44292/09
Aleksandr Vladimirovich GVINIASHVILI
against Russia
lodged on 17 July 2009

STATEMENT OF FACTS

The applicant, Mr Aleksandr Vladimirovich Gviniashvili, is a Russian national, who was born in 1979 and is serving a sentence of imprisonment in correctional colony IK-1 in Penza.

A. The circumstances of the case

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

1. First set of criminal proceedings

According to the applicant, on 7 August 2007, at about 1.00 a. m. in a park in Salsk Town (Rostov Region) while returning home from work he was verbally aggressed and then physically attacked by a group of young people. One of them had a knife. In order to defend himself the applicant snatched out the knife from the attacker and stubbed him in the leg.

(a) Arrest and detention pending investigation and the first trial

On 7 August 2007 the applicant was arrested and charged with murder of Mr M. (the victim). According to the authorities, the applicant had initiated a fight and attacked the victim with a knife, stubbed him in the thigh and cut femoral artery. The victim was delivered by an ambulance car to a nearby hospital where he subsequently died.

On 9 August 2007 the Salskiy Town Court of the Rostov Region (the Town Court) ordered his detention on remand. The detention was subsequently extended several times. The last extension during the trial

before the first instance court was ordered by the Town Court on 4 June 2008, apparently until 7 September 2008.

(b) Investigation

On 7 August 2007 between 10.55 a.m. and 11.55 a. m., Mr B. (the expert), examined the corpse of the victim and recorded that the face of the corpse was covered with live maggots. The expert also found out that rigor mortis was at an advanced stage, death spots on the corpse blanched if pressed and restored in 7.5 minutes. Taking into account the cadaveric phenomena, he came to the conclusion that the victim's death was the result of blood loss caused by a punctured wound in the victim's thigh and occurred on 6 August 2008, between midnight and 4 a. m. The expert recoded the findings in his autopsy report (*акт судебно-медицинского исследования*).

According to the applicant, on 7 August 2007 he asked the investigator to let him see the corpse of the victim, but the investigator refused his request.

On 8 August 2007, on the investigator's request the same expert conducted another examination of the victim's corpse and on the basis of the same cadaveric phenomena described above came to the conclusion that the victim died from blood loss on 7 August 2008, between midnight and 4 a. m. The expert also established that the victim had in his blood 3.6 % of alcohol. The expert recorded the findings in his expert report (*заключение эксперта*).

On 8 August 2007 the investigator in charge of the applicant's case ordered medical examination of the applicant. The examination took place on 12 September 2007 and revealed several bruises on his body. The expert report did not address one of the questions posed by the investigator, namely how old the injuries were.

On 16 October 2007 the applicant and his counsel were informed of the investigator's decision ordering forensic examination of the victim's corpse as well as of the rights of the defense according to the Article 189 of the Russian Code of Criminal Procedure (CCrP). The defense made no comments.

According to the applicant, no photograph of the victim's corpse was made by the investigation authorities and attached to the criminal case-file.

(c) First trial

On 6 December 2007 the Town Court, composed of the presiding judge L., started the examination of the case. The Town Court held a number of sessions during which it, *inter alia*, heard seven prosecution witnesses (the victim's friends who had been present on the crime scene) and examined the expert, Mr B. The witnesses stated that on 7 August 2007 at about 1.00 a. m the applicant had initiated the conflict with the victim in a park in Salsk Town (Rostov Region) and stubbed the latter with a knife.

The applicant did not deny that he had a quarrel and a fight with the victim. However, he argued that even if he had stubbed the victim, it was in self-defense as he had been attacked by the victim with a knife and beaten up by his friends. According to the applicant, the testimony of the prosecution witnesses was unreliable because they were friends of the victim and wanted to avoid criminal responsibility in connection with the

beatings inflicted on him. The applicant based his self-defense plea on the medical examination report of 12 September 2007 which revealed several injuries on his body.

On 10 July 2008 the applicant requested the Town Court to examine the medical staff in charges of the victim before his death in order to clarify the circumstances of the death.

On 18 July 2008 the applicant requested the Town Court to declare the expert report of 8 August 2007 to be inadmissible evidence because the defense was informed of the examination of the victim's corpse on 16 October 2007, i.e. more than two months later after the examinations had taken place. Thus, according to the applicant, his procedural rights guaranteed by Article 198 of the CCrP were violated, i.e. he had been unable to challenge the expert, to propose another expert or expert institution, to propose questions to be posed to the expert, to apply for the investigator's permission to be present at the examinations as well as to give explanations to the expert.

On 18 July 2008 the applicant also asked the Town Court to examine an independent expert in order to clarify the cause and time of the victim's death. All the applicant's requests were refused as unfounded.

On 18 July 2008 the applicant requested the Town Court to help him to find an independent witness who allegedly had seen the incident of 7 August 2007 and did not belong to the victim's friends. The applicant did not know the name and place of residence of the witness but argued that he could recognise the witness at the Central Town market where the latter allegedly worked. The Town Court dismissed his request as unfounded and noted that it was not competent to order investigative actions.

The applicant also repeatedly asked the Town Court to summon and examine Ms D. and Ms K. who allegedly were present on the crime scene. The Town Court referred to the lack of any evidence that Ms D. and Ms K. were present on the crime scene at the time of the incident and dismissed all the requests as unfounded.

On 7 August 2008 the applicant requested an additional forensic examination of the victim's corpse. The Town Court refused the request as unfounded.

It appears that the main contradiction between the autopsy report and the expert report concerning the date of the victim's death was not raised during the trial. The expert, Mr B. who was examined in court on 10 July 2008 in the presence of the applicant and his counsel has not been called upon to give any explanation in this regard.

(d) First judgment

On 8 August 2008 the Town Court convicted the applicant of unintentional killing of the victim and sentenced him to 8.5 years' imprisonment. The judgment was mainly based on the depositions of the prosecution witnesses, the expert report of 8 August 2007 and the expert's testimony given in court. The Town Court did not address the autopsy report of 7 August 2007. The Town Court considered the medical examination report of 12 September 2007 on the applicant's injuries to be irrelevant since the time of the injuries was not determined. The Town

Court also ordered that the applicant should remain in custody until the judgment comes into force.

(e) Appeal proceedings

On 14 October 2008 the applicant's counsel recorded depositions of two persons, Ms E. and Mrs K. Ms E. was the victim's cousin. In her depositions she stated that a prosecution witness who had allegedly seen the applicant stabbing the victim with a knife had previously told her that he had not seen that. According to Ms E., the prosecution witness had also told her that he confirmed his testimony at the trial because previously he had given such testimony to the investigator. Ms E. further asserted that according to the prosecution witness in question he had agreed with other prosecution witnesses about the testimony he had to give against the applicant.

Mrs K., the wife of one of the friends of the victim, stated in her depositions that while she had been in the court building she had overheard three prosecution witnesses who had been discussing their testimony in order to avoid any contradictions. In particular, they had discussed whether they should say that they had seen a knife in the applicant's hand. According to Ms. K., some of the prosecution witnesses had not seen the knife but agreed to testify to the contrary.

Written depositions of those two witnesses were attached to the counsel's statement of appeal. It appears that subsequently they had been attached to the applicant's criminal case-file.

(f) Appeal judgment

On 12 November 2008 the Rostov Regional Court quashed the conviction on the ground that the first instance court's conclusions concerning the criminal intent of the applicant were contradictory and remitted the case for a fresh examination to the first instance court with a new composition. The Regional Court also ordered in its judgment that the applicant should remain in custody. No reasons or time-limit for his detention were indicated.

2. Second set of criminal proceedings

(a) Detention pending the second trial

On 12 December 2008 the Town Court composed of the presiding judge M. started the second trial but did not take any decision on the preventive measure. According to the applicant, during the hearings on 12 and 18 December 2008 he attempted to submit an application for release which was not accepted by the presiding judge.

On 19 December 2008 the applicant renewed an application for release in which he referred to the length of his detention, lack of any reasonable suspicion of his involvement in the crime, his permanent place of residence, his heart diseases (mitral valve prolapse, neurocirculatory dystonia and tachycardia) and promised not to reoffend, flee or intervene with the course of justice. The prosecutor requested an extension of the applicant's detention.

On 19 December 2008 the Town Court examined and dismissed the application for release and extended the term of the applicant's detention until 20 March 2009. It referred to the gravity of the charge, unspecified "information about the applicant's personality", the need to conduct the trial and lack of proof that the applicant suffered from a serious illness and could not be held in custody. The Town Court also noted that it was not competent to deal with the question of the applicant's guilt at that stage of the proceedings. In its decision, the Town Court noted that the applicant's detention was about to expire on 20 December 2008.

On an unspecified date the applicant challenged the Town Court's decision of 19 December 2008 as unlawful und unjustified. He complained, in particular, that the Town Court should have taken a decision on the preventive measure at the first hearing on 12 December 2008 and, therefore, the period of his detention authorised previously expired on that date. The applicant further argued that there was no other detention order authorising his detention until 20 December 2008. Therefore, according to the applicant, his detention between 12 and 19 December 2008 was not based on any judicial order. On 5 January 2009 the applicant lodged additional appeal submissions through the administration of the remand prison IZ-61/3 of Novocherkassk.

On 19 January 2009 the Regional Court examined the applicant's original statement of appeal against the Town Court's decision of 19 December 2008, heard the prosecutor and dismissed the applicant's appeal as unfounded. Neither the applicant nor his counsel were present at the appeal hearing. According to the applicant, he was not informed thereof. It appears that the Regional Court did not consider the question whether the applicant or his counsel had been summonsed to the hearing and whether their personal participation was required for the effective review of the lawfulness of the detention. The Regional Court did not address the issue raised by the applicant as to what was the end date of the period of his detention authorised previously. The applicant's additional appeal submissions were not examined by the Regional Court since they were not forwarded to the latter by the Town Court.

On 20 January 2009 the Town Court sent back the additional appeal submissions lodged by the applicant as introduced after the expiry of the appeal time-limit. It noted that they reached the Town Court on 19 January 2009.

On 12 February 2009 the Town Court suspended the trial due to the applicant's illness. On 25 February 2009 the Town Court resumed the proceedings by a ruling. In the operative part of the ruling it stated that "the preventive measure in respect of the defendants (sic!) – undertaking not to leave the place of residence (sic!) – shall remain unchanged".

On 18 March 2009 the Town Court extended the applicant's detention on remand until 20 June 2009. It referred to the gravity of the charge, unspecified "information about the applicant's personality", the need to conduct the trial and lack of proof that the applicant suffered from a serious illness and could not be held in custody.

On 27 March 2009 the applicant appealed against the detention order of 18 March 2009 and requested the Regional Court to be heard in person. On

2 April 2009 he lodged additional appeal submissions through the administration of the remand prison.

On 8 April 2009 the Regional Court examined the applicant's original statement of appeal against the detention order of 18 March 2009 and considered that the applicant's personal attendance was not necessary since "his position was set out in detail in the statement of appeal". The hearing took place in the absence of the applicant's counsel. The prosecutor was present and addressed the court. According to the applicant, he was not informed of the appeal hearing. It appears that the Regional Court did not consider the question whether the applicant or his counsel had been summonsed to the hearing or whether personal participation of the applicant's counsel was required for the effective review of the lawfulness of the applicant's detention. The Regional Court found that the trial against the applicant lasted too long, that the Town Court had not given reasons as to why it had needed more time. The Regional Court reduced the period of the applicant's further detention to two months, i.e. until 20 May 2009. The applicant's additional appeal submissions were not examined by the Regional Court since they had not been forwarded to it by the Town Court. On 7 May 2009 the Town Court sent the applicant his additional appeal submissions back as belated. It noted that they had reached the Town Court on 30 April 2009.

(b) Examination of evidence during the second trial

(i) Self-defense plea

The applicant's defense during the second trial was twofold. He did not deny that on 7 August 2007 he had a quarrel and a fight with a person, allegedly not the victim. However, he argued that even if he had stubbed the victim, it was in self-defense as he had been attacked by the victim with a knife and beaten up by his friends.

The applicant tried to support that plea with the medical examination report of 12 September 2007 which certified that there had been injuries on his body. In addition, on 21 April 2009, the applicant asked the Town Court to examine two defense witnesses, Mr D. and Mr K., who could confirm that late in the evening on 6 August 2007 he did not have any injuries. The Town Court dismissed the request as unfounded since the testimonies in question were not relevant for the criminal charge against the applicant.

The applicant further argued that almost all prosecution witnesses had participated in the attack on him, beat him up and therefore were giving false testimony in order to avoid criminal responsibility. In order to refute testimony of the prosecution witnesses, the applicant repeatedly requested the Town Court to question two defense witnesses Mrs K. and Ms E. who could confirm that the prosecution witnesses had coordinated their positions. The applicant made such requests on 13 January 2009, 18 March 2009, 20 and 21 April 2009. On 20 April 2009 the defense witness Ms E. was present in the court room and was ready to testify. Nevertheless, the Town Court dismissed all the requests either as premature or as unfounded since they were irrelevant for the criminal charges against the applicant.

On 26 March 2009 the applicant requested the Town Court to help him to find a witness of the incident of 7 August 2007 who allegedly worked at the

Central Town market. The Town Court dismissed that request as unfounded and noted that it was not competent to order investigative actions.

During the trial the applicant repeatedly asked the Town Court to summon and examine Ms D. and Ms K., who allegedly were present on the crime scene. He made such requests on 13 January 2009, 18 March 2009 and 21 April 2009. The Town Court referred to the lack of any evidence that Ms D. and Ms K. were present on the crime scene at the time of the incident and dismissed all the requests as unfounded. The Town Court also noted that the defence was unable to ensure the attendance of Ms D. and Ms K. at the hearing or to provide information as to their place of residence.

On 21 April 2009 the applicant requested examination of prosecution witness Ms K. who had been previously examined at the first trial. The Court refused the request because her place of residence was unknown and the prosecution authorities' attempts to ensure her presence at the hearing were to no avail. The Town Court also refused the prosecutor's request to read out the depositions of Ms K. made at the investigation stage of the proceedings.

(ii) Attempts to challenge forensic evidence

Secondly, the applicant argued that, taking into account the cadaveric phenomena described in the autopsy report of 7 August 2007 as well as the expert report of 8 August 2007, the person whose corpse was examined by the expert had died earlier than 7 August 2007. Thus, probably that corpse did not belong to the person with whom the applicant had the fight. In absence of a reliable expert examination of the corpse it was impossible to establish the exact cause and time of death of the victim and attribute it to the applicant. The applicant supposed that the victim must have died not of the wound itself but of the lack of appropriate medical treatment afterwards or because the victims had been heavily intoxicated with alcohol.

Developing that second line of the defense, the applicant referred to the contradiction between the autopsy and expert reports concerning the date of the victim's death: 6 and 7 August 2007 respectively.

On 21 January 2009 the expert, Mr B., testified in court and commented on his report. He stated, *inter alia*, that no medical documentation from the hospital was available to him. Shortly after the questioning of the expert started the applicant was removed from the court room because of his inappropriate behaviour. The applicant's counsel remained in the courtroom. The expert was not called upon to explain the contradiction between the autopsy report and the expert report as to the time of the victim's death. The applicant's subsequent requests for additional cross-examination of the expert were dismissed by the Town Court as unfounded.

In order to establish the cause of the victim's death the applicant requested the Town Court to question medical staff in charge of the victim on 7 August 2007 and to have access to the hospital's medical documentation related to the victim which, according to the applicant, should have contained a record of the exact time of the victim's death. The applicant made such requests on 13 January 2009, 18 March 2009, 13 and 21 April 2009. The Town Court dismissed all the requests either as premature or unfounded. As to the access to the hospital's medical

documentation, the Town Court noted on 21 April 2009 that the expert based his reports, *inter alia*, on the documentation in question.

On 18 March 2009 and 21 April 2009 the applicant requested a repeated forensic examination of the victim's corpse. On 21 April 2009 the applicant requested the Town Court to declare the expert report of 8 August 2007 to be inadmissible evidence. He argued that the defense was informed of the previous forensic examinations of the victim's corpse on 16 October 2007, i.e. more than two months later after the examinations had taken place. Thus, according to the applicant, his procedural rights guaranteed by Article 198 of the CCrP were violated.

On 18 March 2009 and 13 April 2009 the applicant also requested to question an independent expert who could give an expert opinion on the time and the cause of the victim's death on the basis of the cadaveric phenomena described in the autopsy and expert reports.

On 13 April 2009, the applicant requested to question an entomologist who could give an expert opinion on the question of how much time fly eggs needed to develop into maggots. On 21 April 2009 the applicant asked the trial court to attach to the case file scientific materials on cadaveric phenomena and development of maggots in order to refute the expert report of 8 August 2007. According to the materials, fly eggs, for example, need at least 12 hours to develop into maggots and the full restoration of death spots after pressure which takes between 5 and 10 minutes corresponds to a post mortal period between 16 and 24 hours. All that, in his view, confirmed the findings of the autopsy report and refuted the expert report.

On 21 April 2009 the prosecutor submitted a note of the expert stating that a misprint concerning the date of the victim's death (6 August 2007) had been made in the autopsy report and the date in the expert report (7 August 2007) was correct. The Town Court attached the note to the case file and dismissed all the requests of the applicant as unfounded and the materials as irrelevant.

During the trial the applicant made a number of requests for access to minutes of the hearing. All the requests were dismissed as premature by the Town Court. The applicant got access to the minutes only after the trial ended.

(c) Second judgment

On 13 May 2009 the Salskiy Town Court convicted the applicant of unintentional killing for the second time and sentenced him to 8,5 years' imprisonment. The judgment was mainly based on testimonies of six prosecution witnesses (friends of the victim) examined at trial, the expert report of 8 August 2007 and the expert's testimony given in court. The Town Court did not address the second line of the applicant's defense as well as the autopsy report of 7 August 2007. As to his self-defense argument, the Town Court dismissed it because "the defense had not submitted indisputable evidence (to that effect)". The Town Court considered the medical examination report of 12 September 2007 on the applicant's injuries to be irrelevant since the time of the injuries was not determined in the report.

(d) Appeal hearing

On 7 October 2009 the Regional Court held appeal hearing by means of a video conference and upheld the judgment. According to the applicant, the quality of the video link was unsatisfactory, the appeal hearing lasted five minutes and he was not given time to bring all his arguments and to file all the motions he wanted to. The applicant also submits that he was provided with minutes of the appeal hearing six months after it took place.

3. Medical assistance in detention

The applicant suffers from a number of heart diseases such as mitral valve prolapse (*пролапс митрального клапана*), neurocirculatory dystonia (*нейроциркуляторная дистония*) and tachycardia. On 23 December 2008 the applicant underwent an echographic study in Salsk Town hospital which revealed that he suffered from mitral valve prolapse of the third degree.

The applicant's state of health subsequently deteriorated and on 28 January 2009 he was admitted to prison hospital UCh-398/19 in Rostov-on-Don in connection with his diseases described above. It was diagnosed in the hospital that the applicant's mitral valve prolapse disease had attained the second degree.

On 24 February 2009 the applicant was discharged from the hospital in satisfactory condition and transferred back to the remand prison. At the moment of his discharge a doctor from the prison hospital prescribed him the following medications: beta-blocking agents, potassium and magnesium pills, nootropics and angioprotectors. According to the applicant, after his transferral to the remand prison he had not received the medication prescribed to him in the prison hospital, and that it was so until his transfer to the correctional colony in October 2009.

On 18 March 2009 and on 21 April 2009 the applicant complained to the trial court about remand prison administration's refusals to provide him with the medicaments prescribed. The court declared itself incompetent to decide the issue.

4. Other facts

According to the applicant, conditions of his detention in remand prison IZ-61/3 in Novocherkassk were very poor and prison officers repeatedly threatened him with beatings in connection with his complaints to law-enforcement bodies.

The applicant also argues that the prison authorities repeatedly did not dispatch his correspondence or dispatched it with significant delays. The applicant further alleges that his application form to the Court lodged in September 2009 with the administration of remand prison IZ-61/3 in Novocherkassk was not forwarded to the Court and that a letter from the Court reached him with significant delay.

After his conviction, the applicant lodged a number of criminal complaints seeking prosecution of the investigator, the judge, the expert and prosecution witnesses who had been involved in the criminal proceedings against him. His complaints were unsuccessful.

The applicant also lodged a number of supervisory review complaints in order to challenge his conviction and to review the lawfulness of his detention which were also unsuccessful.

B. Relevant domestic law

1. Detention on remand after setting aside of a judgment

Article 388 § 1 (8) of the Russian Code of Criminal Procedure in force at the material time (CCrP) requires the appeal court to decide on the preventive measure (detention or other) when it remits the case to the first instance court for retrial. Upon receipt of the case file, the first instance court must determine, in particular, whether the defendant should remain in custody or be released pending trial (Articles 228 (3) and 231 § 2 (6) of the CCrP).

On 22 March 2005 the Constitutional Court of the Russian Federation adopted Ruling no. 4-P. In particular, the Constitutional Court held:

> "The second part of Article 22 of the Constitution of the Russian Federation provides that ... detention is permitted only on the basis of a court order ... Consequently, if the term of detention, as defined in the court order, expires, the court must decide on the extension of the detention, otherwise the accused person must be released ...
>
> Those rules are common to all stages of criminal proceedings, and also cover the transition from one stage to another. ... The transition of the case to another stage does not automatically put an end to a preventive measure applied at previous stages."

2. Detention orders - appeal procedure

At any time during the trial the court may order, vary or revoke any preventive measure, including detention on remand (Article 255 § 1 of the CCrP). An appeal against such a decision lies to the higher court (Article 255 § 4 of the CCrP). It must be lodged with the first instance court within three days after the decision was issued (Articles 108 § 11 and 355 § 1 of the CCrP). After the expiry of the time-limit for the appeal, the first instance court forwards the case to the appeal court (Article 359 § 2 of the CCrP). Upon receipt of the case, the appeal court shall fix the date, time and place for appeal hearing and decide on the appeal within three days (Articles 108 § 11 and Article 376 § 1 of the CCrP). Under Article 376 § 2 of the CCrP parties shall be notified of the date, time and place of the appeal hearing.

Article 375 § 2 of the CCrP provides that if a convicted person wishes to take part in the appeal hearing, he must indicate that in the statement of appeal. The appeal court shall determine whether it is necessary to call a convicted defendant who is in custody (Article 376 § 2 of the CCrP). On 22 January 2004 the Constitutional Court delivered Ruling No. 66-O on a complaint about the Supreme Court's refusal to permit a detainee to attend the appeal hearings on the issue of detention. It held, in particular, as follows:

> "Article 376 of the Code of Criminal Procedure regulating the presence of a defendant remanded in custody before the appeal court... cannot be read as depriving the defendant held in custody... of the right to express his opinion to the appeal court,

by way of his personal attendance at the hearing or by other lawful means, on matters relating to the examination of his complaint about a judicial decision affecting his constitutional rights and freedoms...".

Additional appeal submissions can be lodged until the beginning of the appeal hearing (Article 359 § 4 of the CCrP). Article 126 of the CCrP requires detainees to submit all complaints through the administration of the remand prison which should immediately forward them to the court.

3. Examination of witnesses at trial

Article 271 of the CCrP establishes the right of the defendant to lodge requests for the attendance of witnesses. Under Article 271 § 4 of the CCrP, the trial court cannot dismiss a request for examination of a witness who has come to the court on the parties' initiative.

4. Defendant's rights concerning expert reports

If the investigator considers it necessary, he may order a forensic examination by a decision in which, *inter alia*, he should indicate the questions raised before the expert (Article 195 § 1 (3) of the CCrP). A forensic examination is obligatory in order to establish the cause of the death or the character and the extent of the damage inflicted upon the health of a person (Article 196 of the CCrP). The investigator should acquaint the defendant and his counsel with the decision ordering a forensic examination and explain to them their rights, stipulated by Article 198 of the Code; a protocol in this regard should be drawn and signed by the investigator, defendant and his counsel (Article 195 § 3 of the CCrP).

Under Article 198 § 1 of the CCrP the defendant and his counsel have the following rights in respect of a forensic examination: (1) to get acquainted with the decision to order the forensic examination; (2) to challenge the expert or the expert institution; (3) to propose experts or an expert institution; (4) to propose additional questions to the expert; (5) to be present, with the investigator's permission, at the performance of the forensic examination and to give explanations to the expert; (6) to get acquainted with the expert report.

The expert report should mention, *inter alia*, the questions put to the expert, and should contain replies to those questions and the substantiation thereof (Article 204 of the CCrP). The investigator should give the defendant and his counsel access to the expert report and explain them the right to propose an additional or a repeated forensic examination (Article 206 of the CCrP). An additional forensic examination by the same or another expert may be ordered, if the expert report is not sufficiently clear or comprehensive, and also if new questions have arisen with respect to the circumstances of the criminal case examined earlier (Article 207 § 1 of the CCrP). A second forensic examination by another expert may be ordered on the same questions, if any doubts arise as to the substantiation of the expert report or in case of contradictions in the expert's conclusions (Article 207 § 2 of the CCrP).

COMPLAINTS

1. The applicant complains under Article 3 about lack of medical assistance while in detention on remand.

2. Under Article 3 the applicant complains about poor conditions of detention in the remand prison, about threats of ill-treatment by prison officers as well as about degrading treatment he was subjected to by the courts.

3. The applicant complains under Article 5 § 1 of the Convention that after the remittal of the case to the first-instance court for fresh examination the first instance court did not rule on the preventive measure and his detention was therefore unlawful.

4. Under Article 5 § 1, referring to the decision of 25 February 2009 the applicant complains that he was detained for an unspecified period of time despite a release order of which he was also not informed.

5. The applicant complains under Article 5 § 3 that his detention on remand had been unreasonably long and that it had not been based on relevant or sufficient reasons.

6. The applicant complains under Article 5 § 4 about the Regional Court's failure to address his arguments in the appeal decision of 19 January 2009.

7. Under Article 5 § 4 the applicant complains of his absence at the appeal hearings of 19 January 2009 and 8 April 2009.

8. The applicant complains under Article 5 § 4 that his additional appeal submissions against the detention orders of 19 December 2008 and 18 March 2009 were not examined by the Regional Court.

9. Under Article 5 the applicant also complains that on 12 and 18 December 2008 the Town Court refused to consider his application for release, that the Town Court's detention order of 19 December 2008 was unlawful and that he was not informed of the remand appeal hearings of 19 January 2009 and 8 April 2009.

10. The applicant complains under Article 6 § 1 that the principles of equality of arms and of a fair trial had been infringed, in particular, because he was deprived of an opportunity to participate in the preparation of the expert report of 8 August 2007 or effectively challenge it before the courts.

11. Under Article 6 §§ 1 and 3 (d) the applicant complains that the trial court did not hear any of the defense witnesses suggested by him and refused to obtain evidence in his defense.

12. Under Articles 6 § 1 the applicant makes complaints about lack of impartiality of the courts, about unfairness of the criminal proceedings against him, about unreasonable length thereof as well as about ineffective legal assistance provided by a privately-retained counsel.

13. Under Article 7 the applicant complains about erroneous application of criminal law by the domestic courts.

14. Under Article 8 the applicant complains that the prison authorities did not dispatch his correspondence or dispatched it with significant delays.

15. Under Article 10 the applicant complains that he did not have access to minutes of the hearing during the trial before the court of first instance, that he was provided with minutes of the appeal hearing six months after it

took place as well as he was not provided with copies of documents from his criminal case file.

16. Under Article 13 the applicant complains about his unsuccessful attempts to initiate supervisory review proceedings to challenge his conviction and to review the lawfulness of his detention as well as about refusals of the prosecution authorities to initiate criminal proceedings against the investigator, the judge, the expert and prosecution witnesses who had been involved in the criminal proceedings against him.

17. Under Article 14 the applicant complains about discrimination by the Russian authorities on the basis of his Georgian origin.

18. Under Article 34 the applicant complains that his application form to the Court lodged in September 2009 with the administration of remand prison IZ-61/3 in Novocherkassk was not forwarded to the Court and that a letter from the Court reached him with significant delay.

QUESTIONS TO THE PARTIES

1. Did the applicant have adequate medical assistance while in detention on remand, as required by Article 3 of the Convention? In particular, was the applicant provided with medicaments prescribed to him by prison hospital UCh-398/19? The Government are requested to submit a copy of the applicant's medical file and a transcript of it.

2. Did the applicant's detention between 12 November and 19 December 2008 have a lawful basis, as required by Article 5 § 1 of the Convention, in particular in view of the failure of the Rostov Regional Court to give any reasons for extending the applicant's detention on remand and specify a period of the detention?

3. Was the length of the applicant's detention on remand in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention? In particular, were there "relevant and sufficient" reasons for the applicant's continued detention?

4. Were the appeal proceedings in which detention orders of 19 December 2008 and 18 March 2009 were reviewed compatible with Article 5 § 4 of the Convention? In particular, the parties' are invited to comment on the applicant's claims that:

(a) in the decision of 19 January 2009 the Rostov Regional Court failed to address the applicant's arguments concerning lawfulness of his detention between 12 and 19 December 2008;

(b) the defense had not been afforded an opportunity to state their case at the appeal hearings of 19 January 2009 and 8 April 2009 (on this point the Government are invited to explain whether the applicant's lawyer was properly summonsed to the appeal hearings);

(c) additional appeal submission against detention orders of 19 December 2008 and 18 March 2009 from the applicant were not admitted (on the latter point the Government are invited to describe the procedure for lodging additional appeals or similar written submissions before the court of appeal).

The Government are requested to provide the Court with a copy of the applicant's appeals against the detention orders of 19 December 2008 and 18 March 2009 and documents confirming that the applicant's counsel was summonsed to the appeal hearings of 19 January 2009 and 8 April 2009, if any.

5. Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 § 1 of the Convention? In particular, did the applicant enjoy from adversarial proceedings and equality of arms, as required by Article 6 § 1 of the Convention? The parties are invited specifically to comment on the applicant's allegation that he had no opportunity to examine and challenge the expert report of 8 August 2007 on the cause and time of the victim's death, that neither the applicant nor his counsel had been able to take part in the preparation of that report, and that the court refused to seek second expert opinion or discover documentary evidence related to the cause and time of the victim's death? (see, *mutatis mutandis*, *Mantovanelli v. France*, 18 March 1997, *Reports of Judgments and Decisions* 1997-II; *Cottin v. Belgium*, no. 48386/99, 2 June 2005).

6. Was the applicant able to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him, as required by Article 6 §§ 1 and 3 (d) of the Convention? In particular, was the refusal of the Salskiy Town Court to hear defense witnesses proposed by the applicant compatible with Article 6 § 3 (d) of the Convention?