



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

FIRST SECTION

Application no. 66619/10  
Vadim Mikhaylovich MELNIK  
against Russia  
lodged on 15 October 2010

**STATEMENT OF FACTS**

The applicant, Mr Vadim Mikhaylovich Melnik, is a Russian national who was born in 1972 and lives in Odintsovo, the Moscow Region. He is currently serving a sentence of imprisonment in a correctional labour colony in Gary, the Sverdlovsk Region.

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

**A. The applicant's apprehension on 14 October 2008 and alleged ill-treatment**

*1. Circumstances leading to the arrest of the applicant*

The applicant submits that at the time of the events he was an addicted drug-user.

According to the official version of the events, at some point the Naro-Fominsk Department of the Drug Control Service of the Moscow Region ("the Drug Control Service") decided to carry out an operational-search activity "test purchase" in respect of the applicant. The decision was based on the information on the applicant's involvement in drug trafficking. D., instructed by the police officers, agreed to meet the applicant and to buy heroin from him. He received 6,000 Russian roubles and a voice recorder.

According to the applicant, at 9 a.m. on 14 October 2008 D., his acquaintance, called him and invited him to buy two sachets of heroin from him.

*2. The applicant's apprehension*

At about 11.30 a.m. on 14 October 2008 D. met the applicant.

According to the applicant, D. attempted to give him money, but the applicant refused. He submits that their conversation was audio-recorded by D. Then the applicant was apprehended by the officers of Drug Control Service and handcuffed. He did not resist the arrest. The policemen brought him to a police car. An officer (further identified by him as Pr.) started beating him up in the car. In the meantime, the policemen were searching the nearby road. At some point G., the Drug Control Service officer, showed a sachet of heroin to the applicant, asked him about it, put in on the ground and took several pictures with a photo camera. According to the applicant, the officer himself planted a sachet on the spot. The distance of about 300 meters separated G. and lay witnesses, and they were not able to supervise the officer's actions.

According to the official account of the events, the applicant had an agreement with D. that the latter would give money to the applicant. The applicant, in his turn, would leave the sachet of heroin in a specific place. After having searched the scene in the presence of lay witnesses Dul. and Tish., G. discovered drugs on the road near the meeting point. According to an undated report by A., a Drug Control Service Officer, referred to in the decision of 3 December 2009 (see below), the applicant resisted the arrest and the officers had to use physical force to apprehend him.

### *3. Alleged ill-treatment and subsequent developments*

The officers further brought him to the Drug Control Service office. The applicant submits that they did not perform his examination («*допрос*»). Then the officers (further identified by the applicant as Pr. and Kras.) severely beat him up in order to extract confession. He was beaten up with a truncheon, hit in the face, legs, arms and chest. The officers on several occasions handcuffed him to a heating element. They threatened him that they would plant heroine on his wife. He submits that on one occasion officer G. came into the office to make photocopies of some documents and saw the applicant bleeding and being beaten. The applicant further submits that on one occasion an unknown man came into the office and told the policemen “to be quiet”, since “[they] could be heard from the street.” The applicant did not produce a self-incriminating statement. Then he was taken to the corridor and handcuffed to a heating element there. Officer Pr. put on gloves and hit the applicant in the head. The applicant lost consciousness, and the officers continued to kick him.

It appears that on 2.45 p.m. the applicant was brought to the detoxication unit of hospital No.23 of Naro-Fominsk. A specialist of the unit examined the applicant and found that he was under influence of drugs. According to an undated report by A., the Drug Control Service Officer,<sup>1</sup> the doctors established that applicant did not have any visible injuries. According to the applicant, the doctor in charge did not examine him in order to establish whether he had any injuries, and the medical record was drafted on the basis of the policemen's sayings.

On the same date he was placed to the administrative detention cell («*камера для административно задержанных*») of the local temporary detention facility (“the IVS”) and detained there overnight.

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<sup>1</sup> As referred to in the decision of 3 December 2009 (see § E-7 below)

According to the applicant, at some point a staff member examined him upon his arrival to IVS and found that he had multiple injuries on his body.

#### *4. The apprehension record*

According to the applicant, his arrest was not recorded on that date.

It follows from the decision of 15 October 2008 by the Justice of the Peace of the 138<sup>th</sup> Court Circuit (see below), at some point on 14 October 2008 an administrative offence record in respect of the applicant was drawn up by an officer of the Drug Control Service under Article 6.9 of the Administrative Code of the Russian Federation (use of drugs without a prescription).

### **B. Events of 15-21 October 2008**

#### *1. Administrative proceedings of 15 October 2008*

On 15 October 2008 the Justice of the Peace of the 138<sup>th</sup> Court Circuit of the Naro-Fominsk Court District of the Moscow Region held a hearing in the administrative case. It follows from the hearing transcript that the Justice of the Peace read out the administrative offence record and questioned the applicant, who confessed of having used drugs without prescription on 13 October 2010. According to the transcript, the applicant did not complain about the beatings.

On the same date the Justice of the Peace found that the applicant had breached Article 6.9 of the Code of Administrative Offences and sentenced him to a seven days' administrative arrest.

The applicant alleges that by the same decision the judge had retroactively authorised his detention since 14 October 2008. He does not submit a copy of the decision and it appears that he did not appeal against it.

#### *2. The applicant's administrative detention*

At 5.30 p.m. on 15 October 2008 on the same date he was brought to the Naro-Fominsk District Hospital No.1. It appears that the doctors recorded no injuries and found that he was fit for detention.

Thereafter the applicant was brought to the IVS.

On 17 October 2008 the applicant developed severe headache and started vomiting. The IVS staff called the ambulance. The ambulance doctors examined the applicant, considered that his state of health required admission to a medical facility and transferred him to the Naro-Fominsk Town Hospital.

#### *3. The applicant's medical treatment and documents related to his injuries*

According to the medical certificate by the Naro-Fominsk Town Hospital, at 12.45 a.m. on 17 October 2008 the applicant applied for medical assistance. Medical examination revealed the following injuries on him: a closed craniocerebral injury, multiple bruises and abrasions on his arms, chest and legs. He was recommended in-patient treatment in a local hospital.

The applicant submits that he did not have any documents and therefore the hospital could not direct him to another medical facility. Therefore on the same date the applicant came back to the IVS and requested to return his passport previously seized from him. Once in possession of the identity document, he came back to the Naro-Fominsk Town Hospital. The doctors sent him to the Odintsovo District Hospital for medical treatment.

He submits that the Odintsovo District Hospital doctors again examined him and diagnosed him with multiple bruises and abrasions, confirmed that he had a closed craniocerebral injury and placed him to the trauma unit for in-patient treatment. He remained there until 21 October 2008.

#### *4. Transfer to the IVS*

According to the applicant, on 21 October 2008 the Dugs Control Service officers apprehended him directly in the hospital and immediately transferred him back to the IVS. They allegedly threatened him and told him that he had “signed his own death-warrant” because he had complained about beatings to the prosecutor’s office (see below).

According to the testimony of a doctor Sh, referred to in the decision of 3 December 2009 (see below), at some point the applicant’s brother came to see the applicant and they left the hospital together.

It follows from the arrest record of 21 October 2008 (see below) that at 3.50 p.m. the applicant was arrested in Naro-Fominsk by the Drug Control Service officers.

At some point on that date applicant was brought to the Drug Control Service office.

### **C. The applicant’s arrest on 21 October 2008 and pre-trial detention**

#### *1. Arrest and extensions of the detention period until 21 August 2009*

According to the arrest record of 21 October 2008, at 3.50 p.m. on that date the applicant was arrested by the Drug Control Service officers on suspicion of attempted sale of heroin in particularly large quantity (3.19 g) to D. on 14 October 2008.

On 22 October 2008 he was officially charged with attempted sale of drugs in particularly large quantities.

On 23 October 2008 the Naro-Fominsk Town Court ordered the applicant’s placement into custody. The order did not contain a reference to an exact time-limit for detention.

It appears that the applicant did not appeal against the detention order.

On 19 December 2008 the detention was extended by the same court until 20 February 2009. The court specified that the investigation had not been completed and it was necessary to take various investigative measures, in particular, to obtain several expert examinations’ results and to allow time for the applicant and his lawyer to study them. The court further referred to the gravity of charges against the applicant and his prior conviction for a similar offence and concluded that the applicant would flee from justice if released.

The applicant did not appeal.

On 20 February 2009 the Naro-Fominsk Town Court extended the applicant's detention until 21 April 2009 upon the town prosecutor's request. The prosecutor argued, in particular, that the applicant still had to study the file, it was necessary to obtain a detailed record of the phone conversations and conduct other investigative activities. The court accepted these arguments and also referred to a risk that the applicant would abscond or obstruct justice if released.

The decision was not appealed against.

On 16 April 2009 the town court granted a new extension of the applicant's detention until 21 June 2009. It found that the investigation had not been completed, that the applicant was charged with serious crimes related to drug trafficking and that he was likely to continue criminal activity, as well as to obstruct justice if released.

It appears that no appeal followed.

On 18 June 2009 the town court ordered that the detention be further extended until 21 August 2009 on the same grounds.

The parties did not challenge the decision on appeal.

### *2. Extension order of 18 August 2009 and the applicant's appeal*

On 18 August 2009 by the town court's decision the applicant was remanded in custody until 17 October 2009. The court noted that the investigators still had to take further procedural steps before completing the investigation. In particular, several witnesses were to be questioned and a number of confrontations to be held. The court's reasoning as to the gravity of the charges and the risk of absconding remained unchanged. The operative part of the decision contained an error in the applicant's first name (Melnik Valeriy Mikhaylovich instead of "Vadim")

The applicant appealed.

On 27 August 2009 the Moscow Regional Court set aside the decision of 18 August 2009, having found that the prosecutor's request for extension had been filed in respect of Mr Melnik Vadim Mikhaylovich, but the decision had been issued in respect of a person with a different name. Furthermore, the regional court found that the first instance court had failed to indicate specific facts underlying the decision to extend the detention period. The regional court remitted the case for a fresh examination and extended the applicant's detention until 14 September 2009 pending a new first-instance hearing on the matter.

The applicant does not submit any information on a new hearing in the case, if any.

### *3. Extension order of 8 September 2009*

On 8 September 2009 the Naro-Fominsk Town Court ordered a further extension of the applicant's detention until 17 October 2009. The court reproduced the arguments of the prosecutor's office as to the need to question witnesses, hold confrontations and obtain a detailed record of some phone conversations. It decided that there were no new circumstances requiring a change of the measure of restraint to a milder one, referring to the gravity of charges and risk of absconding.

The applicant appealed, arguing that the decision was unfounded. He submitted, in particular, in particular, that during his ten-month detention he had participated in just one investigative activity, namely a confrontation with a Drug Control Officer, during which the applicant reiterated his ill-treatment allegations.

The applicant does not submit a copy of the appeal decision.

#### *4. Extension order of 14 October 2009*

On 14 October 2009 the Moscow Regional Court, acting as a first-instance court, decided that the applicant's detention be extended until 17 December 2009. The court established, in particular, that the applicant was likely to contact unidentified persons who had previously supplied drugs on him. It referred to a need to protect several witnesses and took into account a danger to public health caused by the offence the applicant had been charged with. Turning to his family situation, the court found that the applicant had a minor child; at the same time, he was not the only breadwinner in the family, and the applicant's spouse was taking care of the child.

It appears that the decision was not appealed against.

#### *5. Subsequent developments*

It appears that on 11 December 2009 the Naro-Fominsk Town Court ordered a further extension of the applicant's detention. The applicant submits a copy of the hearing record. However, he has not provided the Court with a copy of the first-instance decision and of the appeal court's ruling, if any.

The applicant's detention was further extended on an unspecified number of occasions. In particular, by an unspecified decision the detention period was extended until 4 June 2010.

In the meantime, the case was transferred to the Naro-Fominsk Town Court for trial.

On 25 May 2010 the town court extended the period of the applicant's detention on remand until 4 September 2010 referring to the gravity of charges and in order to ensure that the accused would appear before the court.

It is unclear whether the decision was appealed against.

### **D. Criminal proceedings against the applicant**

#### *1. The first-instance proceedings*

On 21 October 2008 the applicant was arrested on suspicion of attempted sale of drugs in particularly large quantity.

According to the applicant, the investigators remained inactive for several months after his arrest. Every two months he was brought to a judge who extended the pre-trial detention period. Otherwise, no investigative activities involving his participation were performed.

On 6 July 2010 the Naro-Fominsk Town Court convicted the applicant of attempted illicit sale of narcotic drugs.

During the trial the applicant submitted that he had been ill-treated by the policemen. He also pointed out to several procedural irregularities of the apprehension, the personal search and the seizure of the drugs on 14 October 2008, as well as to substantial contradictions in the Drug Control officers' statements made in court (see below for a summary of these submissions). He further introduced several requests to exclude various items of evidence as inadmissible. The trial court rejected the requests. It based the conviction on the testimonies of several witnesses, including D., the police officers and lay witnesses Dul. and Tish., the documents and reports relating to the operative-search activities of 14 and 15 October 2008 (some of them, apparently, signed by lay witnesses Dm., Te.,V. and Tok.; the applicant did not provide further details and documents in that respect), the expert examination reports and various items of material evidence. As regards the ill-treatment allegations, the court found as follows:

“It was established that in October 2008 [the applicant] had injuries on his body and received medical treatment in this respect since 16 [sic] October 2008. However, having examined the existing evidence, having received the replies to the requests made during the trial and having studied the applicant's administrative case, [the court finds that it] was not established that the injuries could have been caused to [the applicant] by Pr. and Kras. as a result of premeditated and unlawful actions. Therefore, the [respective] information cannot serve as a basis for the applicant's acquittal [...], given the amount of evidence collected [in the criminal case].”

### *2. The applicant's requests concerning the identity of the lay witnesses*

It appears that on 21 July 2010 and other unspecified dates the applicant's lawyer made requests to several domestic authorities in order to obtain information on several lay witnesses' whereabouts.

It follows from an extract from a list of inhabitants drawn up on 1 September 2010 by a local municipal housing service that lay witness Te. did not reside at the address specified in the case documents.

According to a certificate of 1 September 2010 by the Technical Inventory Bureau of Maloyaroslavets, the Kaluga Region, the alleged address of lay witnesses V. and Tok. did not exist.

On the same date the Kaluga Regional Department of the Federal Migration Service advised the lawyer that the alleged address of Dm. did not exist either.

### *3. The applicant's appeal and the appeal hearing*

On 21 July and 14 September 2010 the applicant and his lawyer appealed against the judgment. In their detailed submissions they argued, in particular, that:

- the applicant had been absent from the crime scene when the sachet of heroin had been discovered. The pictures of the crime scene taken on 14 October 2008 showed that the lay witnesses had been absent from the scene, too; the distance between them and G. had amounted to 300 m;
- the pictures of the sachet allegedly discovered on spot had been taken at some point after the events, at the Drug Control office, and not on the crime scene;

- the trial court failed to establish the key facts of the case. In fact, it had remained unclear which officers had actually arrested the applicant on 14 October 2008. For instance, officer G. testified in court that he had not apprehended the applicant and had been busy with a different assignment within the same covert operation; however, it transpired from the search record that he had been present on the scene at the time of the arrest. Similarly, officer Pr. submitted to the trial court that he had not participated in the apprehension; on the other hand, it followed from his report of 15 October 2008 that he had arrested the applicant and that the applicant had resisted the arrest. The officers had changed their depositions several times, and the trial court had failed to assess their statements and to exclude the respective items of evidence as inadmissible;

- several discrepancies in the documents and reports concerning the applicant's arrest and personal search demonstrated that these documents had been drawn up after the events and had been forged;

- the trial court had omitted to examine the audio-recording of the applicant's conversation with D. preceding the arrest;

- according to various certificates produced by the local communal and migration services, lay witnesses Dm., Te., V. and Tok. did not at the addresses specified in the procedural documents signed by them, and it was likely that those witnesses did not exist at all.

The applicant further reiterated his ill-treatment complaint and submitted that D. had testified under duress.

On 11 November 2010 the Moscow Regional Court excluded the reference to a particularly dangerous recidivism from the operative part of the judgment, reduced the applicant's sentence to eight years and six months' imprisonment and upheld the remainder of the judgment. Turning to the applicant's submissions, the court found as follows:

“The [trial] court [had] duly assessed the evidence, having specified in the judgment the reasons why some items of evidence had been admitted and the other ones critically assessed.”

The court further confirmed, without further details, that the trial court had correctly assessed the actions of co-accused and the applicant's account of the events had not been corroborated by the evidence carefully studied in open court.

### **E. Inquiry into the ill-treatment allegations**

On 16 October 2008 the applicant complained about the ill-treatment to the Naro-Fominsk town prosecutor's office. On 25 February 2009 the prosecutor's office informed the applicant that such complaint was not received by the office.

On 17 October 2008 the Naro-Fominsk Town Hospital informed a local police department about the applicant's injuries.

#### *1. Initial refusal to initiate criminal proceedings and its annulment*

On 19 January 2009 the case was forwarded to the Naro-Fominsk Investigative Department (“the investigative department”).



On an unspecified date the investigative department completed an inquiry and refused to open criminal proceedings in respect of the applicant's allegations. The case-file does not contain a copy of that decision. From unspecified "preliminary materials" referred to in the decision of the Naro-Fominsk Town Court of 27 December 2010 (see below) it follows that at some point it "appeared impossible" for unspecified authorities (apparently, the policemen) to interview the applicant. Thereafter the investigative department established that the applicant had been arrested during the operative-search activity, examined by the district hospital's doctor who found him to be under influence of drugs, and that the applicant had been subsequently found guilty of the administrative offence.

On 20 February 2009 the Head of the investigative department quashed the refusal and remitted the case for an additional inquiry.

### *2. Decisions of 2 March and 18 April 2009 and their annulment*

It appears that on 2 March 2009 the investigative department decided not to bring criminal proceedings in respect of the applicant's allegations of ill-treatment and that on 8 April 2009 the refusal was set aside by the Head of the investigative department.

On 18 April 2009 the investigative department issued a new refusal to open criminal proceedings. The copy of the decision has not been submitted. It follows from the Naro-Fominsk Town Court's ruling of 27 December 2010 that the refusal was based on the fact that neither the administrative hearing record nor an undated applicant's personal examination record (*«протокол личного досмотра»*) contained any information on ill-treatment by the Drug Control Service officers.

The applicant complained about the refusal to the Naro-Fominsk Town Prosecutor's office and to a court.

On 6 June 2009 the Head of the investigative department quashed the refusal, having considered that an additional inquiry was necessary. He indicated, in particular, that it was necessary to interview the doctors who had examined the applicant and to admit the records of the applicant's interrogations within the criminal proceedings against him.

On the same date the Deputy Town Prosecutor of Naro-Fominsk ("the Deputy town prosecutor") refused to proceed with the applicant's complaint, since the decision of 18 April 2009 had been quashed in the meantime.

On 16 June 2009 the Naro-Fominsk Town Court disallowed the applicant's complaint about the decision of 18 April 2009 referring to its annulment on 6 June 2009.

### *3. Decision of 15 June 2009 and its quashing*

On 15 June 2009 the investigative department again decided that it was not necessary to initiate criminal proceedings in respect of the applicant's ill-treatment complaint. The investigator studied the applicant's medical file and "other relevant documents" and decided that his traumas had been inflicted "in other circumstances."<sup>1</sup> than those invoked by the applicant.

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<sup>1</sup> As summarised in the Naro-Fominsk Town Court's decision of 27 December 2010 (no copy of the investigative department's decision submitted).

On 14 August 2009 the Head of the investigative department annulled the decision and sent the file for an additional inquiry. He noted, in particular, that the investigators had failed to question the applicant.

On 17 August 2009 the deputy town prosecutor allowed the applicant's complaint about the refusal of 15 June 2009 and found that the investigative department had acted in breach of the instructions, since they had not forwarded a copy of the refusal to open a criminal case to the town prosecutor's office.

On 19 August 2009 the investigative department informed the applicant about the quashing of the decision of 15 June 2009, specified that the investigators had been instructed to interview the applicant and advised that he would be able to study the inquiry file during the interview.

#### *4. Decision of 26 August 2009 and its subsequent annulment*

On 26 August 2009 the investigative department held an additional inquiry and issued yet another refusal to initiate criminal proceedings, further challenged by the applicant at the town prosecutor's office.

On 12 October 2009 the Head of the investigative department on yet another occasion considered that the refusal should be set aside and an additional inquiry be held. He observed, in particular, that the investigators had not interviewed the IVS officers.

On the same date the deputy town prosecutor rejected the applicant's complaint since it had become devoid of purpose.

#### *5. Complaint to a court about the authorities' inaction*

On 8 October 2009 the applicant complained about the town prosecutor's office's inaction in dealing with his ill-treatment case.

On 13 October 2009 the Naro-Fominsk Town Court refused to examine the application, for the applicant's failure to specify the date of his complaint to the town prosecutor's office, as well as a respective decision taken by the respondent authority. It appears that the court decision was not appealed against.

#### *6. Decision of 12 October 2009 and its quashing*

On 12 October 2009 the investigative department refused to initiate criminal proceedings in relation to the duress complaint.

On 23 November 2009 the decision was set aside by the Head of the department, because the applicant's inmates in IVS had not been questioned.

#### *7. Decision of 3 December 2009 and its quashing*

On 3 December 2009 the investigative department held an inquiry and established that there was no need to bring criminal proceedings in relation to the applicant's complaint.

The decision referred to the report of officer A.; the medical certificate by the detoxication unit on the absence of injuries on the applicant's body; the administrative hearing record of 14 October 2008; the certificate by the Naro-Fominsk District Hospital No.1 issued on 15 October 2008. It concluded that none of these documents contained an indication of either

the existence of any injuries on the applicant's body or any evidence that he had complained about the alleged beatings to the respective officials on those dates.

The decision further referred to the following items of evidence:

- the testimony by the Drug Control officer G. and Kr. who submitted that the applicant had violently resisted his arrest and the officers had been obliged to use physical force and handcuff him;
- the testimony of Sh., a doctor of the Naro-Fominsk District Hospital, who submitted that on 17 October 2010 the applicant had been examined at the hospital, "the palpation [had not revealed] any injuries", and that he further received medical treatment "on suspicion of the brain concussion";
- the testimony of K., an officer and a car driver of the IVS, who submitted that he had seen the applicant on 15 October 2008 in the evening and had not received any complaints from him. On 17 October 2008 the applicant's state of health had deteriorated, apparently due to the drug withdrawal syndrome. K. had called the ambulance, and the applicant had been taken to a hospital. K. did not have information about any ill-treatment of the applicant.
- the testimony of Dulen. and P., the police officers who had seen the applicant in the IVS on 15 October 2008. They had not noticed injuries on him, nor had they received any complaints. Dulen. submitted that if the applicant had had any injuries, they should have been recorded by the IVS. However, no such record existed, and the applicant had not raised any complaints when detained.
- the testimony of Ya., a doctor of the Naro-Fominsk District Hospital, who did not remember whether he had examined the applicant on 15 October 2008.

Having listed the above items of evidence and without elaborating on their analysis, the investigative department concluded that there was no basis for bringing criminal proceedings against officers G. and Kr. on suspicion of abuse of power (Article 286 of the Criminal Code), since the policemen had not "taken any actions which were evidently beyond the scope of their competence" and that the injuries referred to in the medical certificate of 17 October 2008 "could have been caused by unknown persons".

The applicant appealed to the town court.

On 10 February 2010 the Head of the investigative department annulled the decision of 3 December 2009 and ordered an additional inquiry and, in particular, indicated that it was necessary to interview the applicant.

On 11 February 2010 the Naro-Fominsk Town Court refused to examine the applicant's action, since the decision complained of had been quashed in the meantime.

#### *8. Decision of 22 February 2010 and its quashing*

On 22 February 2010 the town investigative department held an additional inquiry and decided that there was no need to initiate criminal proceedings. The decision referred to the statement of facts by the applicant who maintained his allegations. Otherwise it reproduced *verbatim* the decision of 3 December 2009.

On 18 July 2010 the Head of the investigative department quashed the decision and obliged the investigators to rectify several unspecified shortcomings. No copies of the respective acts have been submitted by the applicant.

*9. Decision of 29 March 2010 and its quashing*

It follows from the letter by the town prosecutor's office of 12 August 2010 that on 29 March 2010 yet another refusal to open criminal case was issued by the investigative department and on 10 August 2010 it was again quashed by the Head of the investigative department.

*10. Decision of 26 August 2010*

On 26 August 2010 the town investigative department completed the inquiry and concluded that there were no grounds to initiate criminal proceedings against the policemen.

The applicant lodged a complaint about the decision with the town court and the town prosecutor's office.

On 19 October 2010 this decision was annulled by the Head of the investigative department.

On the same date the Naro-Fominsk Town Court refused to proceed with the applicant's action referring to the annulment of the challenged act.

On 25 October 2010 the town prosecutor's office declared unlawful the decision of 26 August 2010.

*11. The applicant's complaint to a court about the investigators' inaction after 18 July 2010*

At some point in the meantime the applicant complained to the town court that he had not been advised of the outcome of the additional inquiry ordered on 18 July 2010.

On 1 October 2010 the hearing was held and an investigator of the town investigative department issued the applicant with a copy of the decision of 26 August 2010.

On 1 October 2010 the Naro-Fominsk Town court discontinued the proceedings, since the applicant had received the requested information from the investigator and thus his claims had been granted and the matter had been resolved.

*12. The investigative department's request for medical information*

On 20 October 2010 the town investigative department directed a request for information on the applicant's medical treatment to the Odintsovo District Hospital.

At some point in October 2010 (exact date illegible) the hospital confirmed that the applicant had been admitted to the hospital from 17 to 18 October 2008. However, the hospital staff was unable to forward the original of the applicant's medical record, since it could only be done within the framework of criminal proceedings and upon an authorisation by the Moscow Regional Court.

It appears that no further action was taken by the investigative department in respect of their request.

### *13. Decision of 29 October 2010*

It follows from the letter of the Deputy Town Prosecutor of Naro-Fominsk dated 12 December 2010 that on 29 October 2010 (the date also referred to as 27 October 2010 in the case documents; a copy of the refusal is not provided) the inquiry in the applicant's case had been once again discontinued and the criminal proceedings had not been initiated. The investigator concluded that, in the absence of medical information from the Odintsovo District Hospital it was impossible to establish the origin of the applicant's injuries, and therefore there were no grounds to proceed with a criminal case.

On the same date the applicant lodged a new complaint with the Moscow Regional Investigative Department. On 13 January 2011 his petition was forwarded to the town investigative department for examination.

### *14. Decision of 27 December 2010 by the Naro-Fominsk Town Court*

At some point after 26 August 2010 the applicant complained to the town court about the investigative department's inaction, i.e. their failure to hold an inquiry in his ill-treatment allegations and to issue him with a reasoned reply.

On 27 December 2010 the Naro-Fominsk Town Court rejected his complaint as unfounded. The court found, first, that the applicant had timeously received copies of the decisions of 26 August, 25 and 27 October and 2 December 2010, and therefore his allegations in that part were unsubstantiated. Second, the court made a brief summary of the investigative actions taken in the case and decided that the investigative department's decision not to initiate criminal proceedings in the absence of the medical documents was lawful. The court further observed that the applicant "had not complained about the injuries to the Justice of the Peace, police or a prosecutor" and that the case file did not contain any information about his medical examination in the IVS.

It is unclear whether the decision was appealed against.

It appears that the proceedings upon the applicant's complaint are pending.

## COMPLAINTS

The applicant complains under Articles 3 and 13 of the Convention that he was ill-treated by the Drug Control Service officers and the investigation into his allegations of ill-treatment proved ineffective.

He complains under Article 5 § 1 that his arrest and both the administrative and the pre-trial detention were unlawful and that he was arrested as a result of the provocative actions of the policemen, and under Article 5 § 3 and 5 § 4 that his pre-trial detention was lengthy and unreasonable. He submits, referring to Article 5 § 5, that the authorities would not pay him compensation for unlawful detention.

He complains under Article 6 that the criminal proceedings against him were unfair; the trial court was partial and fully upheld the prosecution case, whilst the defence submissions were rejected without sufficient reasoning.

He avers that the courts incorrectly established the facts of the case and wrongfully applied the domestic law. He submits, without further details, that the defence was deprived of an opportunity to submit evidence in the first-instance proceedings.

He further submits under Article 6 that several items of evidence were forged and complains that the appeal court failed to examine his detailed and specific submissions in this respect.

Finally, he submits, with reference to Article 6 § 3 (d), that he was unable to question lay witnesses Dm., Te.,V. and Tok. , that their personal details and signatures in the respective procedural documents were forged by the policemen and that such persons never existed.

He complains under Article 8 that the conviction adversely affected his family life.

He complains under Article 14 that he was discriminated on the ground that he had been previously convicted by a domestic court and that he was a drug addict.

He submits that the appeal instance failed to hold a fair examination of his criminal case in breach of Article 2 of Protocol No. 7.

### **QUESTIONS TO THE PARTIES**

1. Was the applicant subjected to treatment contrary to Article 3 of the Convention following his arrest on 14 October 2008? The Government are invited to address the following factual questions.

(a) Was the applicant's apprehension planned beforehand? Did the applicant resist the arrest? Did the Drug Control Service officers use excessive force to arrest him (see *Rehbock v. Slovenia*, no. 29462/95, §§ 71-77, ECHR 2000-XII)? The Government are invited to submit the respective documents and to specify the exact time of the apprehension.

(b) Once in the hands of the police:

(i) Was the applicant informed of his rights? If so, when, and what rights was he informed about?

(ii) Was he given the possibility of informing a third party (family member, friend, etc.) about his detention and his location and, if so, when?

(iii) Was he given access to a lawyer and, if so, when?

(iv) Was he given access to a doctor and, if so, when?

(c) What activities involving the applicant were conducted at the premises of the Drug Control Service on 14-15 October 2008, and at which times of the day? What was the applicant's procedural status? What confessions and/or statements did the applicant give during that period (please submit relevant documents, in particular, records containing the applicant's statements/confessions)? Was the applicant given access to a lawyer before and during each such activity?

(d) Were his medical examinations of 14-15 October 2008 and later on conducted out of the hearing and out of sight of police officers and other non-medical staff?

(e) The parties are invited, in particular, to specify which medical specialists examined the applicant on 14-21 October 2008, to indicate exact dates and times of all those examinations («осмотр», «освидетельствование», etc.) and to provide copies of the respective medical document(s), including medical certificates/other documents issued by the detoxication unit of a local hospital, by the Naro-Fominsk Town Hospital and the Naro-Fominsk District Hospital. They are further requested to submit medical documents related to the applicant's medical treatment at the Odintsovo District Hospital between 17 and 21 October 2008.

2. Have the authorities complied with their positive obligation under Article 3 of the Convention to carry out an effective investigation into the applicant's allegations of ill-treatment on 14 October 2008? In particular:

(a) Were the investigators (investigating authority) who carried out the inquiry into the applicant's allegations of police ill-treatment independent from the investigators (investigating authority) who were responsible for investigating the criminal case against the applicant?

(b) Which officers (police, Drug Control Service, etc.) from which police department(s) were involved in the inquiry into the applicant's complaint of police ill-treatment? What operational and other activities did they carry out in the course of the inquiry and were those sufficient to ensure that the investigation into alleged torture be thorough and effective?

(c) Did the absence of instituted criminal proceedings prevent investigative measures, which could correspond to the notion of an effective investigation, as required by the Court's case-law under Article 3 of the Convention (see, *mutatis mutandis*, *Taraburca v. Moldova*, no. 18919/10, § 57, 6 December 2011, and *Shanin v. Russia*, no. 24460/04, § 69, 27 January 2011)? Which of the investigation methods employed for a preliminary investigation under Articles 150-226 of the Code of Criminal Procedure (CCrP) could be and were employed, in the present case, in the course of the inquiry under Article 144 of the Code?

(d) Were persons from whom explanations («объяснения») were taken liable for false statements or a refusal to testify?

(e) The parties are invited to address the following specific questions:

- whether a forensic medical examination/ a medical expert examination was performed in respect of the applicant in order to establish the nature and the origin of his injuries?
- when was the applicant questioned/interviewed in respect of his allegations of ill-treatment?

- did the applicant complained to the authorities about his ill-treatment on 16 October 2008? If yes, did the authorities receive his complaint? If they did, which investigative measures did they take in that respect?

- which investigative activities were performed between 17 October 2008, when the Naro-Fominsk District Hospital informed the local police department of the applicant's injuries, and 19 January 2009, when the respective documents were received by the Naro-Fominsk Investigative Department?

The Government are requested to submit relevant documents in response to each of the above questions.

3. Did the applicant have at his disposal an effective domestic remedy for his complaints under Article 3 of the Convention as required by Article 13 of the Convention?

4. Was the length of the applicant's pre-trial detention in breach of the "reasonable time" requirement set forth in Article 5 § 3? The parties are requested to provide copies of the domestic courts' decisions ordering extensions of the applicant's pre-trial detention.

5. As regards the criminal proceedings against the applicant, was his right to a fair trial under Article 6 of the Convention respected? In particular, was his lawyer's detailed statement of appeal of 21 July 2010 and the applicant's additional grounds of appeal of 14 September 2010 examined by the Moscow Regional Court? Did the Moscow Regional Court complied with a requirement to give reasons for its judgment within the meaning of Article 6 § 1 of the Convention (see, in so far as relevant, *Ilyadi v. Russia*, no. 6642/05, §§ 37-47, 5 May 2011)?