



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

FIRST SECTION

Application no. 13744/11
Vladimir Anatolyevich KOSENKOV against Russia
lodged on 24 December 2010

STATEMENT OF FACTS

The applicant, Mr Vladimir Anatolyevich Kosenkov, is a Russian national, who was born in 1985 and has his permanent residence in Yuzhno-Sakhalinsk. He is currently serving a sentence of imprisonment in a correctional colony in Irkutsk, the Irkutsk Region.

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

A. The applicant's apprehension and alleged ill-treatment

The applicant is a former police officer. On 4 April 2008 he was arrested by the officers of the Yuzhno-Sakhalinsk Department of the Federal Service of Drug Control ("the Drug Control Service").

1. The applicant's account of the events of 4 April 2008

According to the applicant, at 8 p.m. on 4 April 2008 in the evening he and I., his acquaintance, met R., another acquaintance of theirs. Thereafter the applicant and I. went out for a few errands in the applicant's car. Suddenly several unknown armed persons in plain clothes went out of a minibus and stopped his car on the street. They did not introduce themselves. The applicant, threatened, decided to flee but then his car was again stopped by the same minibus. One of the persons, further identified by the applicant as a Drug Control officer, broke the car window. The applicant went out of the car and showed his police service ID card. The apprehenders replied that they represented the local Drug Control Service.

They handcuffed him, put him on the backseat of his car and took him to the yard of the Drug Control office building. Several officers started beating

him. On one occasion he lost consciousness. Then he was brought to the second floor of the Drug Control office building. The policemen administered several blows in his nose, eyes, ears and lips; he was also hit in the legs. All that time he remained handcuffed, and his hands got swollen. Then he was brought to an office and beaten up again. According to the applicant, at that point a police officer planted something into his pocket.

Then the officers invited two attesting witnesses, Sp. and Vas., held a personal examination (*«личный досмотр»*) of the applicant in their presence and discovered drugs on him. According to the applicant, attesting witness Sp. was an officer of the Drug Control Service and Vas. a friend of another officer. The applicant submits that he told them about the ill-treatment, but to no avail.

Then the policemen took him to the third floor of the same building and continued beating him up there. They threatened the applicant that he would be further ill-treated in a detention centre by inmates.

The applicant submits that R. and I. were detained in the same building and he saw them being beaten by the policemen.

2. The official account of the events of 4 April 2008

According to the official account of the events, on 4 April 2008 the Drug Control Service received information that the applicant had been involved in cannabis oil trafficking, and it was decided to verify this information. At some point between 9 and 10 p.m. on 4 April 2008 in the evening a group of several officers noticed the applicant's car near a local students' dormitory. The officers came to the car, introduced themselves, showed their service ID cards (*«служебные удостоверения»*) and asked the applicant and this passenger to leave the car. The applicant attempted to flee, and the police had to pursue him. They stopped the car and broke the window. The applicant and I. resisted the arrest. The applicant attempted to put his hand in the pocket, apparently in order to throw away or destroy the evidence. This is why it was decided to handcuff him. Then the applicant and I. were brought to the Drug Control Service premises and searched in the presence of lay witnesses. They were not beaten or otherwise ill-treated or threatened after that point.

3. Events of 5 April 2008

At 6 a.m. on 5 April 2008 the applicant was brought to a local detoxification centre for examination.

At some point in the morning on that date I. was released. At 9 a.m. he informed the applicant's mother and partner about the applicant's arrest and told them that the policemen had beaten him and the applicant up and had planted drugs on the applicant.

On the same date the applicant was questioned by an investigator as a suspect. He told the investigator about the beatings and asked to hold his medical expert examination. As regards the accusations of drug trafficking, the applicant chose to remain silent. It appears that on the same date the investigator issued a "direction" (*«направление»*) for a medical expert examination (*«медицинское освидетельствование»*).

It appears that at 12.10 a.m. the applicant was examined by a doctor of the trauma unit of the out-patient hospital no. 7 of Yuzhno-Sakhalinsk. According to the medical certificate of 5 April 2008, multiple bruises were detected on his chest and the left leg.

At some point on that date the applicant was transferred to the temporary detention centre of Yuzhno-Sakhalinsk (“the IVS”). According to the IVS logbook (*книга учета лиц, содержащихся в ИВС*), the following injuries were detected on him upon his admission on 5 April 2008: he had bruises under both eyes; the nose and the lower lip had swollen up; his left eyebrow was incised, and there were multiple haematomas on his body.

At 3 p.m. the applicant’s mother, sister and partner saw the applicant in the IVS, handcuffed, and noticed several bruises on his face. He managed to tell them that he had been beaten up by the Drug Control Service officers.

At some point, apparently on 7 April 2008, the Yuzhno-Sakhalinsk Town Court ordered his pre-trial detention, and the applicant was transferred to remand prison IZ-65/1 of Yuzhno-Sakhalinsk.

B. The applicant’s injuries and respective medical documents

On 12 April 2008 the applicant was examined in remand prison IZ-65/1 by the doctors of the emergency unit. They diagnosed him with a bruise of the soft tissue of the left side of the chest.

On 17 April 2008 the medical examination report was completed by the Sakhalin Regional Forensic Expert Bureau. The following injuries were detected on the applicant: a cicatrisation mark of a subcutaneous wound on the left eyebrow, a bruise of the right infraorbital area, a bruise of the left foot. They could have been inflicted as a result of traumatic action of blunt solid objects.

He also had a cicatrisation mark of an abrasion on the right shoulder, a hyper-pigmentation area on the right forearm, abrasions on the left hand and belly, as well as bruises on the left leg. These injuries could have been sustained as a result of the traumatic action of blunt solid objects with limited traumatic surface.

According to the expert, all these injuries had not caused harm to the applicant’s health. They could have been inflicted within one to two weeks prior to the expert examination.

At some point in 2008 the applicant was diagnosed with post-traumatic optic disc atrophy.

It appears that on 16 December 2008 a forensic expert medical examination was performed in respect of the applicant. The applicant does not submit a copy of the report.

C. The authorities’ response to the applicant’s complaint of police ill-treatment

On 5 April 2008 the applicant complained about the ill-treatment by the Drug Control officers to the Head of the local Department of Interior. In 2008-2010 he made several complaints with various authorities. The replies he received may be summarised as follows.

On 25 April 2008 an investigator of the Yuzhno-Sakhalinsk Investigative Department of the Investigative Committee of the Prosecutor's office of the Russian Federation ("the town investigative department") refused to open a criminal case upon the applicant's complaint. The decision contained an account of the events by the applicant, as well as testimonies of the applicant's mother, partner and sister. Then the investigator, in a one-paragraph long conclusion, rejected the applicant's complaint as unfounded since there had been "no sufficient data" to suggest that the Drug Control officers had abused power or had acted in contradiction to the interests of the service.

On 15 May 2008 the Deputy Head of the town investigative department upon the applicant's complaint annulled the decision as unlawful and specified that those in charge of the investigation were to take the following actions: to interview the Drug Control officers concerned, admit and examine the applicant's medical documents, establish the grounds for the applicant's and I.'s arrest and make legal assessment of the circumstances of the case in their entirety. The case was remitted for an additional inquiry.

On 25 May 2008 the town investigative department issued a new refusal to bring criminal proceedings against the officers. The decision was identical to the previous one.

On 16 June 2008 the Head of the investigative department granted the applicant's complaint in respect of the above decision, quashed it as unlawful and remitted it for an additional pre-investigation inquiry, having pointed out to the same shortcomings as in the decision of 15 May 2008.

On 25 June 2008 the town investigative committee again refused to open criminal proceedings, for lack of *corpus delicti* in the officers' actions. The applicant submitted an incomplete copy of the decision. The applicant complained about the decision.

In the meantime the applicant challenged the investigators' inaction in court. By two separate decisions of 25 August and 16 September 2008 the Yuzhno-Sakhalinsk Town Court disallowed the complaints as introduced in violation of the procedural requirements. The decisions were not appealed against.

On 19 September 2008 the Deputy Head of the town investigative department quashed the decision of 25 June 2008, reiterated the actions to be taken to complete the investigation and also instructed the officers in charge of the investigation to establish the circumstances of the applicant's and I.'s arrest, as well as the nature and character of their injuries and, furthermore, to explain why the applicant's medical examination had not been held until 17 April 2008.

On 22 September 2008 the town prosecutor of Yuzhno-Sakhalinsk granted the applicant's complaint about the investigators' inaction in part. The prosecutor noted, in particular, the investigator's failure to take measures indicated in the respective decisions ordering the quashing of the refusal to open a criminal case.

On 23 October 2008 the investigator of the town investigative department again refused to open a criminal case against the Drug Control officers. In addition to the statements by the applicant, his mother, partner and sister, cited above, the decision referred to the following items of evidence:

- statement of the investigator who had questioned the applicant on 5 April 2008. He submitted that he had seen bruises on the applicant's face. The applicant complained about ill-treatment by the police officers and asked that his medical examination be held. The investigator "[had] brought him to the expert centre but it [had been] closed"; this is why the medical examination had been held on 17 April 2008 only.

- statement of officer Ryab. who submitted that the Drug Control service had been in possession of the information on the applicant's involvement in cannabis oil trafficking. Ryab. had searched the applicant after the arrest and had seen the bruises on his face. The applicant had told him that the injuries had been inflicted during the arrest.

- statements by officers Luk., Ro. and Sem. who maintained that they had had to use force during the arrest in response to the applicant's and I.'s violent behaviour. They firmly denied any further allegations of ill-treatment.

- submissions by the Drug Control Service investigator B. who had conducted an internal inquiry into the allegations of ill-treatment and found that the policemen used physical force against the applicant and I. during the arrest in compliance with the Police Act.

The decision also referred to the results of the applicant's medical examination. The investigator found nothing in the case materials to suggest that the Drug Control officers abused their authority and concluded that the applicant's complaint constituted an attempt to avoid criminal liability in the drug trafficking case.

On 9 April 2009 (the decision is dated 9 April 2008, apparently due to a clerical error) the Deputy Head of the town investigative department set aside the refusal and ordered yet another pre-investigation inquiry. He suggested that the investigators should interview the attesting witnesses, admit information from the criminal case-file including the medical information contained therein, make a request to the Sakhalin Regional Hospital and the medical expert for information on the applicant's eye diseases, and take any other measures in order to complete the inquiry.

On 19 April 2009 the investigative department on yet another occasion decided not to open a criminal case against the policemen on the same grounds as on 23 October 2008.

On 8 January 2010 the Deputy Head of the investigative department quashed the refusal as unlawful and remitted the case for an additional inquiry, having advised the investigator to examine and admit copies of the attesting witnesses' submissions to the inquiry file.

On 21 April 2010 the investigative department issued another refusal to bring criminal proceedings against the policemen. In addition to the items of evidence described above, the decision referred to the "explanations" (*«объяснения»*) of Sp., an attesting witness. Sp. provided a detailed account of the applicant's search and described the items seized from him. The explanations did not contain any information as to whether the applicant had had visible injuries at the material time.

According to the applicant, on 24 April 2010 he introduced a new complaint with the Sakhalin Regional Investigative Department of the Investigative Committee of the Prosecutor's office of the Russian

Federation. Having received no response, he complained to the regional prosecutor's office about the authorities' inaction.

By letters of 9 August and 8 September 2010 the Sakhalin regional prosecutor's office advised him that there was no evidence that he had, in fact, lodged a complaint on 24 May 2010, and accordingly rejected his application as unfounded.

D. The applicant's pre-trial detention and the trial

1. Arrest and interrogation as a suspect

On 4 April 2008 the applicant was arrested, brought to the Drug Control Service and searched in the presence of two lay witnesses. He remained at the Drug Control premises overnight and was allegedly ill-treated (see above). The applicant submits that he was not allowed to benefit from the assistance of a lawyer at that stage. He submits that shortly after the arrest his car was searched, and his personal search was performed, in the presence of the attesting witnesses. The lawyer was not present. The applicant did not sign a self-incriminating statement allegedly requested from him by the policemen.

On 5 April 2008 an investigator interrogated the applicant as suspect and authorised his arrest on suspicion of illicit sale of narcotic drugs. It is unclear whether he was assisted by a lawyer at that stage. The applicant did not submit a copy of the interrogation record. It appears that he chose to remain silent.

2. Relevant information on R.'s, T.'s and I.'s apprehension, their statements given at the pre-trial stage and the duress complaints

(a) Events of 4-5 April 2008

On 4 April 2008 I. was arrested together with the applicant (see above). It appears that at some point on that date R. was also apprehended and brought to the Drug Control Service. The policemen discovered about 3 g of cannabis oil in his car. Thereafter I. and R. were searched at the Drug Control office and were allegedly beaten up by the policemen.

At some point on 5 April 2008 R. produced hand-written "explanations" (*«объяснения»*) to the effect that he had bought drugs from the applicant a day before in the presence of T., an acquaintance.

On the same date R. was again questioned as a suspect in the criminal case, apparently in the presence of a lawyer. He confessed of having bought cannabis oil from the applicant. From the statement of the investigator as reproduced in the decision of 21 April 2010 (see above) it follows that R. signed the interrogation record and acknowledged in writing that he had not been subjected to any moral or physical pressure. The investigator had not seen any injuries on him.

In the meantime, I. gave written explanations to the policemen. He stated that he had eye-witnessed the transfer of drugs from the applicant to R.

On the same date I. was questioned as a witness. He maintained his submissions. According to an official account of the events, he was not

ill-treated or threatened. The investigator saw an abrasion on his face. I. stated that he had sustained the injury during the arrest because he had attempted to flee from the policemen. According to I.'s own testimony at the trial stage (see below), the investigator himself threatened him and forced him to testify.

Finally, on the same date T. also produced explanations having admitted that he had been aware of R.'s intention to purchase drugs from Vladimir (the applicant). Allegedly, he produced the statement out of fear, since he was threatened by the policemen.

(b) Subsequent developments

On 8 April 2008 a medical examination revealed several bruises on R.'s face and body. The case file does not contain information as to whether R. or I. lodged separate ill-treatment complaints. According to several decisions taken in response to the applicant's ill-treatment complaint (see above), the town investigative department also examined the duress issue in respect of R. and I. and concluded that the policemen had had to use force against I. because he had resisted the arrest.

On 2 June 2008 T. was interrogated as a witness. He revoked his previous statement incriminating the applicant and stated that his explanations had been produced in coercive environment. He acknowledged authenticity of his signature on the copy of the explanations. However, he submitted that a hand-written note on the copy was not made by him.

3. The applicant's pre-trial detention

At some point, apparently between 6 and 7 April 2008, a domestic court ordered the applicant's placement in custody.

On 3 September 2008 he was released from pre-trial detention against an undertaking not to leave the town.

4. The trial

On 29 April 2010 the Yuzhno-Sakhalinsk Town Court found that R. had unlawfully purchased cannabis oil from the applicant. The court convicted the applicant of one count of illicit sale of narcotic drugs in large amount and one count of attempted sale of drugs. The court sentenced the applicant to ten years' imprisonment. By the same judgment R. was convicted of illicit purchase and storage of drugs without intent to sell them.

(a) Findings as regards the applicant's alleged ill-treatment

During the trial the applicant made detailed submissions regarding the circumstances of his arrest and alleged ill-treatment on 4 April 2008. He pointed out that his injuries had been recorded upon his arrival to the IVS. He further submitted to the trial court that I. and R. had also been beaten on that date.

R. submitted to the court that he had made statements incriminating the applicant as a result of the physical and moral pressure.

I., questioned as a witness, testified that he had seen the Drug Control officers beating the applicant, that the applicant had been covered with

blood and, further, that at some point the Drug Control officers had beaten them together.

T. submitted that he had seen the applicant being beaten at the Drug Control office building. The applicant did not resist.

Officers Ro. and Luk. stated that they had had to use force against the applicant during the arrest in response to his violent resistance and in order to prevent destruction of material evidence.

Finally, the court heard two inmates of the remand centre IZ-65/1 who had seen injuries on the applicant's body and admitted the medical report of 17 April 2008 and the medical expert examination report of 16 December 2008.

The trial court rejected the applicant's ill-treatment allegations with reference to the Drug Control officers' submissions, as well as the results of the pre-investigation inquiry (see above). The court concluded that he could have sustained the injuries during the arrest as a result of his violent resistance.

(b) Admissibility of evidence issue and the conclusion in the criminal case

During the hearing R., T. and I. challenged their statements produced on 4 and 5 April 2008 (including both the explanations and, where applicable, their interviews as a suspect and witnesses) as given under duress. R. partially maintained his earlier confession of having illegally purchased drugs, but stated that he had not procured cannabis oil from the applicant. T. and I. also claimed that they had had to incriminate the applicant as a result of the physical and moral pressure of the policemen and the investigator. The applicant maintained that the drugs had been planted on him on the Drug Control premises.

The court rejected the duress argument for the same reasons as the applicant's similar complaint (see above). It found, as regards the co-accused's and the witnesses' submissions of 4-5 April 2008, that R., T. and I. had been duly advised of their procedural rights. The court accordingly admitted both their explanations and subsequent statements.

The conviction was based on the statements by the above witnesses, as well as attesting witnesses Sp. and Vas., statements by several the police officers and the investigator, several items of the material evidence, as well as the procedural documents related to the applicant's and R.'s personal examination of 4 April 2008, the records of examination of their cars, police reports and expert reports drawn up in respect of the drugs seized from R. and the applicant.

It appears that at some point during the proceedings the applicant challenged lawfulness of participation of attesting witnesses in his personal search as they had allegedly been affiliated with the Drug Control Service. It is unclear whether the trial court responded to the complaint.

5. The trial record and the applicant's objections to it

On 28 July 2010 the applicant received a copy of the trial record and appealed against it on 4 August 2010.

Thereafter on 5 August 2010 he received another copy of the trial record. According to the applicant, it was re-drafted so that it became "more

consistent with the trial court's judgment". On 11 August 2010 he introduced his objections to the record.

By two separate decisions of 9 and 16 August 2010 the trial court rejected the respective sets of objections as unfounded. The applicant did not produce copies of the respective documents.

6. The appeal proceedings

On 15 August 2010 the applicant appealed against the judgment.

On 1 September 2010 an unspecified expert conducted an expert examination of T.'s explanations of 5 April 2008 (see above) and found that a handwritten note attesting accuracy of the submissions had been made by an unspecified person and not by T.

The applicant and his lawyer argued, in particular, that the trial court had failed to make due assessment of the existing evidence of the applicant's ill-treatment. In particular, the court had not requested medical documents from the IVS and the remand centre and had disregarded several witnesses' testimonies. The defence further challenged R.'s, T.'s and I.'s pre-trial depositions as inadmissible since they had been obtained under duress. They further argued that the attesting witnesses had unlawfully participated in the applicant's personal search since attesting witness Sp. had been a trainee at the Drug Control office at the material time and had been employed by the Office in May 2008, whilst attesting witness Vas. had been a friend of another Drug Control officer. They requested to admit a medical certificate of 4 April 2008 confirming that lay witness Sp. had received medical treatment in a military hospital as an officer of the Drug Control Service and submitted that the first instance court had refused to admit the certificate. They further requested to admit the expert examination report of 1 September 2010 and to strike out T.'s pre-trial statement as faked.

On 3 November 2010 the Sakhalin Regional Court upheld the conviction on appeal. The applicant and his lawyer were present and made submissions.

As regards the attesting witnesses, the regional court found that Sp. had in fact undergone a health check at a military hospital. However, according to the appeal court, that fact was not sufficient to demonstrate that he had been a Drug Control officer at the time of the events. The court rejected the applicant's arguments as unfounded.

The court further refused to admit and take into account the expert report of 1 September 2010 since it had been drawn up in disregard of the requirements of the law of criminal procedure.

The appeal instance upheld the remainder of the lower court's findings regarding both the duress issue and the merits of the criminal case. It found that the lower court had duly and carefully assessed the existing evidence, as well as the parties' submissions pertaining to its admissibility. The appeal court considered that the findings on the applicant's guilt were corroborated by several items of evidence.

On the other hand, the court excluded a reference to the "explanations" given by R., T. and I. "in so far as they constituted evidence of the applicant's and R.'s guilt". It further found that there had been no evidence of any violation of the procedural law requirements by the investigators.

Finally, the court found that the lower court's dismissal of the applicant's objections to the trial record had been reasoned and lawful.

COMPLAINTS

The applicant complains under Article 3 of the Convention about ill-treatment by the Drug Control officers and about inefficiency of the investigation into his respective complaint.

He complains under Article 5 that his arrest and pre-trial detention were unlawful since he was arrested in the absence of sufficient evidence of his involvement in the sale of drugs.

He submits under this head that on 4 April 2008 he was searched in the absence of a lawyer and the attesting witnesses could not participate in his personal examination since they were affiliated with the local department of the Drug Control Service.

He complains under Articles 6 § 1 and 13 that his conviction was based on inadmissible evidence, such as the record of a search conducted in violation of the procedural rules and the statements of R., I. and T. of 4 April 2008, made in the absence of a lawyer and under duress. He submits under this head that T.'s statement was faked in part.

He further complains under those Articles about the refusal of access to counsel at the initial stage of the investigation.

He complains under the same Convention provisions that the drugs were planted on him, the evidence in his case was faked and so was the trial record, that the trial court failed to correctly establish the facts of the case and that the appeal court did not remedy the above procedural shortcomings.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected to treatment contrary to Article 3 of the Convention following his apprehension on 4 April 2008? The Government are invited to address the following factual questions.

(a) Was the applicant's apprehension on 4 April 2008 planned beforehand? Did the applicant resist the arrest? Did the police 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.

(b) Once in the hands of the police on 4-5 April 2008:

- (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 4-5 April 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)? Was the applicant given access to a lawyer before and during each such activity?

(d) The Government are requested to submit relevant legible documents and, if need be, their typed copies, in response to each of the above questions. In particular, they are requested to submit the medical logbook of individuals admitted to the remand centre IZ-65/1 of Yuzhno-Sakhalinsk («ИЗ-65/1 г. Южно-Сахалинска») or any other documents containing information on the applicant's medical examination upon his arrival to the said remand centre.

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 4-5 April 2008? In particular:

(a) Which officers 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?

(b) 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?

(c) Did the applicant introduce a complaint with the Sakhalin Regional Investigative Department of the Investigative Committee of the Prosecutor’s office of the Russian Federation on 24 April 2010? If he did, was the complaint received by the respective authority? The applicant is invited to provide a copy of the respective complaint.

(d) The Government are invited to submit a complete legible copy of the decision on the refusal to open criminal proceedings of 25 June 2008.

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. Having regard to the applicant’s specific allegations, did he have a fair trial within the meaning of Article 6 of the Convention? In particular:

(a) Was the applicant afforded an opportunity to exercise his right to legal assistance from the moment of his arrest on 4 April 2008 (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008; *Panovits v. Cyprus*, no. 4268/04, §§ 64-77, 11 December 2008; and *Dayanan v. Turkey*, no. 7377/03, §§ 31 and 32, 13 October 2009)? Was there a violation of Article 6 § 1 and 3 (c) of the Convention on that account? Did the delay of legal assistance on 4-5 April 2008 entail “irretrievable” damage to the defence, thus leading to a violation of Article 6 of the Convention (see *Salduz*, cited above, and *Mehmet Şerif Öner v. Turkey*, no. 50356/08, §§ 21-23, 13 September 2011)?

In addition to the factual information requested in Questions 1 (b) (iii) and 1 (c) above, the Government are invited to comment on the following particular points:

- When was the applicant first informed of his right to legal assistance? What was the exact scope of this right at the relevant stage of proceedings? What was the exact wording by which such information was conveyed to the applicant? Was such information conveyed in a manner which allowed him to understand the scope of this right, including free legal assistance, and the significance of dispensing with the services of a lawyer?

- When did the applicant first talk to his counsel? Did he talk to counsel before the investigative measures, for instance an interview (*донпрос*)? Was counsel present during the investigative measures?

(b) Was there a violation of Article 6 § 1 of the Convention on account of the use made of any tainted evidence at the applicant's trial? Reference is being made to the pre-trial submissions by R., I. and T., including both their "explanations" («объяснения») and submissions made by them during their questioning as a suspect (the case of R.) and witnesses (the case of I. and T.). In particular:

- Was any evidence obtained during the relevant period of time (confessions, etc.) used for convicting the applicant?

- Was the applicant's conviction based, solely or to a decisive extent, on such evidence?

The parties are requested to provide relevant documents, including a copy of the trial record («протокол судебного заседания») and copies of the grounds of appeal against the judgment of 29 April 2010.