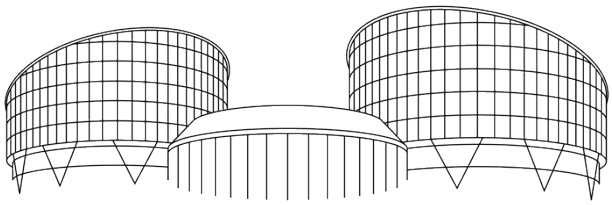

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NASAKIN v. RUSSIA

(Application no. 22735/05)

JUDGMENT

STRASBOURG

18 July 2013

FINAL

09/12/2013

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

In the case of Nasakin v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 25 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 22735/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Lev Viktorovich Nasakin ("the applicant"), on 10 June 2005.

2. The applicant, who had been granted legal aid, was represented by Mr Ye. Selyukov, a lawyer practising in Krasnodar. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. In the first letter of 10 June 2005, the applicant alleged, in particular, that he had been subjected to ill-treatment in police custody and that the ensuing investigation had not been effective. In the letter of 12 January 2008, the applicant further alleged that his pre-trial detention had been unlawful and unreasonably long; that neither he nor his lawyer had been given the opportunity to attend a hearing on the review of his pre-trial detention on 6 November 2007; and that his conviction had been based on self-incriminating statements he had made under duress.

4. On 8 April 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1945 and lives in Krasnodar.

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

6. On 25 August 2003 B. was found dead by the Kuban river. On 26 August 2003 the district prosecutor's office opened a criminal investigation into B.'s murder.

7. On 29 August 2003 the applicant attended at the police station for questioning. He explained that he had discovered B.'s body on 25 August 2003 in the yard of his summer cottage. There had been a knife next to the body. According to the applicant, he had panicked, thrown away the knife, put B.'s body into the sidecar of his motorcycle, taken it to the river and left it there. Later he had realised that he had made a mistake and gone back to the river. The body was not there. The applicant had spoken to lawyer M., who had advised him to contact the police. According to the applicant, he was handcuffed and taken to an office where five police officers beat him for several hours, ordering him to confess to B.'s murder. The applicant alleged that the officers hit him with rubber truncheons on his feet, legs, stomach, chest and the back of his head. They allegedly tortured him with electricity and threatened to rape and kill him and his family members. When his resistance was worn down, the applicant wrote a confession statement, prompted by the police officers. He reiterated his confession, in the lawyer's presence, on 31 August 2003.

8. From 29 to 31 August 2003 the applicant was held in an overcrowded cell at the police station, allegedly without food or water. The police officers allegedly continued threatening the applicant, offering to secure his release in exchange for 10,000 US dollars.

9. On 1 September 2003, at 6.10 p.m., the police officers took the applicant to a hospital, where he was examined by the doctor on duty, who documented an infected wound on his chest. The doctor treated the wound and concluded that the applicant was fit for detention. The applicant was then transferred to a temporary detention centre.

B. Ensuing investigation

10. On 5 September 2003 the applicant's lawyer complained to the prosecutor's office about the applicant's ill-treatment in police custody.

11. On 8 September 2003 investigator G. of the prosecutor's office ordered a forensic medical examination of the applicant, which was conducted immediately. On the same day, the investigator refused to institute criminal proceedings against the police officers, relying on their statements, in which they denied having put any pressure on the applicant when questioning him.

12. On 11 September 2003 the applicant's daughter lodged a complaint with the prosecutor's office about the applicant's ill-treatment in police custody. The applicant lodged a similar complaint on 25 September 2003.

13. On 23 September 2003 the forensic expert completed the report concerning the applicant's injuries. In particular, the expert stated as follows:

> "[The applicant] has a striated abrasion on the chest which measures 6 centimetres in length and 2.5 centimetres in width and is covered with a sanious yellow [crust] ... [There is] an injury having an irregular oval form and measuring 1.5 centimetres in length and 0.5 centimetres in width on the external surface of the upper third of the left leg, [the injury] is covered with a dry dark brown crust ... [There is] a round abrasion measuring 0.6 centimetres in diameter on the front surface of the upper third of the left leg; [the injury] is covered with a dark brown crust ... [There is] an abrasion on the back surface of the left foot; [the abrasion] has an irregular oval form, measures 2 centimetres in length and 1 centimetre in width and is under a red brown crust ... The skin around [the abrasion] is oedematous and reddish. No other injuries have been discovered ...
>
> ...
>
> On the basis of the data from the forensic medical expert examination of [the applicant] [I] reach the following conclusions in response to the questions put:
>
> [The applicant] has sustained the following injuries:
>
> - an abrasion on the front surface of the chest, an abrasion of the left foot [caused] up to 1 day before the expert examination;
>
> - abrasions on the leg [caused] 3-4 days before the examination.
>
> The above-mentioned injuries were caused by blunt solid objects and did not cause damage [to the applicant's] health."

14. On 30 September 2003 the decision of 8 September 2003 was quashed and the materials were sent for further examination. The supervising prosecutor noted as follows:

> "The decision [of 8 September 2003] was not substantiated. No inquiry ... was in fact conducted. [The investigator] questioned only the police officers; [the applicant], his lawyer and [the applicant's daughter] were not questioned. Their allegations were not confirmed or refuted. Accordingly the said decision must be quashed."

15. On 8 October 2003 the regional prosecutor's office instituted criminal proceedings against the police officers on charges of abuse of power.

16. The investigator questioned the applicant, his daughter, the two lawyers representing the applicant, the guards at the police station, certain persons who had been detained with the applicant at the police station, and the alleged perpetrators. The applicant named two of the police officers who had taken part in the beatings and claimed that he would be able to identify the others if given the opportunity.

17. On 11 March 2004 the applicant underwent another forensic medical examination. In the report, issued on 26 March 2004, the experts confirmed that at the time of the first examination the applicant had had an infected wound on the chest, two abrasions on the left leg and abrasions on the left foot. They concluded that the injuries had been caused by solid blunt objects and could have been sustained "in the circumstances and on the dates detailed by the applicant". The experts also noted that the injuries on the left foot could have resulted from electrocution.

18. On 7 May 2004 investigator P. closed the criminal investigation against the police officers. He relied on the statements of the alleged perpetrators, who stated that they "had tried to convince" the applicant to confess to the murder. They fiercely denied that any force or pressure had been used against him. They also stated that the applicant had had no visible injuries. The senior investigator also included in his decision statements by a number of police officers and arrestees who had seen the applicant between 29 August and 1 September 2003. The officers and arrestees, except for one person, stated that the applicant had had no visible injuries and that he had not made any complaints about the alleged beatings. One of the arrestees confirmed that the applicant had had an injury on his chest and that he had complained that the police officers had tortured him. On the basis of that evidence, the investigator concluded as follows:

> "[The applicant] indicates that he was beaten up by police officers of the Crime Detection Unit of the Prikubanskiy District Police Department in Krasnodar and thus that the statements in which he confessed to B.'s murder, a crime which he had not committed, were obtained under duress. However, it is necessary to take into account that in the materials of the case file concerning the charge against [the applicant] there is sufficient evidence to prove [the applicant] guilty of a particularly serious criminal offence – murder; the criminal case was sent to the trial court to be examined on the merits, and the materials of the present criminal case do not contain sufficient evidence to prove [the police officers] guilty of committing an offence in respect of [the applicant]. The forensic medical expert examinations performed ... came to mutually exclusive conclusions. The conclusions of the additional forensic medical examination in respect of the time and origin of [the applicant's] injuries are hypothetical. The witnesses' statements, save for those made by lawyer P. and [the applicant's] daughter, do not confirm that unlawful investigative measures or unlawful arrest were used in respect of [the applicant] and [do not confirm] any of the other circumstances described by [the applicant].

...

In such circumstances, the [applicant's] allegations about the offence committed against him have not been substantiated. It follows that there are no grounds to indict [the police officers] on criminal charges. Their guilt of committing the criminal offence of [abuse of power] is not confirmed by the evidence collected."

19. On 6 December 2004 the Oktyabrskiy District Court of Krasnodar quashed the decision of 7 May 2004 and remitted the matter for further investigation. In particular, the court indicated as follows:

"Having examined the materials in the criminal case file and compared them with the arguments proffered by [the applicant], the court concludes that [the decision of 7 May 2004] was premature. The statements made by [the police officers under investigation] are contradictory. Furthermore, not all investigative measures ... were carried out."

20. On 9 March 2005 the Krasnodar Regional Court, acting on an appeal by the prosecutor, quashed the decision of 6 December 2004 and remitted the matter for fresh examination to the District Court.

21. On 20 June 2005 the District Court upheld the decision of 7 May 2004, reasoning as follows:

"As has been established ..., on 8 October 2003 the [regional prosecutor's office] opened [a criminal investigation] in respect of [the police officers] who had allegedly caused injuries to [the applicant].

In the course of the investigation of the criminal case ..., all investigative actions were carried out. The witnesses and [the alleged perpetrators], and ... were questioned. Forensic medical expert examinations were conducted. However, no circumstances which objectively confirmed that the police officers had used physical force against [the applicant] were established.

Moreover, on 19 November 2004 [the applicant] was convicted ... ; [the applicant's] confession statement served as the basis for [the conviction].

The court cannot take into account [the applicant's] argument that he made the confession statement as a result of unlawful ... measures taken against him by the police officers ... . Those arguments were refuted in the course of the [applicant's] trial as contradictory to the actual circumstances of the case."

22. On 12 October 2005 the Krasnodar Regional Court upheld the decision on appeal, endorsing the reasoning of the District Court.

C. Criminal proceedings against the applicant

1. First conviction on 19 November 2004

23. On 1 September 2003 the Prikubanskiy District Court of Krasnodar authorised the applicant's detention pending the investigation noting as follows:

> "The applicant is suspected of a particularly serious criminal offence, and, if released, might abscond or interfere with administration of justice".

24. On 25 October 2003 the Leninskiy District Court of Krasnodar extended the applicant's detention until 30 November 2003. The court reasoned as follows:

> "The information pertaining to the circumstances of the case, the progress of investigation and the [applicant's] character shows that the investigation cannot be completed within two months and that there are no grounds to change or lift the preventive measure imposed on [the applicant]."

25. On 30 November 2003 the Leninskiy District Court extended the applicant's detention until 30 December 2003. The court noted as follows:

> "The fact that [the applicant] is charged with a particularly serious criminal offence and that neither he nor his defence lawyer has so far studied the materials of the case file shows that the investigation cannot be completed within three months. There are no grounds to change or lift the preventive measure imposed on the [applicant]."

26. According to the Government, on 16 February 2004 the Prikubanskiy District Court held a preliminary trial hearing of the case and ruled, *inter alia*, that the applicant should remain in custody pending trial. It again extended the applicant's detention on 22 June and 23 August 2004.

27. On 19 November 2004 the Prikubanskiy District Court found the applicant guilty of murder and sentenced him to six years' imprisonment. The District Court based its decision on, *inter alia*, the confession statements given by the applicant between 28 August and 1 September 2003. As regards the applicant's arguments that those statements had been made under duress, the court stated as follows:

> "The court considers that [the applicant's] argument that his initial statements made in the lawyer's presence did not correspond to the factual circumstances as [those statements] had been extracted by the use of unlawful methods of criminal investigation, is farfetched [and was] made in order to evade the punishment for the crime committed.
>
> The [applicant's] allegations were examined during the pre-trial investigation and were not confirmed; which fact was indicated in the [investigator's] decision ... of 7 May 2004 to discontinue the criminal proceedings concerning ... [the police officers who had allegedly subjected the applicant to ill-treatment] ... ."

28. On 9 February 2005 the Krasnodar Regional Court upheld the applicant's conviction on appeal.

29. On an unspecified date the applicant was transferred to correctional colony no. IK-2 in the Krasnodar Region to serve his prison sentence.

2. Supervisory review and re-trial

30. Approximately two and a half years after the applicant's conviction, on 19 July 2007, the Presidium of the Krasnodar Regional Court quashed, by way of supervisory review, the judgments of 19 November 2004 and

9 February 2005 and remitted the matter for a retrial. The decision of 19 July 2007 was silent on the issue of the applicant's detention. The applicant remained in custody.

31. On 6 November 2007 the Prikubanskiy District Court fixed the preliminary trial hearing for 14 November 2007 and ruled that "[the applicant] should be remanded in custody [pending trial]". Neither the applicant nor his lawyer attended the hearing.

32. On 14 November 2007 the District Court listed the trial for 26 November 2007. As regards the applicant's detention, the court held that "the preventive measure applied to [him] should remain unchanged". The court also dismissed an application by the applicant for release.

33. On 28 November 2007 the Regional Court upheld the decision of 14 November 2007 on appeal.

34. On 21 February 2008 the Prikubanskiy District Court found the applicant guilty of manslaughter and sentenced him to two years' imprisonment. The court dismissed the applicant's allegations that initially he had confessed to the crime because of the undue pressure put on him in the police custody as unsubstantiated. The court took into account the period the applicant had already spent in detention and released him on his own recognisance. Neither the applicant not the prosecutor appealed against that judgment.

D. Civil proceedings initiated by the applicant

35. The applicant brought a civil action against the regional prosecutor's office and the Regional Treasury, seeking compensation for non-pecuniary damage sustained as a result of his allegedly unlawful arrest and detention, ill-treatment by the police, and conviction.

36. On 5 August 2008 the Pervomayskiy District Court of Krasnodar dismissed the applicant's action, finding that he had been convicted by a final judgment on 21 February 2008 and sentenced to two years' imprisonment. Despite the fact that the trial court had changed the initial classification of the criminal offence from murder to manslaughter, the applicant had not acquired the right to rehabilitation as his guilt was proven beyond reasonable doubt. The District Court also noted that the applicant's complaint about the alleged ill-treatment in police custody was unsubstantiated.

37. On 18 November 2008 the Krasnodar Regional Court upheld the judgment on appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Investigation of criminal offences

38. In response to a complaint alleging a criminal offence, the investigator is under an obligation to verify the complainant's allegations (Article 144 of the new CCrP).

39. Should there be sufficient grounds to believe that a crime has been committed, the investigator initiates a criminal investigation (Article 145 of the new CCrP).

B. Pre-trial detention

40. Article 108 of the CCrP provides that detention may be ordered by a court if the charge carries a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be applied. An appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention. The appeal court must decide on the appeal within three days of its receipt.

41. Article 376 of the CCrP provides that the parties must be notified about the date, time and venue of the appeal hearing no later than fourteen days before it. The court shall decide whether the detainee should be summoned to the hearing.

42. On 22 January 2004 the Constitutional Court delivered decision 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:

> "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 ..."

43. As regards the pre-trial detention of a defendant in criminal proceedings following the quashing of his conviction by way of supervisory review, the Constitutional Court of the Russian Federation stated in its Ruling No. 4-P of 22 March 2005 as follows:

> "The lack of an explicit indication in [the applicable provisions of the Russian Code of Criminal Procedure] that a supervisory-review court, when quashing a verdict and remitting the matter for fresh consideration to a trial, appeal or cassation court, must decide whether a preventive measure should be applied [to a defendant] does not relieve the supervisory-review court of the obligation to rule on that issue. It should rely on the general provisions of [the Russian Code of Criminal Procedure] in accordance with which, once a conviction becomes final, a preventive measure imposed earlier ceases to be effective. The quashing of the conviction does not

automatically entail its automatic reinstatement. In order to [remand the defendant in custody] anew, the court, in the presence of the interested parties, must determine the actual circumstances of the case which justify his remand in custody in view of the new stage of the criminal proceedings."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

44. The applicant complained under Articles 2, 3 and 13 of the Convention that he had been severely beaten while in police custody, and that the ensuing investigation had not been effective. The Court will examine the applicant's grievances under Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

45. The Government contested the applicant's argument. In their view, his allegations of ill-treatment had been subject to thorough examination by the competent domestic authorities, who had found no case to answer against the alleged perpetrators.

46. The applicant maintained his complaints that he had been subjected to torture and degrading treatment while in police custody and that the ensuing investigation had not been effective.

A. Admissibility

47. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Alleged ill-treatment in custody

(a) General principles

48. The Court has held on many occasions that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336; see also, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

49. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch*, cited above, § 34, and *Salman*, cited above, § 100).

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

(b) Application of the principles to the present case

51. The Court observes that on 1 September 2003, that is, two days after the applicant's arrest, the applicant was given a medical examination and it was established that he had a chest wound (see paragraph 9 above); on 8 September 2003 a forensic medical expert confirmed that the applicant had a chest wound and certain injuries on his left leg and foot (see paragraphs 11 and 13 above).

52. The Court further notes the applicant's argument, not contested by the Government, that he did not have any injuries prior to his arrest. In such circumstances, the Court concludes that it was incumbent on the national authorities to provide a satisfactory and convincing explanation as to the cause of the applicant's injuries.

53. In this connection, the Court notes that neither the competent national authorities in the course of the domestic proceedings nor the Government before the Court attempted to proffer any explanation as to the cause of the applicant's injuries. Accordingly, the Court considers that the Government have failed to rebut the presumption of their responsibility for the injuries inflicted on the applicant while in the charge of the State. They have not satisfactorily established that the applicant's injuries were caused otherwise than – entirely, mainly, or partly – by the treatment he underwent while in police custody. It follows that the responsibility for the ill-treatment lies with the domestic authorities.

54. The applicant maintained that the ill-treatment to which he had been subjected amounted to torture. The Government did not comment. The Court observes that the applicant sustained multiple injuries to his chest, left leg and foot. The injuries must have caused him mental and physical suffering. Moreover, it appears that the use of force was aimed at debasing the applicant, driving him into submission and making him confess to a criminal offence. Therefore, the Court finds that the treatment to which the applicant was subjected was sufficiently serious to be considered inhuman and degrading within the meaning of Article 3 of the Convention.

55. It follows that there has been a violation of Article 3 of the Convention under its substantive limb.

2. Investigation into the allegations of ill-treatment

(a) General principles

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

57. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the

identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

58. An investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman*, cited above, § 106; *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

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

(b) Application of the principles to the present case

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

61. The Court notes that the materials submitted by the parties disclose a number of significant omissions in the way the investigation was conducted.

62. It appears that the national authorities, and in particular the administration of the temporary detention centre where the applicant was taken on 1 September 2003, were aware that the applicant had sustained serious injuries. However, they took no action in this connection. It was only after a complaint by applicant's lawyer that an investigator at the prosecutor's office opened an inquiry into the applicant's allegations. The Court observes that the investigator opened and closed the inquiry within one day, without putting any time or effort into elucidating the circumstances of the applicant's detention in police custody. It was only two months later that the prosecutor's office opened an official investigation into

the applicant's allegations. Accordingly, the Court considers that the authorities' response to the applicant's complaint was belated.

63. As regards the scope of the inquiry, the Court notes that the investigation carried out by the authorities did not take into account the forensic medical evidence corroborating, to a certain extent, the applicant's allegations of ill-treatment. When discontinuing the criminal investigation, the investigator merely stated that the conclusions of the forensic medical experts as regards the time and cause of the applicant's injuries were mutually exclusive (see paragraph 18 above). At no time did he try to resolve the inconsistencies between the experts' findings by ordering an additional forensic medical examination or questioning the forensic experts or the medical personnel who had attended to the applicant.

64. Lastly, the Court observes that the subsequent judicial review of the investigator's findings did not remedy the deficiencies in the investigation. Courts at two levels of jurisdiction merely upheld the investigator's decision to discontinue the criminal investigation. In this regard, the Court also notes that when upholding the investigator's decision the judicial authorities referred to the evidence relied on for the applicant's conviction of 19 November 2004, as upheld on appeal on 9 February 2005, and in his verdict the trial judge, when refuting the applicant's allegations of ill-treatment, had based his findings on the investigator's decision of 7 May 2004. The Court finds such circular reasoning unacceptable.

65. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the applicant's complaint of ill-treatment in police custody cannot be considered to have been "effective". There has therefore been a violation of Article 3 of the Convention under its procedural limb.

3. Effective remedy in respect of the applicant's grievances under Article 3 of the Convention

66. The Court further notes that the applicant's complaint under Article 13 of the Convention concerns the same issues as those examined in paragraphs 60-65 above under the procedural limb of Article 3 of the Convention. However, having regard to its conclusion above under Article 3 of the Convention, the Court considers it unnecessary to examine these issues separately under Article 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

67. The applicant complained that his pre-trial detention had been unlawful. He referred to Article 5 § 1 of the Convention, which, in so far as relevant, reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so[.]"

A. Admissibility

68. In so far as the applicant's complaint concerns the lawfulness of his pre-trial detention from his arrest on 29 August 2003 to his conviction on 19 November 2004, the Court notes that this complaint was lodged on 10 June 2005. It follows that this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

69. As regards the complaint concerning the alleged unlawfulness of the applicant's pre-trial detention from 19 July 2007 to 21 February 2008, the Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

70. The Government considered that the applicant's pre-trial detention from 19 July 2007 to 21 February 2008 in question had been compatible with Article 5 § 1 (c) of the Convention. Referring to the Constitutional Court's Ruling No. 4-P of 22 March 2005 (see paragraph 43 above), they nevertheless conceded that on 19 July 2007 the Presidium of the Krasnodar Regional Court, when quashing the applicant's conviction by way of supervisory review and remitting his case for fresh consideration to the trial court, should have authorised the applicant's pre-trial detention or released him pending trial. However, the Government stated that the whole of the period the applicant had spent in custody awaiting the determination of the criminal charges against him had been taken into account by the domestic judicial authorities when determining the length of the applicant's sentence.

71. The applicant maintained his complaint.

2. The Court's assessment

72. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see, among numerous other authorities, *Benham v. the United Kingdom*, 10 June 1996, §§ 40-41 *in fine*, *Reports of Judgments and Decisions* 1996-III).

(a) Detention from 19 July to 6 November 2007

73. The Court observes that on 19 July 2007 the Presidium of the Regional Court quashed the applicant's conviction by way of supervisory review and remitted the matter for fresh consideration to the trial court. The question as to the applicant's detention or release pending trial was not considered by the Presidium. As a result, the applicant remained in custody in the absence of any detention order until 6 November 2007.

74. In this connection, the Court takes into account the Government's submission that it was incumbent on the Presidium, as a matter of law, to rule on the issue of the applicant's detention pending a new trial.

75. It follows that the applicant's detention from 19 July to 6 November 2007 was not "lawful" or "in accordance with a procedure prescribed by law". There has accordingly been a violation of Article 5 § 1 of the Convention.

(b) Detention from 6 November 2007 to 21 February 2008

76. The Court observes that during the period between 6 November 2007 and 21 February 2008, on two occasions – that is, on 6 and 14 November 2007 – the Prikubanskiy District Court ruled that the applicant should remain in custody pending the new trial.

77. In this connection the Court reiterates that a court's decision to maintain a custodial measure does not breach Article 5 § 1 provided that the trial court "acted within its jurisdiction ... [and] had the power to make an appropriate order". However, "the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time may be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1 (see *Khudoyorov v. Russia*, no. 6847/02, § 135 in fine, ECHR 2005-X (extracts)).

78. The Court accepts that on 6 and 14 November 2007 the District Court acted within its powers in deciding to maintain the applicant's

detention pending a new trial. However, the Court cannot but notice that the District Court failed to indicate any reason or set a time-limit when ordering the applicant's detention. As a result, the applicant remained unaware of the grounds for his detention during the period under consideration. The District Court's failure to give reasons for its decision was made all the more regrettable by the fact that the applicant had by then spent over three and a half months in custody without a valid judicial decision (see paragraphs 73-75 above).

79. Having regard to the above, the Court considers that the District Court's decisions of 6 and 14 November 2007 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness which together constitute the essential elements of the "lawfulness" of detention within the meaning of Article 5 § 1.

80. Accordingly, the Court considers that in the present case there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 6 November 2007 to 21 February 2008.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

81. The applicant complained that his pre-trial detention had been unreasonably long. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

82. The Court observes that in the present case the applicant's pre-trial detention comprised two distinct periods: (1) from 29 August 2003, when the applicant was arrested pending criminal investigation against him, to 19 November 2004, when he was convicted by the Prikubanskiy District Court at the first level of jurisdiction, and (2) from 19 July 2007, when the Presidium of the Regional Court quashed the verdict and the appeal judgment, to his conviction on 21 February 2008 by the District Court. In between those two periods the applicant's first conviction became final, when upheld by the appellate court on 9 February 2005, and the applicant, for approximately two and a half years, served a prison sentence.

83. The Court considers that the issue in the present case is whether the two periods of the applicant's pre-trial detention can be assessed cumulatively. The Court answers this question in the negative. It considers that the present case should be distinguished from a situation where an applicant continued to be deprived of liberty pending an appeal hearing, the conviction subsequently being quashed on appeal (see, for example *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007). In the Court's view,

the fact that the applicant's conviction became final once upheld on appeal and he started serving a prison sentence had the effect of triggering the application of the six-month rule referred to in Article 35 § 1 in respect of the first period of his pre-trial detention (see, *mutatis mutandis*, *Idalov v. Russia* [GC], no. 5826/03, §§ 127-33, 22 May 2012).

84. Having regard to the above, the Court finds, similarly to *Idalov*, that the six-month rule should be applied, separately, to each period of pre-trial detention. Accordingly, the Court cannot consider whether or not the first period was compatible with the Convention. The applicant's complaint should be declared inadmissible as being lodged out of time. However, as it follows from the *Idalov* judgment (*Idalov*, cited above, § 130), the fact that an applicant has already spent time in custody pending the same set of criminal proceedings, should, in a given case, be taken into account by the Court in its assessment of the sufficiency and relevance of the grounds justifying the subsequent period of pre-trial detention, which the Court is competent to examine.

85. In the circumstances of the present case, the Court considers that the applicant's complaint under Article 5 § 3 of the Convention in respect of his detention from 19 July 2007 to 21 February 2008 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. As it is not inadmissible on any other grounds, the Court will declare it admissible. However, having regard to its earlier finding under Article 5 § 1 of the Convention that this period of detention was unlawful, the Court finds no need to examine the issue under Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

86. The applicant alleged that neither he nor his lawyer had attended the detention hearing of 6 November 2007. He referred to Article 5 § 4 of the Convention, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

87. In the circumstances of the case and in view of the Court's earlier finding that the applicant's pre-trial detention from 19 July 2007 to 21 February 2008 has been unlawful, the Court does not consider it necessary to examine separately the applicant's grievances under Article 5 § 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

88. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair. In particular, he alleged that his conviction had been based, *inter alia*, on confessions he had made under duress while in police custody. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

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

A. Admissibility

89. The Court observes that the applicant's first conviction on the charge of murder, as upheld on appeal, was quashed by way of supervisory review on 19 July 2007 and his case was remitted for a new consideration to the trial court which reclassified the charges and found the applicant guilty of manslaughter on 21 February 2008.

90. The Court further observes, and the parties did not argue to the contrary, that the applicant did not appeal against his conviction by the court at the first level of jurisdiction of 21 February 2008. Accordingly, there is a ground to consider that he has failed to exhaust the available domestic remedies. However, under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application. Accordingly, the normal practice of the Convention organs has been, where a case has been communicated to the respondent Government, not to declare the application inadmissible for failure to exhaust domestic remedies, unless this matter has been raised by the Government in their observations (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII; *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X; and *Rydz v. Poland*, no. 13167/02, § 72, 18 December 2007).

91. It follows that, despite the Court's well-established case-law that an appeal against a conviction by a court at the first level of jurisdiction is viewed as an effective remedy for a complaint under Article 6 in connection with the criminal proceedings, the applicant's complaint in this respect cannot be rejected by the Court on the ground that the domestic remedies have not been exhausted.

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

B. Merits

1. The parties' submissions

93. The Government submitted that the trial court had thoroughly examined all the evidence before it. The court's findings had not been based exclusively on the applicant's confessions given in police custody. And, in any event, the applicant's allegations of coerced confession had been subject to thorough examination by the domestic authorities and dismissed as unsubstantiated.

94. The applicant maintained his complaint. He claimed that he had not been advised of his right not to incriminate himself on the day of his arrest or during the subsequent questioning by the investigator.

2. The Court's assessment

95. The Court reiterates that it is not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (see *Gäfgen v. Germany* [GC], no. 22978/05, § 163, ECHR 2010).

96. Furthermore, particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3. The use of such evidence, secured as a result of a violation of one of the core and absolute rights guaranteed by the Convention, always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction (see *Gäfgen*, cited above, § 165).

97. The Court has found in earlier cases, in respect of confessions as such, that the admission of statements obtained as a result of torture (compare *Örs and Others v. Turkey*, no. 46213/99, § 60, 20 June 2006; *Harutyunyan v. Armenia*, no. 36549/03, §§ 63, 64 and 66, ECHR 2007-III; *Levinţa v. Moldova*, no. 17332/03, §§ 101 and 104-05, 16 December 2008; *Hajnal v. Serbia*, no. 36937/06, § 113, 19 June 2012; and *Grigoryev v. Ukraine,* no. 51671/07, § 84, 15 May 2012), or of other ill-treatment in breach of Article 3 (see *Söylemez v. Turkey*, no. 46661/99, §§ 107 and 122-24, 21 September 2006, and *Iordan Petrov v. Bulgaria*, no. 22926/04, § 136, 24 January 2012), as evidence in establishing the relevant facts in criminal proceedings rendered the proceedings as a whole unfair. This finding applied irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction (ibid.).

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

99. The Court further notes that it has already established that the applicant was subjected to ill-treatment whilst in police custody, that is, when he was questioned and made statements implicating himself in the crime with which he was subsequently charged (see paragraphs 51-55 above).

100. In such circumstances, the Court is not convinced by the Government's argument that the applicant's confessions should be regarded as having been given voluntarily. It concludes that, regardless of the impact the applicant's statements obtained under duress had on the outcome of the criminal proceedings against him, such evidence rendered the criminal proceedings unfair. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

101. Lastly, the applicant complained under Article 3 of the Convention about the conditions of his detention at the police station from 29 August to 1 September 2003. Referring to Article 5 of the Convention, he alleged that there had been no grounds for his arrest on 29 August 2003, and that he had not been informed of the reasons for his arrest or brought promptly before a judge. He complained under Article 6 of the Convention of numerous procedural violations by the national courts, and of the unreasonable length of the criminal proceedings against him. He further complained under Article 8 of the Convention about the allegedly poor quality of the medical care available during his pre-trial detention, and of interception of his letters by the prison administration. He complained under Article 9 of the Convention that he had been denied visits by a priest during his pre-trial detention. Lastly, he alleged a violation of Article 2 of Protocol No. 7.

102. Having regard to all the material in its possession, and in so far as they fall within its competence, the Court finds that the above complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

104. The applicant claimed 1,627,782.30 Russian roubles (RUB) in respect of pecuniary damage, including lost earnings and damage to and loss of his real and movable property, as well as damage to his health, and 43,000 euros (EUR) in respect of non-pecuniary damage.

105. The Government considered the applicant's claims excessive and unreasonable.

106. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. As regards the applicant's claims in respect of non-pecuniary damage, the Court observes that it has found a combination of serious violations in the present case. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this sum.

B. Costs and expenses

107. The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the applicant's ill-treatment in police custody, the ineffectiveness of the ensuing investigation, the unlawfulness, excessive length and review of his pre-trial detention from 19 July 2007 to 21 February 2008, and the use of the coerced confession

during the criminal proceedings against him admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb on account of the applicant's ill-treatment in police custody;

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

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

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's pre-trial detention from 19 July 2007 to 21 February 2008;

6. *Holds* that there is no need to examine the complaint under Article 5 § 3 of the Convention;

7. *Holds* that there is no need to examine the complaint under Article 5 § 4 of the Convention;

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

9. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement.

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 18 July 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President