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

FIRST SECTION

DECISION

Application no. 18454/04
Apandi Magomedovich APANDIYEV
against Russia

The European Court of Human Rights (First Section), sitting on 21 January 2014 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*
and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 6 April 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant's,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Apandi Magomedovich Apandiyev, is a Russian national who was born in 1978 and lives in Tadmagitli in the Republic of Dagestan. He is currently serving a prison sentence in the Sverdlovskiy Region. The Russian Government ("the Government") were represented by their Agent, Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. Preliminary investigation and the alleged ill-treatment of the applicant

3. On 11 February 2002 criminal proceedings were instituted in connection with a double murder and arson committed the previous day.

4. On the same date the applicant was questioned as a witness. He made no self-incriminating statements. In the transcript of the questioning it was noted that the applicant spoke Russian, did not need an interpreter's assistance and wished to be interviewed in Russian. The transcript was signed by the applicant, who also made a handwritten note in Russian to the effect that the content of the transcript correctly reflected his statement. The investigator also seized a number of the applicant's personal items, including the boots, trousers, shirt, sports jacket and leather jacket that he was wearing at the time, so as to attach them as exhibits.

5. According to the applicant, on 11 February 2002 police officers escorted him to a police station and interviewed him as a witness in the case. After they seized his clothes, he was provided only with old trousers and was not given any footwear. Thereafter the police officers and one of the attesting witnesses – who, in the applicant's submission, was known to the police officers – started beating him with truncheons and kicking him in an attempt to extort a confession from him. Allegedly, he was beaten for several hours and then, wearing only trousers and socks, was placed in a cold cell, where he spent the next two days, during which time he was not given any food.

6. According to the Government, before the questioning on 11 February 2002 the applicant's rights were explained to him. However, neither during the questioning nor afterwards did the applicant make any complaints concerning either his health or the actions of the police officers.

7. On 12 February 2002 the applicant was again questioned as a witness. As in the course of his questioning he confessed to the murder, he was subsequently detained as a suspect, and a record of detention was drawn up. As the applicant expressed the wish to be provided with counsel, lawyer R. from the Sverdlovsk bar association was assigned to him. After her arrival the applicant was again questioned as a suspect and confirmed his previous statement in the presence of counsel. In the transcript of the applicant's interview as a suspect dated 12 February 2002 and signed by him it was noted that he spoke Russian, did not need an interpreter's assistance and wished to be interviewed in Russian. The transcript also contained a handwritten note by the applicant to the effect that his statements were

reflected accurately in the transcript, that he had made them without any duress, and that he confirmed them.

8. According to the applicant, in the course of the questioning on 12 February 2002 the police officers beat him again and the investigator put pressure on him, forcing him to sign the transcripts of the interviews of that day. The applicant allegedly requested the investigator to provide him with a lawyer and an interpreter, as his mother tongue was Avarian and he had a poor understanding of Russian, which meant that the contents of the transcripts were unclear to him. Allegedly, these requests were refused and, unable to resist the beatings and physiological pressure, the applicant finally signed the transcripts without reading them.

9. According to the Government, before the questioning on 12 February 2002 the applicant's rights were again explained to him. However, as on the previous day, neither during the questioning nor afterwards did the applicant make any complaints concerning either his health or the actions of the police officers.

10. On 13 February 2002 the applicant was taken to the scene of the incident, where a reconstruction of the events was carried out in his presence and that of his lawyer and the attesting witnesses. It was video recorded.

11. Later that day the applicant was escorted from the police station to the Ekaterinburg temporary detention facility ("the IVS").

12. Also on 13 February 2002, the applicant was seen by a doctor, who issued a certificate stating that the applicant had an abrasion on his back that he had sustained two weeks earlier.

13. According to the applicant, the IVS authorities refused to admit him without a medical certificate. The police officers then took him to city hospital no. 36 where a doctor issued him with a certificate attesting to the presence of abrasions on his back. As he had been allegedly threatened by the police officers who escorted him, the applicant did not disclose the cause of his injuries to the doctor, and the latter, upon the police officers' advice, noted in the certificate that the injuries had been received by the applicant a fortnight before.

14. Thereafter the applicant was taken back to the IVS, where he remained until his transfer to remand prison IZ-66/1 on 15 February 2002.

15. On 15 February 2002 formal charges of aggravated murder were brought against the applicant in the presence of lawyer G., who had been assigned to represent him. On the same date the applicant confirmed in writing in the presence of his lawyer that he preferred to give evidence in Russian, and he was subsequently questioned. In the transcript of the questioning it was indicated that Russian was his mother tongue. The applicant also made a handwritten note in Russian on the transcript to the effect that he admitted his guilt in part but wished to avail himself of the right to remain silent until he had had a chance to study all the case-file

materials. He also noted that he had written the note in his own hand and under no pressure. The text was followed by the signatures of the applicant's counsel and the investigator. There is no indication that the applicant made any complaints concerning the alleged ill-treatment.

16. On 15 February 2002 the applicant was transferred from the IVS to remand prison IZ-66/1, where he remained until 6 June 2003. The applicant had no injuries when he was admitted to the remand prison and during his custody there he never requested medical treatment.

17. The applicant and his counsel studied the case-file on 2 August 2002 from 9 a.m. to 2 p.m., on 27 September 2002 from 9 a.m. to 11 a.m., and on 28 November 2002 from 9 a.m. to 12 noon. The applicant and his counsel made handwritten notes on the relevant procedural records to the effect that they had studied the case-file materials in their entirety. On 25 November 2002 the investigator also familiarised the applicant with eight forensic examination reports.

18. On 11 December 2002 a bill of indictment was served on the applicant.

2. Court proceedings

(a) Proceedings before the trial court

19. In the proceedings before the trial court the applicant was represented by lawyer R.

20. According to the transcript of the hearing of 16 January 2003, the applicant requested the court to allow him access to the case file, the exhibits and the video recording of the reconstruction of events, stating that he had been unable to study the case file fully at the pre-trial stage. He further requested the court to call the witnesses he had previously indicated, stating that they could give oral evidence regarding the circumstances of the incident. Lastly, the applicant requested the court to provide him with an interpreter. He claimed that his understanding of legal terminology in Russian was insufficient. In reply to the court's questions, the applicant confirmed that he understood the words "murder", "being accused" and "[he] committed". He went on to say that he had learned Russian at school, that he had lived in Ekaterinburg for two years before the relevant events and, that he understood everyday language well.

21. In the prosecutor's opinion, the applicant did not need an interpreter's assistance as he had been born and had grown up in Russia, had done his military service there and had written documents in Russian.

22. Having examined the parties' submissions, the court rejected the applicant's request to be provided with an interpreter, noting that he spoke and wrote Russian adequately. The court further rejected the applicant's request concerning witnesses as premature. It also dismissed his request regarding the exhibits, stating that those items had been seized from the

applicant and were therefore familiar to him. The court further ordered that the applicant be allowed additional time to study the case file and, to that end, suspended the proceedings until 20 January 2003.

23. The applicant studied the case-file on 16 January 2003 from 3 p.m. to 4 p.m. and on 17 January 2003 from 10.30 a.m. to 12.30 p.m. Thereupon the applicant made a hand-written note in the procedural record to the effect that he had studied the case-file materials. Neither the applicant nor his lawyer made any requests for additional time to study the case file.

24. During the subsequent hearings the applicant stated that he understood the charges against him and pleaded not guilty. He further gave his version of the incident, alleging that the murder had been committed by another person. The applicant repudiated his self-incriminating statements made during the preliminary investigation, stating that they had been extracted under duress and threats of ill-treatment. He stated that he had been beaten by the police officers, with the result that he had signed certain documents without reading them and had copied his "confession" rather than written it voluntarily.

25. The court called and examined a number of witnesses, including expert witness Ts. and witnesses S. and M.V. The court further noted that it had not been possible to call witness R., as she was paralysed. Her statements and those of witness Ves. made during the preliminary investigation were read out in court, after the applicant gave his consent. The applicant also stated that he no longer insisted on the examination of witness Sm.

26. The court further called and examined the investigators in charge of the case, Ye. and K.. They denied putting any pressure on the applicant or using any unlawful methods of investigation, such as beatings. Investigator K. also testified that while studying the case file the applicant had not requested an interpreter's assistance, and that at a certain point he had refused to continue with the study of the case file, following which the materials in the file had been photocopied and given to him. Investigator K. also stated that the video record of the reconstruction of events of 13 February 2002 had been shown to the applicant.

27. By a judgment of 3 February 2003 the Regional Court convicted the applicant of aggravated murder and sentenced him to fifteen years' imprisonment.

28. The court admitted in evidence the applicant's confession made during the preliminary investigation, rejecting as unsubstantiated his allegation that it had been extorted under duress. In this regard the court noted that the applicant had always been questioned in the presence of a lawyer, and a lawyer had also participated in the reconstruction of events of 13 February 2002. Moreover, after being detained, the applicant had been informed on several occasions of his right not to testify against himself. The court also noted that the applicant had not objected to Ye.'s statement made

in court to the effect that Ye. had not put any pressure on the applicant during the investigation. As regards the applicant's allegation of beatings by the police officers, the court stated that the medical certificate of 13 February 2002 only attested to the presence of abrasions on his back sustained two weeks earlier and did not mention any "dark blue" bruises on the applicant's legs and shoulders, as he had alleged in court.

29. The court further based its findings on other pieces of evidence, including statements by a number of witnesses, several expert reports, and, in particular, a forensic report on the clothes seized from the applicant on 11 February 2002 which attested to the presence on the applicant's trousers of blood, which could have come from of one of the victims.

(b) Proceedings before the appeal court

30. In their appeal submissions, the applicant and his lawyer complained, *inter alia*, that the self-incriminating statements made by the applicant during the preliminary investigation had been extorted from him as a result of ill-treatment by the police.

31. On 28 April 2003 the Supreme Court of Russia ("the Supreme Court") granted the applicant's request to be present at the appeal hearing.

32. On 10 June 2003 the applicant was transported from remand prison IZ-66/1 in Ekaterinburg to remand prison IZ-77/3 in Moscow.

33. On 21 June 2003 the Supreme Court notified the applicant and counsel R., who had represented him before the trial court, that the appeal hearing was scheduled for 21 July 2003.

34. The applicant requested an interpreter's assistance for the examination of his case before the appeal court. He further requested the appeal court to allow him to study the case file, alleging that he had not been given enough time to do this at the pre-trial stage.

35. The applicant and his counsel were present at the hearing of 21 July 2003. The Supreme Court noted that during the proceedings before the trial court the applicant had demonstrated sufficient command of Russian, being well able to understand what was being said to him in Russian and to express himself clearly in that language. Nevertheless, noting that everyone had the right to use his mother tongue, the appeal court decided to grant the applicant's request and provide him with an interpreter during the examination of his appeal. The Supreme Court accordingly postponed the hearing to 18 August 2003.

36. At the hearing of 18 August 2003 the applicant was present but his counsel did not appear. The applicant did not make any requests in this regard, such as for the postponement of the hearing. The Supreme Court refused the applicant's request for additional time to study the case file. It referred to the case-file materials, stating that on 28 November 2002 the applicant and his lawyer had had access to and studied all the materials, including the exhibits and the video recording, and that they had not made

any requests upon the completion of their study. Moreover, the first-instance court had granted the applicant additional time to study the case file, which he had done on 16 and 17 January 2003.

37. On the same date the Supreme Court, in the presence of the applicant and the prosecutor, upheld the judgment of 3 February 2003. It confirmed that the trial court had correctly assessed the evidence and applied the domestic law. It noted, in particular, that on 12 February 2002 the applicant had been interviewed as a witness and that the procedural law then in force had not provided for a lawyer's assistance during such interviews. However, after the applicant had made self-incriminating statements during his witness interview, he had then been questioned as a suspect in the presence of a lawyer and confirmed his statement. The applicant's defence counsel had been present at all subsequent interviews and investigative actions.

38. The court further rejected as unsubstantiated the applicant's allegations of ill-treatment during the investigation, stating that they were not corroborated by the results of the applicant's medical examination as recorded on the certificate of 13 February 2002. It also pointed out that the applicant had not complained about any injuries upon his arrival at the IVS, nor had he complained at the pre-trial stage about the alleged ill-treatment, although he had had the opportunity to do so, as he had always given oral evidence in the presence of his defence counsel and, during the reconstruction of events, also in the presence of the attesting witnesses.

39. The court went on to note that when his rights were being explained to him at the pre-trial stage, the applicant had stated that he understood his rights, that he spoke Russian, would give oral evidence in that language and did not need an interpreter's assistance. Furthermore, when interviewed both as a suspect and an accused, the applicant had expressed his wish to give oral evidence in Russian and refused an interpreter's assistance. Further, when studying the file of his criminal case, the applicant had not requested an interpreter's assistance. The court further noted that the case file contained the applicant's confession written in Russian, his handwritten notes made on the transcript of his interview of 15 February 2002 and other documents which confirmed that he had an adequate command of Russian. The appeal court added that the applicant had received secondary education in Russia, had learned Russian at school, had done his military service in 1995-1997 in Russia and had lived in Ekaterinburg since 2000. During the hearings before the trial court the applicant had stated that he understood everyday Russian, had testified in Russian and had actively participated in the examination of his criminal case. The appeal court therefore concluded that in such circumstances the fact that the applicant had not had an interpreter's assistance during the preliminary investigation and before the first-instance court had not violated his rights.

(c) Further developments

40. The applicant's attempts to have his case reopened in supervisory review proceedings were to no avail.

41. On 20 August 2009 the applicant's sentence was reduced to thirteen years and four months' imprisonment because of changes in the criminal law.

3. The applicant's complaints of ill-treatment

42. On 15 December 2002 the applicant complained in writing to the prosecutor's office of the Sverdlovskiy Region about various irregularities in the preliminary investigation, including ill-treatment by the police and refusals of his requests to be provided with a lawyer and an interpreter, to have the case-file materials and the bill of indictment translated into his mother tongue, and to be granted access to the exhibits.

43. On 3 February 2003 the prosecutor's office of the Kirovskiy District of Ekaterinburg refused to institute criminal proceedings in respect of the applicant's allegations. It noted in its decision that it was clear from the medical certificate of 13 February 2002 that the applicant had sustained the abrasion on his back two weeks before the examination, that is, in late January 2002, before he was questioned and subsequently detained. Thus, there was no evidence of an offence.

44. A copy of that decision was sent to the applicant on 4 February 2003.

45. On an unspecified date the applicant resubmitted his complaint to the prosecuting authorities.

46. In a letter of 10 November 2003 the prosecutor's office of the Sverdlovskiy Region informed the applicant that the inquiry into his allegations of ill-treatment by the police officers carried out by the prosecutor's office of the Kirovskiy District of Ekaterinburg had been incomplete and that therefore the decision of 3 February 2003 had been quashed and the relevant materials sent back to the prosecutor's office of the Kirovskiy District of Ekaterinburg for an additional inquiry. The letter further stated that the applicant would be apprised of the results of that inquiry.

47. On 18 November 2003 the prosecutor's office of the Kirovskiy District of Ekaterinburg again refused to institute criminal proceedings in respect of the applicant's allegations on the ground that following an additional inquiry they had been found to be unsubstantiated. In particular, there was no evidence that the applicant had sustained any injuries apart from an abrasion on his back that had been sustained approximately two weeks before he had been questioned and detained. A copy of the decision was sent to the applicant.

48. In the autumn of 2004 the applicant contested the decision before a higher prosecutor's office. His complaint was dismissed by the prosecutor's office of the Sverdlovskiy Region on 23 November 2004.

4. The applicant's attempts to apply to the Court

49. On 14 January 2004 the authorities of detention facility USHCH-349/52 ("the prison authorities") accepted for dispatch from the applicant an envelope addressed to the Court which contained a completed application form which, with its enclosures, totalled eighty-one pages. The next day, the applicant was informed that it had been entered in the prison correspondence register under number 225 and sent out.

50. On 27 January 2004 the prison authorities returned the envelope to the applicant. They explained that it had been returned by the postal service on the ground that the stamps placed on the envelope by the applicant, which corresponded to the postage for a standard letter, were insufficient, and that the applicant needed to pay 120 Russian roubles (RUB) in postage for the excess weight.

51. According to the applicant, on 29 January 2004 he again handed his letter to the prison authorities and requested them to take the necessary amount from his account to cover the postage. However, the authorities returned the letter to him. He allegedly resubmitted it for dispatch on 4 February 2004.

52. Between 14 January and 9 February 2004 there was no money in the applicant's account. On the latter date the account was credited with the amount of RUB 1,000.

53. On 12 February 2004 the applicant requested the prison authorities to send a letter to the International Protection Centre, an NGO based in Moscow, and to debit his account for the amount of the postage. In the letter he asked the International Protection Centre to forward his application to the Court.

54. On 14 May 2004 the Court received a five-page letter from the applicant dated 6 April 2004, which was the first piece of correspondence it had received from him. In the letter the applicant explained that on 14 January 2004 he had tried to send an application form to the Court but it had subsequently been returned on account of insufficient postage. He went on to note that as he had then had to apply to the International Protection Centre with a request for his application to be forwarded to the Court, there might be a delay in the application reaching the Court.

55. On 27 May 2004 the Court acknowledged receipt of the applicant's letter of 6 April 2004 and invited him to submit a duly completed application form.

56. On 8 July 2004 the Court received a four-page letter from the applicant dated 17 June 2004. In the letter the applicant again described his attempt to send the application form to the Court on 14 January 2004 and

his subsequent application to the International Protection Centre. He added, however, that the International Protection Centre had refused to forward his application form to the Court and that he had being trying to send it to the Court himself. He noted, without specifying any reasons, that he was having difficulty in doing so, which might lead to the dispatch of the application form being delayed. He therefore asked the Court not to reject it on the ground of expiry of the six-month time-limit.

57. On 31 August 2004 the Court reminded the applicant that he still had to submit a duly completed application form.

58. On 1 February 2005 the Court received a two-page letter from the applicant dated 22 December 2004, in which he stated that he had been unable to send the application form to the Court because of the prison authorities' refusal to forward it, but that he would persist in his attempts to send it.

59. On 2 March 2005 the Court received an eight-page letter from the applicant dated 23 December 2004, in which he again outlined his previous attempts to send the application form to the Court and made lengthy observations on the Court's admissibility criteria, in particular the application of the six-month time-limit.

60. On 9 and 23 March 2005 the Court again reminded the applicant that he still had to submit a duly completed application form.

61. On 29 April 2005 the Court received a letter from the applicant dated 16 March 2005 in which he asked it to confirm receipt of the application form.

62. On 3 May 2005 the Court received a letter from the applicant dated 16 February 2005 enclosing the application form dated 14 January 2004.

63. On 9 May 2005 the Court received an additional application form sent by the applicant on 30 March 2005. The applicant once again stated that, following the return of his application form of 14 January 2004 and after his account had been credited with a sum of money, he had asked the prison authorities to send the form to the International Protection Centre on 12 February 2004.

64. On 20 May 2005 the Court confirmed receipt of both application forms.

65. Thereafter the applicant continued to send correspondence to the Court on a regular basis. The following documents, *inter alia*, were enclosed with the applicant's correspondence:

– An undated certificate signed and stamped by the head of detention facility USHCH-349/52 confirming that the applicant had indeed submitted an application to the Court to the prison authorities on 15 January 2004, which had been registered under the outgoing number 68/52-225 and forwarded to the post office, which had then returned it, stating that the envelope containing the applicant's correspondence weighed more than twenty grams and therefore additional payment needed to be made. The

certificate also indicated that the prison authorities had sent out the application immediately upon receipt of the necessary sum of money from the applicant.

– A letter of 8 April 2005 from the Main Department for Execution of Punishments of the Sverdlovskiy Region informing the applicant that his application to the Court comprising eighty-one pages had been registered by the prison authorities on 15 January 2004 under the number 68/52-225. The letter went on to say that the post office to which the applicant's letter had been taken had pointed out that its weight exceeded the maximum allowed and that therefore it was necessary to pay a supplement; however, at that time there had been no money in the applicant's account and therefore his letter had been sent out later, when the necessary sum had been credited to the account.

– A letter of 16 May 2005 from the head of detention facility USHCH-349/52 informing the applicant that his application had been sent to the Court after 15 January 2004, when the supplement for the postage had been paid. The letter assured the applicant that 15 January 2004, the date on which his letter had been accepted for dispatch by the prison authorities, would be considered as the date of dispatch.

B. Relevant domestic law and practice

66. Article 91 (1) of the Penal Code states that detainees may receive and send unlimited letters, postcards and telegrams at their own expense. The correspondence sent by detainees must comply with the applicable postal requirements. After receipt of requests by detainees, the prison administration informs them of the transfer of their correspondence to the postal service for delivery to the addressee.

67. Article 125 of the Russian Code of Criminal Procedure provides for judicial review of decisions, acts or failure to act on the part of an inquirer, investigator or prosecutor which affect constitutional rights or freedoms. The judge is empowered to verify the lawfulness and reasonableness of the decision, act or failure to act, and to grant the following forms of redress: (i) to declare the act or failure to act unlawful or unreasonable and order the relevant authority to remedy the violation; or (ii) to reject the complaint.

COMPLAINTS

68. The applicant complained that the prison authorities' failure to forward his application to the Court in time constituted a hindrance of his right of individual petition.

69. The applicant further complained that his command of Russian was insufficient to enable him to fully understand the accusation against him and to state his case at the trial, and that therefore the authorities' refusals of his numerous requests to be provided with an interpreter and for the relevant documents to be translated from Russian into Avarian, his mother tongue, were in breach of Article 6 § 3 (a) and (e) of the Convention. The applicant also complained that he and his lawyer had only been allowed one day to study the file of his criminal case; that he had not been given an opportunity to write down the information necessary for his defence; that he had not been shown the video recording of the reconstruction of events of 13 February 2002, or photographs and other exhibits, with the result that his right under Article 6 § 3 (b) of the Convention had been violated. The applicant complained under Article 6 § 3 (c) of the Convention that he had not been assisted by a lawyer during the examination of his case by the appeal court. He further complained under Article 6 § 3 (d) of the Convention about the trial court's refusal to call and examine witnesses of his choosing. He also claimed that his conviction in criminal proceedings which had been tainted by numerous breaches of the procedural law had violated Article 13 of the Convention.

70. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police and had no effective remedy in respect of this complaint.

THE LAW

A. Article 34 of the Convention

71. The applicant complained that, in failing to forward his application to the Court, the prison authorities had hindered his effective exercise of the right of individual petition. He maintained that because of the delay in the dispatch of his letter of 14 January 2004 he had missed the six-month time-limit in respect of certain complaints raised in his application. The Court will examine this complaint under Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

72. The Government submitted that the applicant's letter of 14 January 2004 had been returned not by the prison authorities, but by the postal service on account of insufficient postage, and the prison authorities had not

in any way hindered the applicant's right to apply to the Court. The Government pointed out that Article 91 (1) of the Penal Code states that detainees may send correspondence at their own expense. However, firstly, between 14 January and 9 February 2004 there had been no assets in the applicant's account and, secondly, contrary to the applicant's contentions, he had not applied to the prison administration with a request to withdraw money from his account so as to pay postal expenses on either 29 January or 4 February 2004. As regards the applicant's allegation that he had missed the six-month time-limit because of acts or omissions on the part of the prison authorities, the Government noted that since the applicant had had sufficient money credited to his bank account on 9 February 2004, it had been open to him to forward his application to the Court before 18 February 2004, the date he believed the six-month time-limit would expire. However, he had not done so, but on 12 February 2004 he had requested the prison authorities to send a letter to the International Protection Centre instead, which they had done on the same date. The prison authorities had thus promptly complied with all the applicant's requests concerning his correspondence.

73. The applicant submitted that on 27 January 2004, when his letter of 14 January 2004 had been returned by the postal service, he had had no means to pay the excess postage. In his view, the authorities had been under an obligation to provide him with financial means so as to enable him to apply to the Court, which they had failed to do. He further contended that he had been unaware that money had been credited to his account on 9 February 2004 and that the letter of 12 February 2004 had been sent to the International Protection Centre because of a mistake by the prison officers, as he asked them to send it directly to the Court.

74. The Court observes that the applicant's complaint mainly concerns the prison authorities' alleged failure to send his application to the Court before 18 February 2004, when he believed the six-month time-limit expired in respect of certain complaints raised in his application.

75. The Court notes that the applicant's application to the Court was handed to the prison authorities for dispatch on 14 January 2004, entered in the correspondence register on 15 January 2004, and handed in at the post office on the latter date. On 27 January 2004 it was returned by the postal service on the ground of insufficient postage for the letter's weight.

76. The Court further notes that Article 91 of the Penal Code states that detainees may send correspondence at their own expense, and that between 14 January and 9 February 2004 there was no money in the applicant's account.

77. In so far as the applicant contends that the prison authorities' failure to provide him with the necessary means to pay for the excess weight precluded him from sending his application form before 18 February 2004, the Court notes that in Yepishin v. Russia, no. 591/07, § 76, 27 June 2013, it

found that the prison administration's refusal to pay the postage for the dispatch of the applicant's letters to the Court did not disclose any prejudice in the presentation of his application. As in the case at hand there is no evidence that the applicant actually requested the prison authorities to pay the postage for his application to the Court, the Court is not called upon to decide on this issue. As regards the overall handling of the applicant's application to the Court by the authorities, the Court finds no evidence of any prejudice as it was in any event open to the applicant to send his application to the Court before 18 February 2004.

78. First of all, in order to interrupt the running of the six-month time-limit the applicant could have sent a letter to the Court expressing his intention to lodge an application and submit the completed application form with enclosures at a later date. The applicant had enough money to pay the postage for a standard letter to France. He has provided no explanation as to why he did not do so. Secondly, as noted above, there is no evidence that the applicant ever asked for financial aid in order to send the complete application form with enclosures. Thirdly, the Court notes the applicant's submissions made in his observations that he had been unaware of money being credited to his account on 9 February 2004 and that the letter of 12 February 2004 had been sent to the International Protection Centre and not to the Court because of a mistake on the part of the prison officers. However, these submissions contradict the applicant's earlier statements. Thus, in his letters of 6 April and 17 June 2004 and the additional application form of 30 March 2005 the applicant explicitly stated that it had been his decision to send a letter to the Centre of International Protection asking it to forward his application to the Court. From the same application form it is also clear that he was aware that the money had been credited to his account on 9 February 2004. Accordingly, the Court finds that the applicant could have resubmitted his application form, or otherwise applied to the Court, before 18 February 2004, but chose to proceed in a different way.

79. The Court also notes that the prison authorities provided the applicant with certificates attesting that he had first tried to send an application to the Court on 15 January 2004 and it had been entered in the prison correspondence register but returned by the post because of excess weight. They also provided him with a copy of a letter addressed to the Court explaining that the initial application had been returned by the postal service and not by the prison authorities. All the certificates were submitted by the applicant and received by the Court.

80. The Court also notes that the applicant wrote numerous letters to the Court that were sent promptly by the prison authorities and duly received by it.

81. Taking into account (i) that the applicant's initial application of 14 January 2004 was returned due to its excess weight by the postal service

and not by the prison authorities; (ii) the fact that the applicant could have resubmitted the application or sent a letter stating his intention to apply to the Court before 18 February 2004; (iii) the prison authorities' efforts to explain the situation to the Court; and (iv) the lack of any evidence that the prison authorities interfered with the applicant's subsequent extensive correspondence with it, the Court finds no indication that there were any attempts on the part of the authorities to hinder the applicant's right to apply to the Court.

82. Thus, the Court concludes that the State has not failed to fulfil its obligation under Article 34 not to hinder the effective exercise of the right of individual petition.

B. Article 6 of the Convention

83. The applicant further complained under Article 6 § 3 (a) and (e) of the Convention about the refusal to provide him with an interpreter and a translation of certain documents from Russian into Avarian, his mother tongue. He also complained under Article 6 § 3 (b) of the Convention that he and his lawyer had been given only one day to study the case-file materials, and that certain pieces of evidence had not been made available to them. The applicant further complained under Article 6 § 3 (c) of the Convention that he had not been assisted by a lawyer at the appeal hearing. He also complained under Article 6 § 3 (d) of the Convention about the trial court's refusal to call and examine certain witnesses of his choosing. Finally, the applicant relied on Article 13 of the Convention, claiming that he had been convicted as a result of criminal proceedings tainted by numerous breaches of the procedural law.

84. The Court reiterates that under Article 35 § 1 of the Convention it may deal with a matter only after all domestic remedies have been exhausted and within a period of six months from the date on which the final decision was taken. Accordingly, it must first ascertain that the present complaint was lodged within the six-month time-limit.

85. The Court must therefore first establish the date of introduction of the present application. It has found above that the applicant first unsuccessfully tried to send the application form on 14 January 2004. The envelope containing it was entered in the prison correspondence register on 15 January 2004 and handed in at the post office on the same date. However, it was returned by the latter on 27 January 2004 because of insufficient postage, as the stamps placed on the envelope by the applicant corresponded to the postage for a standard letter, whereas he needed to pay another RUB 120 in postage for the excess weight. The envelope handed over by the applicant to the prison authorities included a completed application form with enclosures, the total number of pages being eighty-one. The Court observes in this regard that (i) it must have been clear to the

applicant that such a bulky envelope exceeded the postage for a standard letter, and (ii) the applicant never claimed that information on the applicable postal tariffs was unavailable to him prior to sending the application form.

86. The Court has also established above that when the envelope containing the application form was returned to the applicant on 27 January 2004, there was no money in his account and he therefore had no means to pay for the excess weight. The applicant never applied for financial aid. However, he was informed that on 9 February 2004 his account had been credited with the amount of RUB 1,000. Yet, rather than resubmitting the application form to the Court, or sending it a letter stating his intent to lodge an application before 18 February 2004, the applicant chose to send a letter to the Centre of International Protection on 12 February 2004 asking it to forward his application to the Court, which it eventually refused to do.

87. The Court further observes that after the unsuccessful attempt to send the application form on 14 January 2004, the applicant sent correspondence to the Court directly for the first time on 6 April 2004. Subsequently he sent the Court numerous letters of several pages each with repeated descriptions of his attempts to send the application form in January and February 2004. However, he only resubmitted the application form dated 14 January 2004 and its enclosures on 16 February 2005, that is, more than one year later. Given the obvious facility with which the applicant was able to communicate with the Court, it remains unexplained why, after the return of his application form by the postal service due to insufficient postage, he did not write to the Court before 18 February 2004 to express his intent to lodge an application. It has to be noted that it is likewise unclear why, taking into account the number of relatively voluminous letters the applicant sent to the Court between 6 April 2004 and 16 February 2005, he only sent the duly completed application form on the latter date, even though he had obviously had the means to do so earlier.

88. Taking into account the foregoing and the provisions of Rule 47 § 5 of the Rules of Court as in force at the material time, the Court considers that the present application was introduced on 6 April 2004, the date of the first letter received by the Court from the applicant. Given that the Court's subsequent letters reminding the applicant that he had to submit a duly completed application form did not set any time-limits in this respect, it considers the fact that it was only sent on 16 February 2005 to be of no relevance in respect of the introduction date.

89. The Court observes that the applicant was convicted by the Supreme Court on 18 August 2003, and that judgment constituted a final domestic decision for the purposes of Article 6 of the Convention. Accordingly, the six-month time-limit provided in Article 35 § 1 of the Convention in respect of the applicant's complaint under Article 6 expired on 18 February 2004. Therefore, the present complaint was lodged outside the prescribed time-limit.

90. It follows that this part of the application must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

C. Articles 3 and 13 of the Convention

91. The applicant also complained under Article 3 of the Convention that he had been ill-treated by the police on 11 and 12 February 2002. Article 3 reads as follows:

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

92. He also claimed that he had no effective remedy in respect of the alleged ill-treatment. The Court will examine the complaint under Article 13, which reads as follows:

> "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."

93. The Government submitted that before 15 December 2002 the applicant had made no complaints concerning the alleged ill-treatment by the police or investigating officers, and that the only medical certificate, issued on 13 February 2002, attested to an abrasion sustained by the applicant about two weeks prior to his being questioned and detained. The inquiries conducted following his complaints had proved his allegations to be unsubstantiated. Furthermore, the Government pointed out that the applicant had never challenged before a court the refusals of the prosecuting authorities to institute criminal proceedings, although it had been open to him to do so under Article 125 of the Code of Criminal Procedure.

94. The applicant maintained his complaint.

95. To the extent the Government's submissions suggest that the applicant has not exhausted domestic remedies as required by Article 35 § 1 of the Convention, the Court does not, in the circumstances of the present case, find it necessary to examine this issue, as the complaint is in any event inadmissible for the following reasons.

96. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing this evidence, the Court has adopted the standard of proof "beyond reasonable doubt", but has added 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). Article 3, taken together with Article 1 of the Convention, implies a positive obligation on the States to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment (see *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports of Judgments and Decisions* 1998-VI). Where an individual is taken into police 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, failing which an issue arises under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

97. In the present case the Court notes that the alleged ill-treatment in the applicant's submissions took place on 11 and 12 February 2002, whereas he chose not to complain about it to the prosecuting authorities until 15 December 2002. It further notes that on 3 February 2003 the prosecutor's office of the Kirovskiy District of Ekaterinburg refused to institute criminal proceedings in respect of the applicant's allegations relying, *inter alia*, on the medical certificate of 13 February 2002. This was the only piece of evidence that corroborated any injuries sustained by the applicant, according to which he had an abrasion on his back that had been sustained about two weeks before his first questioning and subsequent detention. The prosecuting authorities thus found the applicant's allegations to be unsubstantiated. As the applicant resubmitted his complaint, the decision of 3 February 2003 was subsequently quashed and an additional inquiry conducted. However, it merely confirmed that the applicant's allegations were unsubstantiated, and the institution of criminal proceedings was again refused on 18 November 2003. The applicant's complaint about the refusal was dismissed by the higher prosecutor's office on 23 November 2004.

98. The Court observes that the applicant has presented no evidence that would enable it to depart from the findings of the domestic authorities in this respect. The medical certificate of 13 February 2002 mentions only an abrasion on the applicant's back sustained two weeks earlier, which rules out it being caused on or after 11 February 2002, when the applicant was first questioned. No other evidence was presented to the Court to corroborate the applicant's submissions. The Court notes also that it is not alleged by the applicant that the prosecuting authorities failed to take any particular investigative steps when conducting the inquiries into his allegations.

99. Therefore, the Court cannot but concur with the domestic authorities' conclusion that the applicant's allegations of ill-treatment are unsubstantiated. It also finds that the domestic authorities complied with their procedural obligation under Article 3 of the Convention to conduct an effective investigation into the allegations of ill-treatment.

100. It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

101. As regards the applicant's complaint under Article 13 of the Convention, the Court reiterates that this provision does not contain a general guarantee of legal protection of every substantive right. It relates exclusively to those cases in which an applicant alleges, on arguable

grounds, that one of his rights or freedoms set forth in the Convention has been violated. According to the Court's case-law, this provision applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see, among other authorities, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 51, Series A no. 131).

102. The Court has found above that the applicant's complaint under Article 3 of the Convention is manifestly ill-founded. In this connection, the Court would highlight that, on an ordinary reading of the words, it is difficult to conceive how a claim that is "manifestly ill-founded" can be nevertheless "arguable" and vice versa (see *Boyle and Rice*, cited above, § 54).

103. The Court therefore concludes that the applicant did not have an "arguable claim", and Article 13 of the Convention in conjunction with Article 3 is inapplicable to the case.

104. It follows that the complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Holds that the State has not failed to fulfil its obligation under Article 34 not to hinder the effective exercise of the right of individual petition;

Declares the application inadmissible.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President