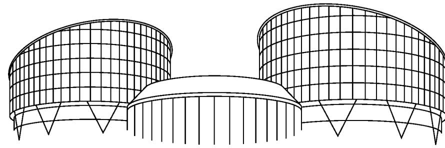

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MUKAYEV v. RUSSIA

(Application no. 22495/08)

JUDGMENT

STRASBOURG

14 March 2017

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Mukayev v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 21 February 2017,

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

PROCEDURE

1. The case originated in an application (no. 22495/08) 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 Arsan Magomedovich Mukayev ("the applicant"), on 30 April 2008.

2. The applicant was represented by an NGO, Stichting Russian Justice Initiative, in partnership with another NGO, Astreya ("SRJI/Astreya"). The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been tortured by the police, that the authorities had failed to effectively investigate the matter and that he had been convicted on the basis of self-incriminating statement given under duress.

4. On 18 February 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 (in some of the documents submitted his year of birth was also stated as 1979). He used to live in Grozny,

Chechnya, but is currently serving a life prison sentence at an unspecified location.

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

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

1. The applicant's arrest

7. On 14 April 2001 the interim prosecutor of Grozny opened criminal case no. 11133 against the applicant. On 14 September 2001 the applicant was charged, *in absentia*, with aggravated murder. On 31 December 2001 he left Chechnya under a false identity and in January 2002 he arrived in Semipalatinsk, Kazakhstan.

8. On 13 January 2006 the applicant was arrested in Semipalatinsk. On 17 January 2006 the local authorities established his true identity and the Semipalatinsk town prosecutor's office extended the applicant's detention with a view to extraditing him. On an unspecified date in January or February 2006 the Russian authorities officially requested the applicant's extradition to Russia. On 23 February 2006 the applicant was taken to Astana airport and handed over to Russian law-enforcement officers.

2. Ill-treatment of the applicant while in detention on remand

(a) The applicant's ill-treatment in Moscow

9. On 23 February 2006 the applicant was taken by Russian police officers from Astana to Moscow. Upon his arrival at Domodedovo airport in Moscow, he was filmed by a journalist of the RTR (Russian Public Television) company and a report about his extradition was televised on the same date in the nationwide news programme, *Vesti*. On the footage, the applicant showed no signs of ill-treatment. His relatives learned about his arrest and extradition from the news report.

10. On the same date, 23 February 2006, the applicant was taken to remand prison IZ-77/4 in Moscow. Upon arrival he was examined by a doctor, who found no evidence of ill-treatment.

11. On the same date, the applicant was handed over from prison IZ-77/4 to Chechen investigators and police officers for transfer to Grozny, Chechnya.

12. According to the applicant, he was placed in a vehicle with two Chechen police officers, Mr Kh. Mag. and Mr L.-A. Mud., who repeatedly punched and kicked him on the way to the airport.

13. At the airport the officers were joined by an investigator from Chechnya, Mr P. The applicant bore signs of ill-treatment: his face was swollen, he was covered in blood and he could not eat or drink.

(b) The applicant's ill-treatment on the journey from Vladikavkaz to Grozny

14. Upon arrival at the airport in Vladikavkaz, Republic of North Ossetia-Alania, the applicant was taken in a Gazel minibus to Grozny.

15. According to the applicant, the commander of the Police Special Task Unit (*Отдел милиции особого назначения (ОМОН)*) ("the OMON") police group ordered him to lie on the floor of the minibus, and the police officers kicked him and beat him with their rifle butts.

(c) The applicant's ill-treatment in the ORB-2

16. Late in the evening of 23 February 2006 the applicant arrived at the police station known as Operational Search Bureau no. 2 (hereinafter "the ORB-2") in Grozny, where he was detained until 6 March 2006.

17. According to the Government's submission to the Court, upon his arrival at the ORB-2 in the evening of 23 February 2006 the applicant underwent a medical examination, which established that he had haematomas around his right eye and an abrasion on his back. According to the Government, the applicant explained to the doctor that he had obtained those injuries in Kazakhstan.

18. According to the applicant's submission to the Court, on the same evening, 23 February 2006, he was taken to a large room on the ground floor of the ORB-2 premises, where he was subjected to beatings by five police officers, namely the head of the ORB-2's operational search division; Mr Ib., the operational search officer; Mr As. Vak., the head of the department specialising in the investigation of aggravated robberies; and two other police officers from the station.

19. The officers questioned the applicant about, among other things, the murder of a prosecutor perpetrated in 2001. They punched and kicked him, demanding that he confess to killing that prosecutor and give statements against certain persons whom he knew personally. The applicant refused. The officers then tortured the applicant with electric shocks and beat him about the head with plastic bottles filled with water. Every time he lost consciousness, the officers poured water on him and continued the interrogation and torture.

20. According to the applicant, throughout the night of 23-24 February 2006 and during the day on 24 February 2006 he was tortured and pressured to admit his involvement in a number of serious crimes. The applicant refused to do so.

21. On 25 February 2006 the applicant was told that his aunt, Ms Kh. Tas., had arrived with a food package for him. The officers detained her, questioned her about the applicant and threatened her. One of the officers then told the applicant that if he wanted nothing to happen to his aunt, he would have to sign confessions. The applicant signed the documents without familiarising himself with their contents.

22. According to the applicant's submission, between 26 and 28 February 2006 he was regularly ill-treated at night; he was bludgeoned, tortured with electric shocks, and a gas mask was put over his head to induce suffocation. He was forced to memorise statements concerning his forced confession to the commission of the crimes in question along with details of those crimes and of crimes in which he had allegedly participated.

23. According to the applicant, on 6 March 2006 he was transferred to remand prison no. 20/1 ("SIZO 20/1") in Grozny. Between March and December 2006 he was sometimes returned to the ORB-2 premises for questioning and was subjected to further beatings, electrocutions and other forms of ill-treatment. The officers threatened to kill him if he complained to anyone of the ill-treatment. He again had to memorise the details regarding the crimes allegedly perpetrated by him; the police officers instructed him regarding places, methods and other details concerning the crimes he was accused of perpetrating. From the middle of March the police officers primarily used electric shocks to torture him in order to avoid leaving bruises and haematomas on his body. In the applicant's submission, the police officer who was most active in torturing him and pressurising him to confess was Mr As. Vak. from the ORB-2.

24. On 30 April and 2 May, and again on 5 and 6 September 2006, the applicant was interviewed in SIZO 20/1 by an official from, apparently, the European Committee for the Prevention of Torture. The applicant described to that official the torture to which he had been subjected on the SIZO 20/1 premises.

25. On the night of 24 to 25 May 2006, after the applicant's complaints of ill-treatment (see paragraphs 31-32 below), he was subjected to severe beatings: a plastic bag was put over his head and he was hit in the head with metal keys and kicked. The officers threatened to kill the applicant if he continued to complain of being ill-treated.

26. On 1 June 2006 the applicant underwent a medical examination in SIZO 20/1, which established the following:

> "... on his left upper shoulder there are circular purple bruises, both internal and external, measuring 2-3 cm. On his right hip there is a large circular purple haematoma measuring 6 cm and an abrasion measuring 3 cm ..."

27. On 20 October 2007 and again on 29 October 2007 the administrative authorities at remand prison IZ-77/4 in Moscow replied to a request for information by the applicant's representatives stating that at the time of his arrival at their remand prison on 23 February 2006 the applicant had not borne any traces of ill-treatment.

28. In support of his allegations, the applicant furnished the Court with statements by witnesses who had also been detained in the ORB-2 at the material time. Those witnesses were: Mr Sh. El. (a statement dated 12 September 2009); Mr U. Cha. (an undated statement); Mr R. Le. (a statement dated 13 September 2007); and Mr M. Ga. (a statement dated

12 September 2007). The applicant also submitted two official statements by the administrative authorities of remand prison IZ-77/4 in Moscow, dated 20 and 29 October 2007 respectively.

(d) Investigation into the alleged ill-treatment

(i) The applicant's complaint to the supervising prosecutors

29. On 1 March 2006 the applicant was examined by a medical expert at the Chechen Republic Bureau of Forensic Expert Evaluations. According to the applicant, out of fear for his life he had to tell the expert that he had sustained the haematomas as a result of several falls on 23 February 2006 while he had been in Kazakhstan. The expert's conclusions of 9 March 2006 were as follows:

> "... [the applicant] stated that he had not been subjected to beatings. His facial trauma was a result of several falls that occurred during his arrest by the local police officers in Kazakhstan. He does not complain about the state of his health. Observations: under the right eye and on the right eyelid there is a crimson and green bruise, yellow along the eye, of about 3 cm by 1.5 cm. Other injuries or traces of trauma were not identified ...
>
> Conclusions: the bruise on Mr A. Mukayev's right eye is the result of this part of his head [coming into contact] with a blunt object; possible date of occurrence – 23 February 2006, in the circumstances described by him. The injury does not [fall under the category of] harm ..."

30. On 6 March 2006 the applicant was transferred to SIZO 20/1 in Grozny, where he was examined by a doctor who made the following notes in his medical record:

> "... complaints of headaches; healing haematoma on the upper-right shoulder; fresh scar on the back of the knee measuring 2 cm; haemorrhage in the right eye; abrasion on the back of the head ... handcuff marks on both wrists ..."

31. On 11 May 2006 the applicant complained to the Chechnya prosecutor's office of having been ill-treated in Moscow and in the ORB-2, stating that the police officers had tortured him to make him confess to crimes he had not committed.

32. On 15 May 2006 the applicant complained of the ill-treatment to the Prosecutor General's office.

33. On 25 May 2006 an investigator from the Chechnya prosecutor's office refused to institute criminal proceedings against the police officers. The applicant was not provided with a copy of that decision.

34. On 6 September the Chechnya deputy prosecutor overruled the decision of 25 May 2006 and returned the case to the investigators for further inquiries. The four police officers allegedly implicated in the ill-treatment were questioned and gave statements to the effect that they had not ill-treated the applicant. On 15 September 2006, upon completion of the

inquiry, the investigator, V.A., refused to open a criminal case against the officers. His report contained the following remarks:

> “... according to the record of the initial medical examination carried out by the IVS [temporary detention centre] of the ORB-2, the examinations conducted on 7 March, 17 March, 29 March, 10 April, 24 May, 13 June and 11 July 2006 did not reveal any bodily injuries ...
>
> Thus, no evidence was obtained as a result of the inquiry ... the allegations of A. Mukayev ... were not confirmed”.

The applicant was not provided with a copy of this decision.

35. On 10 October 2006 the decision of 15 September 2006 not to open a criminal case against the officers was overruled by the supervisory prosecutor and the complaint was returned to the investigators for further inquiries. On 20 October 2006 the investigator, Mr I.Kh. of the Chechnya prosecutor’s office, questioned the officers who had brought the applicant from Moscow to Grozny and the investigator in charge of the criminal case against the applicant. Mr I.Kh. refused to investigate the applicant’s allegations of ill-treatment, stating, inter alia:

> “... according to the record of the initial medical examination carried out by the IVS of the ORB-2, the examinations conducted on 7 March, 17 March, 29 March, 10 April, 24 May, 13 June and 11 July 2006 did not reveal any bodily injuries ...
>
> According to the documents received from SIZO 20/1 dated 14 March 2006 and 5 June 2006 concerning bodily injuries allegedly sustained by A. Mukayev, the Leninskiy district prosecutor’s office refused to institute criminal proceedings.
>
> For instance, when questioned about his bodily injuries – such as the haematoma covering one-third of the right shoulder, a bruise under his right eye, scratches on the back of his head and handcuff marks on both wrists, all of which were found when he was transferred to SIZ0 20/1 on 1 June 2006 – A. Mukayev explained that these injuries had been sustained by him on the way to SIZO 20/1 and on the way back to the IVS. He stated that the guards had not used physical force against him ...
>
> When questioned about the origins of the injuries, including the haemorrhage of the upper-right arm and the haematoma on his left hip found on [the applicant] when he was brought to SIZO 20/1 on 1 June 2006, A. Mukayev explained that he had been taken for interrogation. By the exit [to the facility] he had been beaten on the buttocks and shoulder, but he did not know who had hit him. The escort guards had behaved normally towards him ...”

The applicant was not provided with a copy of this decision.

36. On 23 November 2007 the investigator’s refusal of 20 October 2006 was overruled by the supervisory prosecutor and the case was forwarded to the Leninskiy District Investigative Committee for further inquiries. On 9 December 2007 the investigator of the Leninskiy District Investigative Committee refused to institute criminal proceedings against the police officers on the ground of lack of *corpus delicti*. The applicant was not provided with a copy of that decision.

37. On 27 December 2007 the applicant’s lawyers appealed to the supervisory prosecutor against the investigators’ decisions in respect of the

applicant's complaint of ill-treatment and requested that the prosecutor recognise as unlawful the following:

> "(a) the delays in the verification of A. Mukayev's complaints concerning the unlawful actions of the law-enforcement officers against him;
>
> (b) the investigator's refusal to question important witnesses who could have confirmed the use of violence against A. Mukayev;
>
> (c) the investigator's refusal to question A. Mukayev."

38. On 17 January 2008 the investigator's refusal of 9 December 2007 to initiate a criminal investigation was overruled by the supervisory prosecutor, and the applicant's complaints of ill-treatment were sent back to the investigators for further inquiries. The applicant was informed of that decision on 24 January 2008.

(ii) The applicant's judicial appeals against the prosecutor's refusals to investigate allegations of ill-treatment

39. On an unspecified date in June 2007 the applicant's lawyer complained to the Zavodskoy District Court of Grozny ("the Zavodskoy District Court"), stating, among other things:

> "... During the inquiry into the complaints of A. Mukayev, a forensic medical examination was conducted on 9 March 2006 ...
>
> However, this examination was incomplete, as on 6 March 2006 when A. Mukayev had been taken to SIZO 1 (remand prison no. 1) in Grozny, the following injuries had been noted [in the medical record]:
>
> - headaches;
> - a healing haematoma on the right shoulder;
> - a scar on the back of the knee measuring 2 cm;
> - a haemorrhage in the right eye;
> - an abrasion on the back of the head;
> - handcuff marks on both wrists.
>
> All of the above objectively confirms that physical force was used against A. Mukayev ... In addition, [the policemen] used threats and intimidation to force A. Mukayev to state that he had not been subjected to beatings and that his facial trauma had been caused on 23 February 2006 during the arrest by law-enforcement officers in Kazakhstan.
>
> The use of torture against A. Mukayev is confirmed by his allegedly voluntary confession to having committed serious crimes ...
>
> Before his arrest, A. Mukayev was a healthy man. However, after his arrest he started to have health problems ... In spite of consistent allegations [of torture] in the complaint lodged by A. Mukayev, the investigator refused to open a criminal case ...
>
> On the basis of the above, it is requested that the court:
>
> Order the Chechnya prosecutor's office to furnish [the applicant with] the materials gathered by the inquiry which resulted in the refusal to institute criminal proceedings

on the basis of the complaints of A. Mukayev, as he was neither provided with a copy of this decision nor familiarised with the contents of the file;

Recognise as unlawful the failure of the prosecutor's office to investigate substantiated allegations of torture; and

Order the Chechnya prosecutor's office to conduct a thorough, objective and effective investigation into the applicant's torture, and to prosecute the culprits ..."

40. On 26 September 2007 the applicant's lawyer lodged an additional complaint with the Zavodskoy District Court.

41. On 3 October 2007 the Zavodskoy District Court upheld the complaint in full and recognised as unlawful the refusal to institute criminal proceedings. The decision, which was not appealed against and became final, stated, among other things, the following:

"On 1 March 2006 a forensic medical expert ... examined A. Mukayev. ... [A]ccording to his report, he found '... under the right eye and on the right eyelid ... a crimson and green bruise, yellow along the eye, about 3 cm by 1.5 cm ...'

It follows that, between his extradition to Russia on 23 February 2006 and 1 March 2006, A. Mukayev was subjected to physical violence.

On 6 March 2006, when he arrived at SIZO 20/1 in Grozny, Mukayev was examined by a doctor, who made the following notes in Mukayev's medical record: '... complaints of headaches; healing haematoma in the upper right shoulder; fresh scar on the back of the knee measuring 2 cm; haemorrhage in the right eye; abrasion on the back of the head ... handcuff marks on both wrists ...'

Consequently, assuming that the examination conducted on 1 March 2006 was full and thorough, A. Mukayev was subjected to further physical violence between 1 and 6 March 2006. This is confirmed by the documents.

On 10 April 2006 the following note was made in Mukayev's medical record: '[N]umbness of the right side [the next part of the sentence is illegible]. [B]eaten [according to A. Mukayev] in the head during the journey from Moscow ...'

On 10 May 2006 in SIZO 20/1 the following note was made in Mukayev's medical record: '[C]omplaints of numbness in the right side of his face; lacrimation of the right eye; sharp pains in the right side of the face, the ear and the gums.'

On 1 June 2006 in SIZO 20/1, the following note was made in Mukayev's medical record: '[O]n the upper left shoulder there are round purple bruises, both internal and external, measuring 2-3 cm. On the right hip – a large round purple haematoma measuring 6 cm and a straight, 3-cm-long abrasion ...'

It follows that Mukayev was subjected to torture between 10 May and 1 June 2006. This is confirmed by the documents.

The inmates who were detained in the IVS of the ORB-2 at the same time as A. Mukayev also confirm the use of violence against him. ... [A]ll these [three] persons confirmed that they were prepared to give statements to the prosecutors if necessary.

A. Mukayev's lawyer, who had a short meeting with him in March 2006 in the ORB-2, also confirms that physical violence was used against A. Mukayev.

The use of torture against A. Mukayev is substantiated by the following evidence:

his complaints;

the forensic expert examination report no. 186 of 1 March 2006;

a copy of A. Mukayev's medical record;

the witness statement of Mr Sh. El.;

the witness statement of Mr M.Ga.;

the witness statement of Mr R. Le.;

complaint lodged by [the applicant's] lawyer, Mr B. El.

The absence of any signs of ill-treatment on A. Mukayev's face on 23 February 2006 when he arrived at SIZO 77/4 in Moscow can be confirmed by the following:

the witness statements of A. Mukayev's relatives, who had seen the television programme of 23 February 2006;

the video footage of the television programmes supplied by the television companies;

a reply from SIZO-77/4, if requested ...

The court, having examined the evidence ..., finds the complaint substantiated and upholds it. When refusing to institute criminal proceedings, the investigators failed to examine and take into account Mukayev's bodily injuries, the origins of which are an important factor in resolving the issue. Therefore, the ruling of 15 September 2006 not to open a criminal investigation was taken without fully examining the evidence or the complaints of Mukayev and his lawyer.

The court finds that further verification of all the arguments advanced by Mukayev concerning the use of violence against him is required ..."

42. On an unspecified date between December 2007 and February 2008 the applicant lodged an appeal with the Zavodskoy District Court against the decision of 9 December 2007 by the investigator of the Leninskiy District Investigative Committee not to institute criminal proceedings against the police officers (see paragraph 38 above).

43. On 19 March 2008 the Zavodskoy District Court dismissed the applicant's appeal, stating that the impugned refusal to institute criminal proceedings of 9 December 2007 had just been overruled on the same date (that is to say 19 March 2008) by the head of the Leninskiy District Investigative Committee.

44. On 29 March 2008 the investigator of the Leninskiy District Investigative Committee again ruled against instituting criminal proceedings against the police officers. The applicant again lodged an appeal against that decision with the Leninskiy District Court of Grozny ("the Leninskiy District Court").

45. On 26 June 2008 the Leninskiy District Court dismissed the applicant's appeal as unsubstantiated, stating that:

"... the facts of the alleged violations of the criminal procedure regulations [by the impugned police officers] were not confirmed by the numerous inquiries. A. Mukayev was found guilty as charged ..."

46. The applicant lodged an appeal against that decision with the Chechnya Supreme Court. On 6 August 2008 the latter upheld the decision of the Leninskiy District Court, stating that:

> "... in [citing] the overruling of the decision in refusing to open a criminal investigation within the framework of a criminal case which has been resolved by a sentence, [the applicant's representative] is in fact proposing that the court examine and evaluate evidence that has already been examined and evaluated by the Chechnya Supreme Court and the Supreme Court of the Russian Federation. Those courts have already delivered decisions which are now binding; such a situation is not provided for by the current legislation ..."

47. The documents submitted to the Court show that the applicant had raised, consistently and in detail, complaints of ill-treatment during the proceedings before the Chechnya Supreme Court and in an appeal against his sentence that he lodged with the Supreme Court of the Russian Federation (see below).

48. According to the Government, between May 2006 and March 2008 the domestic authorities on six occasions carried out a preliminary inquiry into the applicant's ill-treatment complaint before each time refusing to open a criminal case. The inquiries carried out showed that the applicant's allegations "were not confirmed by objective data".

B. Criminal proceedings against the applicant

1. The applicant's legal counsel

49. According to the applicant, between 23 and 26 February 2006, while he was being questioned and tortured, he had had no access to a lawyer. The investigator had not explained to him his right to legal counsel, nor that anything he said during questioning might be used as evidence in the criminal proceedings against him.

50. On 26 February 2006 the investigator appointed Mr G. Ber. as the applicant's lawyer. Rather than requesting a lawyer from the Bar Association, as prescribed by law, the investigator appointed Mr G. Ber. directly. The applicant agreed to that lawyer's services on 2 March 2006 only on the insistence of the investigator in charge of the criminal case against him, and only after he had already been questioned and charged with a number of crimes.

51. On 28 February 2006 the applicant's relatives retained Mr B. El. as his lawyer, but the investigators did not allow him access to the applicant. Meanwhile, G. Ber. acted as the applicant's lawyer. According to the applicant, G. Ber. had been present during the applicant's questioning; the lawyer had known that the applicant was being subjected to ill-treatment, but had failed to raise the issue before the authorities. The lawyer had signed the procedural document *post facto,* as requested by the investigators.

52. The applicant furnished the Court with a letter from the head of the Chechnya Bar Association of 14 December 2007, which read as follows:

> "... the investigator [in charge of the criminal case against the applicant] did not request the Nisam Bar Association to assign lawyer G. Ber. as legal counsel for A. Mukayev.
>
> ... under the law, a lawyer must obtain the approval of the head of the Bar Association for him to represent a client in criminal proceedings. However, Mr G. Ber. failed to do that; ... his retainer agreement to represent A. Mukayev was filled out by Mr G. Ber. unlawfully.
>
> On the basis of the complaints received by the Bar Association against the lawyer G. Ber., including those from A. Mukayev, on 30 November 2007 G. Ber. was disbarred..."

53. The applicant's lawyer, Mr B.El., was allowed to meet with the applicant for the first time in the middle of March 2006.

54. The applicant unsuccessfully raised a complaint regarding the flaws in the legal aid before the trial court and on appeal. His complaints were dismissed as unsubstantiated.

2. Trial and appellate proceedings

55. During the trial the applicant was represented by his lawyer, Mr B.El. The applicant retracted his confession and claimed that he had made self-incriminating statements under torture. He complained to the trial judge that during his arrest and detention at the ORB-2, he had been repeatedly tortured and threatened, and had finally been forced to confess. He pleaded not guilty in respect of the murders and admitted his guilt only in respect of the unlawful acquisition of a gun and of being in possession of false identity documents.

56. On 22 May 2007 the Chechnya Supreme Court found the applicant guilty of, among other things, the murder of twelve people, and sentenced him to life imprisonment. Its ruling was based on the applicant's confession, statements made by witnesses and victims to the investigator and the court, and ballistic expert reports concluding that one of the victims had been shot with the gun found on the applicant.

57. In respect of the applicant's allegations of torture, the trial court stated that there were

> "... no grounds for distrusting the statement given by the operational search officer Mr As.Vak. or for casting doubt on the results of the inquiries conducted by the prosecutor's office [into the applicant's allegation]".

58. On 30 October 2007 the sentence was upheld on appeal by the Supreme Court of the Russian Federation. In respect of the applicant's allegations of ill-treatment, the court stated that

> "... the fact that unlawful methods of investigation were used against the applicant was not confirmed".

II. RELEVANT DOMESTIC LAW

59. For the relevant summaries see *Lyapin v. Russia*, no. 46956/09, §§ 96-102, 24 July 2014 and *Ryabtsev v. Russia*, no. 13642/06, §§ 48-52, 14 November 2013.

III. RELEVANT COUNCIL OF EUROPE MATERIAL

60. The public statement of the European Committee for the Prevention of Torture (CPT) concerning the Chechen Republic of the Russian Federation of 13 March 2007, reads in particular as follows:

> “b. The ORB-2
>
> ...
>
> 19. The CPT has for years now been drawing the attention of the Russian authorities to the serious human rights violations being committed by staff of the ORB-2 facility in Grozny and those violations were highlighted in the Committee’s second public statement concerning the Chechen Republic issued on 10 July 2003. The Committee was led to believe, in the course of talks held in January 2005 with Dmitri KOZAK, Plenipotentiary Representative of the President of the Russian Federation in the Southern Federal District, that a “thorough” enquiry was being carried out by the Ministry of the Interior and the Prosecutor’s Office into the treatment of detained persons by staff of the ORB-2. However, it subsequently became clear that no such enquiry had ever been undertaken.
>
> To date, the steps taken in response to the CPT’s concerns about the ORB-2 have consisted only of: i) the transformation of the detention facility at the ORB-2 premises into an IVS under the authority of the Command of the Allied Group of Forces, and ii) the “processing in due time and manner” of complaints lodged with the Prosecutor’s Office. From the information gathered during the two ad hoc visits in 2006, it is clear that those measures have not been sufficient to put a stop to human rights violations by the ORB-2 staff.
>
> 20. Formally speaking, the IVS which has been established on the premises of the ORB-2 may be separate from the ORB-2, and the official reporting line of the IVS staff may differ from that of the ORB-2 staff. However, in reality there is not a watertight division between the two entities.
>
> The information gathered during the 2006 visits puts beyond any reasonable doubt that persons held in the IVS are frequently removed from the facility at night and handed over to the ORB-2 staff, and that those persons are then at great risk of ill-treatment. This conclusion is based in part on individual interviews with numerous persons with experience of custody in the IVS on the premises of the ORB-2, and on medical evidence gathered in relation to certain of those persons and others. It is also based on other information gathered on site at the IVS, which clearly suggests that the management of the ORB-2 continues to exercise an important influence over the day-to-day running of the detention facility. That this is the case is scarcely surprising given the very close proximity of the IVS and its staff to the ORB-2 facility, and the senior level of the ORB-2 staff concerned as compared to that of the staff working on site in the IVS. One member of the IVS staff acknowledged this and indicated that a request from the Head of the ORB-2 for the removal of a detainee at night would be complied with.

It should be added that the information gathered by the CPT's delegation also indicates that persons detained by the ORB-staff may be kept on that agency's own premises (and ill-treated) for some time before they are placed in the IVS for the first time.

21. t the end of the April/May 2006 visit, the CPT's delegation made an immediate observation under Article 8, paragraph 5, of the Convention, formally requesting the Russian authorities to inform the Committee by 2 June 2006 of the measures taken to put an end to ill-treatment at the ORB-2. In their response, the Russian authorities refer to the findings of the preliminary inquiries carried out by the Prosecutor's Office of the Leninskiy district of Grozny as regards complaints against the ORB-2 staff.

19 such preliminary inquiries (on complaints from 22 persons) had been carried out in respect of 2005, and 13 (on complaints from 16 persons) in respect of the first quarter of 2006. The decision in all of the inquiries had been refusal to initiate a criminal case. Commenting on the complaints, the Russian authorities highlighted the "striking similarities" of the descriptions, the sometimes "clichéd style of writing" and the failure to provide any "objective facts" in support of the complaints. The overall conclusion reached was that "persons under investigation have opted for the method of writing out complaints as a peculiar means of procedural defence".

22. In the course of the September 2006 visit, the CPT's delegation was able to examine in detail the files on all the above-mentioned inquiries. It was found that in fact the prosecution service had not taken appropriate action on the complaints and other information received.

The complaints did display certain similarities as regards the alleged ill-treatment and the circumstances in which it was inflicted. However, such consistency tends to strengthen rather than weaken their credibility, all the more so given that in most of the files the same operative officers were concerned. At the same time, the complaints displayed individual features and specific elements that reinforced their plausibility; they could not be fairly described as "clichéd". It should also be noted that 8 of the 32 inquiries were prompted not by complaints but instead by reports on admittance with physical injuries issued by SIZO No. 1; the authorities' argument that one was dealing with "a peculiar means of procedural defence" clearly has no relevance to such cases.

More significantly, it was discovered that the major element of most of the inquiries consisted merely of explanations from the operative officers involved, combined in some cases with explanations from the investigator and the IVS's feldsher. In 11 of the inquiries, the alleged victims had not been questioned at all, and in the other inquiries this crucial element had clearly consisted of a cursory and formalistic examination. The inquiries also displayed other glaring deficiencies, such as the absence of forensic examinations or undue delays in seeking such examinations, a failure to take into account medical documentation from the SIZO, and the failure to question third parties who could shed light on the veracity of the complaint (such as other persons detained at the relevant time).

To sum up, the minimum requirements of an effective inquiry had not been met in the great majority of the 32 inquiries in question. [...]

25. At the end of the September 2006 visit, the CPT's delegation indicated that the continuing failure to take effective measures to put an end to ill-treatment at the ORB-2 inevitably raised an issue under Article 10, paragraph 2, of the Convention. The delegation urged the Russian authorities to improve the situation as regards the treatment of detained persons by staff of the ORB-2, both in Grozny and in the

inter-district divisions of the agency. To date, no information has been provided to the CPT on the measures taken by the Russian authorities in response to the delegation's remarks."

61. The public statement of the European Committee for the Prevention of Torture (CPT) concerning their visit to the North Caucasus in the Russian Federation of 24 January 2013, reads in particular as follows:

> "22. For more than a decade, the CPT has been calling upon the Russian authorities to stop the ill-treatment of detained persons by staff of ORB-2 in Grozny. [...]
>
> Unfortunately, this message was not heeded. During the 2011 visit, the CPT's delegation received several credible allegations of the severe ill-treatment, both physical and psychological, of remand prisoners who had been transferred from SIZO No. 1 in Grozny to the IVS at ORB-2, in order to undergo investigative activities. The official position, according to which persons held in this IVS are only questioned in the specific room designated for that purpose located within the IVS's premises, is pure fiction.
>
> The time is long overdue for the Russian authorities to implement the recommendations made by the CPT in the report on its visits to the North Caucasian region in 2006, in relation to ORB-2. Above all, the IVS facility currently situated on the premises of ORB-2 in Grozny must be relocated elsewhere.
>
> 23. As already mentioned above, the delegation received – mainly in the Republic of Dagestan and in the Chechen Republic – a number of allegations of unrecorded detentions and detentions in unlawful locations, in particular with respect to persons suspected of offences under Sections 205, 208, 209 and 222 of the Criminal Code."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

62. The applicant complained that he had been subjected to ill-treatment at the hands of the police and that no effective investigation into his complaints had been carried out. He relied on Article 3 of the Convention, which reads as follows:

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

63. The Government disputed the applicant's allegations, stating that the applicant had not provided evidence in support of his account of events. Besides, he had already had traces of ill-treatment when arrived in Moscow from Kazakhstan on 23 February 2006. They further stated that the authorities' inquiries carried out into his allegations had complied with the domestic law.

64. The applicant maintained his complaint. He pointed out that the Government's version that he had been ill-treated in Kazakhstan, before his extradition, had been refused by the official statements from the

administration of the remand prison certifying that on 23 February 2006 he had not had any evidence of ill-treatment at the time of his arrival in Moscow (see paragraphs 10 and 27 above). Furthermore, his allegations of ill-treatment had been confirmed by the medical examinations of 1 March and 1 June 2006 (see paragraphs 29, 26 and 39 above), his consistent complaints to the authorities (see paragraphs 31, 32, 37, 39, 40, 42 and 47 above) and the domestic court's findings of 3 October 2007 (see paragraph 41 above). He stressed that the Government neither provided a satisfactory explanation as to the origins of his injuries nor carried out an effective investigation into his complaints. The applicant further stated, in particular, that the inquiries conducted had been neither timely nor thorough; the authorities had not questioned him nor taken any steps to identify his torturers. Finally, he submitted that the ill-treatment to which he had been subjected by the police amounted to torture. In support of his allegations, the applicant referred to the documents submitted and the findings of the CPT of 13 March 2007 in respect of the human rights violations committed by the staff of the ORB-2 at the material time (see paragraph 61 above).

A. Admissibility

65. The Court notes 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 alleged ill-treatment

66. The relevant general principles were summarised by the Court's Grand Chamber in the case of *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-88, ECHR 2015). The Court stressed, in particular, that where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of individuals within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. In the absence of such an explanation, the Court can draw inferences, which may be unfavourable for the Government. That is justified by the fact that those in custody are in a vulnerable position and the authorities are under a duty to protect them (ibid., § 83).

67. Turning to the case at hand, the Court observes that the Government did not dispute that the applicant had arrived in Moscow from Kazakhstan on 23 February 2006 and had been immediately taken to remand prison IZ-77/4 where he had undergone the medical examination which had established the absence of evidence of ill-treatment (see paragraph 10 above). However, later on the same date, 23 February 2006, the applicant had been taken from the prison in Moscow to the ORB-2 in Grozny where his medical examination established that he had abrasions and hematomas (see paragraph 17 above). The Court notes that the Government's explanation of the origin of the evidence of ill-treatment on the applicant at his arrival at the ORB-2 is in contradiction with the documents issued by the domestic authorities (see paragraph 27 above). The Government did not provide any other explanation to the applicant's injuries occurred after he had been taken into custody of the Chechen police, other than referring to their origins in Kazakhstan (see paragraphs 62 above). Given the absence of plausible explanations, the Court considers that the Government failed to discharge their burden of proof and to produce evidence capable of casting doubt on the applicant's account of events concerning his ill-treatment during the transfer from Moscow to the ORB-2.

68. The Court further observes that upon his arrival late at night on 23 February 2006 at the ORB-2 in Grozny, the applicant was taken for the initial medical examination and then on 6 March 2006 he had undergone another examination which had established a number of traces of ill-treatment on his body (see paragraphs 30, 39 and 41 above). Given that between those dates the applicant was detained in the ORB-2 and that the Government provided no explanation for the applicant's injuries while in the police custody, the Court accepts the applicants' version of the events.

69. On the basis of the above, and keeping in mind findings of the CPT concerning serious human rights violations committed by staff of the ORB-2 (see paragraphs 60 and 61 above) as well as the findings of the domestic court of 3 October 2007 (see paragraph 41 above), the Court finds that the applicant had been subjected to ill-treatment while in the police custody in the ORB-2.

70. The Government did not claim that the recourse to physical force the applicant complained of had been made strictly necessary by his own conduct; they simply denied that any force had been used. The Court finds that the acts of violence, to which the applicant was repeatedly subjected while in the police custody and were aimed at obtaining his confession, amounted to torture (see *Tangiyev v. Russia*, no. 27610/05, § 56, 11 December 2012; *Aleksandr Novoselov v. Russia*, no. 33954/05, §§ 65-66, 28 November 2013 and *Pomilyayko v. Ukraine,* no. 60426/11, § 51, 11 February 2016).

71. Accordingly, there has been a violation of the substantive aspect of Article 3 of the Convention.

2. *The investigation into the complaints of ill-treatment*

72. The applicant made a credible assertion that he had suffered treatment proscribed under Article 3 of the Convention at the hands of the police. His assertion was supported by forensic medical evidence and confirmed by other evidence (see, for example, paragraphs 29-31 and 39-41 above).

73. It is not disputed by the Government that the State was under a procedural obligation, arising from Article 3 of the Convention, to carry out an effective investigation into the applicant's allegations of ill-treatment.

74. The Court has previously found that in the context of the Russian legal system in cases of credible allegations of treatment proscribed under Article 3 of the Convention, it is incumbent on the authorities to open a criminal case and conduct a proper criminal investigation in which the whole range of investigative measures are carried out and which constitutes an effective remedy for victims of police ill-treatment under domestic law. The mere fact of an investigating authority's refusal to open a criminal investigation into credible allegations of serious ill-treatment in police custody is indicative of the State's failure to comply with its obligation under Article 3 of the Convention to carry out an effective investigation (see *Lyapin*, cited above, §§ 129 and 132-36; see also subsequent cases in which the Government acknowledged a violation under the procedural aspect of Article 3 of the Convention, such as *Razzakov v. Russia*, no. 57519/09,§§ 57-61, 5 February 2015, and *Aleksandr Andreyev v. Russia*, no. 2281/06, §§ 63-65, 23 February 2016).

75. The Court has no reason to hold otherwise in the present case, which involves credible allegations of ill-treatment of which the authorities were promptly made aware. The investigating authority carried out a pre-investigation inquiry and decided that there was nothing to show that the elements of a crime were present in respect of the actions of the police officers. On that basis they refused to open a criminal investigation. In total, they took six such decisions. The decisions were repeatedly set aside by the supervising authorities as unsubstantiated, unlawful or based on an incomplete inquiry. Those authorities noted on several occasions that the investigators responsible for dealing with the applicant's complaint had failed to comply with their previously issued instructions. This was confirmed by the domestic court's finding that the investigators had failed to take all measures necessary for establishing the relevant facts (see paragraph 41 above).

76. In view of the above, the Court finds that the refusal to open a criminal case into the applicant's credible allegations of ill-treatment at the hands of the police amounted to a failure to carry out an effective investigation, as required by Article 3 of the Convention.

77. There has therefore been a violation of Article 3 of the Convention under its procedural head.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

78. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair. In particular, he alleged that the domestic courts had relied on a confession that he had only given under duress and that he had been deprived of the right to defend himself through legal assistance of his own choosing. 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

79. 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

80. The Government submitted that the applicant's allegations were unsubstantiated. The applicant had been advised of his right not to incriminate himself and his statements had been given by him voluntarily. The applicant's conviction had been based on his confessions to having committed the crimes in question, together with a number of other pieces of evidence obtained by the investigation. The applicant had been represented throughout the proceedings by his lawyer Mr G. Ber.; he could have always exercised his right to choose another legal counsel.

81. The applicant maintained his complaint. He claimed that all his confessions, testimonies and statements had been made under torture. He had had no access to a lawyer between 23 and 26 February 2006 and lawyer Mr G. Ber. had been appointed for him by the investigators, in violation of the relevant procedure. The lawyer had signed backdated documents and had failed to provide the applicant with proper legal assistance.

2. The Court's assessment

82. The Court notes that in his original application and subsequent observations the applicant claimed that several aspects of the criminal proceedings against him had been unfair, contrary to Article 6 of the Convention (see paragraph 77 above). Having examined the material in its possession, the Court does not consider it necessary to examine all of those aspects; the Court will concentrate on the applicant's allegation that the

domestic courts, when they convicted him, had regard to confessions that he made under duress.

83. In this connection, 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 (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08, 50571/08, 50573/08 and 40351/09, § 251, ECHR 2016). 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, *inter alia*, *Gäfgen v. Germany* [GC], no. 22978/05, § 162, ECHR 2010).

84. Particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3 of the Convention. 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).

85. 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 *Tangiyev,* cited above, §§ 74-76, and *Levinţa v. Moldova*, no. 17332/03, §§ 101 and 104-05, 16 December 2008) as evidence to establish the relevant facts in criminal proceedings rendered the proceedings as a whole unfair (see *Gäfgen*, cited above, § 165).

86. 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 produced against him. The trial and appeal court did not find those statements inadmissible and referred to them when finding the applicant guilty and convicting him.

87. The Court further notes that it has already established that the applicant was subjected to torture whilst in police custody, that is to say at the time when he was questioned and made statements implicating himself in respect of the crimes with which he was subsequently charged (see paragraphs 18-27 and 55-56 above).

88. 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 in view of the fact that during the proceedings he had been assisted by a lawyer and advised of his right not to incriminate himself. It concludes that, regardless of the impact the applicant's statements obtained under torture 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.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

89. The applicant complained, under Article 13 of the Convention in conjunction with Article 3 of the Convention, that the authorities had failed to carry out an effective investigation into his complaint of ill-treatment in police custody. Article 13 of the Convention 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."

90. The Government submitted that the applicant had availed himself of an effective domestic remedy with respect to his complaint under Article 3 of the Convention.

91. The applicant argued that he had been denied an effective remedy for his complaint, since the pre-investigation inquiry had not secured an effective full-fledged investigation into his complaint.

92. The Court notes that this complaint is closely linked to the issue raised under the procedural aspect of Article 3 of the Convention and that it should therefore be declared admissible.

93. Having regard to the finding of a violation of Article 3 of the Convention under its procedural aspect on account of the respondent State's failure to carry out an effective investigation, the Court considers that it is not necessary to examine this complaint under Article 13 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

94. Lastly, the applicant complained under Article 3 of the Convention of the conditions of his detention in the ORB-2 and under Article 5 of the Convention that his pre-trial detention between 23 February and 6 March 2006 and between 13 March 2006 and 22 May 2007 had been unlawful.

95. Having regard to all the material in its possession and in so far as it falls within its competence, the Court finds that the evidence discloses no 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 being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

97. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

98. The Government submitted that finding a violation of the applicant's rights would constitute an adequate just satisfaction.

99. Making its assessment on an equitable basis and having regard to the nature of the violations found, the Court awards the applicant EUR 45,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

100. The applicant was represented by lawyers from SRJI/Astreya. He claimed EUR 6,093 for the costs and expenses incurred before the Court. In particular, he claimed EUR 5,448 for the work carried out by his representatives (who had spent 57 hours preparing the case), EUR 134 on postal expenses and EUR 131 for translation costs. He submitted a copy of the representation contract, as well as receipts for translation services and DHL mail.

101. The Government submitted that the claim should be rejected as unsubstantiated.

102. The Court has to determine whether the expenses claimed were actually and necessarily incurred and whether they were reasonable. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,500 covering costs under all heads, plus any tax that may be chargeable to the applicant, to be paid into the representatives' bank account in the Netherlands, as identified by the applicant.

C. Default interest

103. 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 alleged ill-treatment of the applicant in police custody and the ensuing investigation and unfairness of the criminal proceedings against him admissible and the remainder of the application inadmissible;

2. *Holds* that the applicant has been subjected to torture, in violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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

6. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
(i) EUR 45,500 (forty-five thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, the net award to be paid into the representative's bank account, as identified by the applicant;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default t period, plus three percentage points;

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

Done in English, and notified in writing on 14 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Helena Jäderblom
President