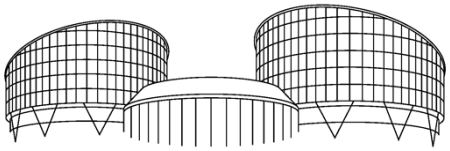

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF IVANOV v. RUSSIA

(Application no. 16310/08)

JUDGMENT

STRASBOURG

1 December 2020

This judgment is final but it may be subject to editorial revision.

In the case of Ivanov v. Russia,

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

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 16310/08) 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 Andrey Aleksandrovich Ivanov ("the applicant"), on 18 February 2008;

the decision to give notice of the application to the Russian Government ("the Government");

the parties' observations;

Having deliberated in private on 3 November 2020,

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

INTRODUCTION

1. The application concerns the applicant's alleged ill-treatment during his unrecorded detention in police custody and the lack of an effective investigation into his complaints.

THE FACTS

2. The applicant was born in 1978 and lives in Yoshkar-Ola. He was represented by Mr A.I. Ryzhov, Ms O.A. Sadovskaya and Mr I.A. Kalyapin, lawyers with the Committee against Torture, a non-governmental organisation based in Nizhniy Novgorod.

3. The Government were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

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

I. THE APPLICANT'S ARREST AND ALLEGED ILL-TREATMENT

5. On the night of 14-15 July 2005 a certain S. was robbed of her handbag on a street in Yoshkar-Ola. Later that night, at about 12.30 a.m. (according to the applicant) or at 1.40 a.m. (according to the official inquiry) a police patrol (consisting of officers D.P. and D.Ts.) stopped the applicant and his friend, Mr G., on the street on suspicion of committing a

crime and took them to the Tsentralnyy police station of Yoshkar-Ola. According to the applicant, at the police station he was held in a cell for administrative offenders from 1 a.m. to 3 a.m.

6. The applicant's account of subsequent events is as follows. At 3 a.m. a police officer took him to room no. 307 on the second floor (the third floor, as expressed in Russian). G. was in a corridor near that room, handcuffed. In that room one of the police officers introduced himself as Ch. The applicant was asked if he had committed any crime that night. He denied having committed any crime. The police officers beat him, in particular kicking him and hitting his head with a rubber truncheon three times. The applicant fainted. When he regained consciousness, he found himself lying outside the room with his head bleeding.

7. According to a report by police officer D.P. to the head of the Tsentralnyy police station (dated 15 July 2005), at 1.40 a.m. on 15 July 2005 D.P., together with police officer D.Ts., arrested and took to the police station the applicant and G., who, according to S., had robbed her of her handbag; at 3.05 a.m. (the time given in a copy of the report is not entirely legible) D.P. handed the detainees over.

8. According to the records of the police station, the applicant was escorted to the police station at 3.30 a.m. on 15 July 2005 and handed over to police officer S.P. at 4 a.m. that day. There were no records of the applicant's detention that day in a cell for administrative offenders or in the temporary detention facility for criminal suspects.

9. The applicant and G. were interviewed by police officer S.P., and each of them gave statements in the form of an "explanation" (*объяснение*), signed by them and police officer S.P. on 15 July 2005, in which they denied committing any crime.

10. According to a report by police officer S.P. to the acting head of the Tsentralnyy police station, dated 15 July 2005, the applicant had been taken to the police station at around 2 a.m. on suspicion of committing the robbery, and at around 5 a.m. during a "talk" in office no. 307 the applicant had attempted to jump out of a window. Wrestling techniques had been used to restrain him. The applicant had put up resistance. S.P. had attempted to grab the applicant's hand. The applicant had broken free and had hit his head against a safe. An ambulance had been called and the applicant had been provided with first aid. Police officer Ch. had been present in the office during all those events.

11. According to the ambulance records, an ambulance called by the police arrived at the police station at 5.50 a.m., the applicant was diagnosed with a wound in the parietal area, and his head was bandaged.

12. At 9 a.m. criminal proceedings were initiated in respect of the robbery and S., the victim of the robbery, was questioned. She did not identify the applicant and G. as her robbers. At 11 a.m. the applicant was questioned as a suspect in the presence of a State-appointed lawyer. The

applicant felt very weak because of the head injury and refused to make any statements. After signing, at an investigator's request, an undertaking to appear before the investigating and judicial authorities, the applicant was taken by a police officer to a traumatology clinic, where the wound on his head was stitched up. He was then transferred to a hospital for treatment, where he was diagnosed with brain concussion, a contused wound in the parietal area of the head, convulsive syndrome and multiple abrasions on the torso and upper limbs. In the evening he left for home.

13. The prosecution proceedings in respect of the applicant and G. were subsequently terminated for lack of any evidence of their involvement in the robbery (at the decision, dated 15 September 2005, of an investigator from the Yoshkar-Ola police department).

14. According to statements by Ms P. and Mr G., who were with the applicant immediately before his apprehension by the police on 15 July 2005, the applicant had had no injuries before his apprehension. Their statements were given on 17 October 2005 and 18 July 2005, respectively, to Chelovek i Zakon, an NGO based in Yoshkar-Ola, which represented the applicant in the subsequent domestic proceedings.

II. INQUIRY INTO THE APPLICANT'S COMPLAINTS

15. On 16 July 2005 the applicant complained of his arrest and ill-treatment to the Yoshkar-Ola prosecutor's office. On the same day S., the investigator, heard from the applicant his account of his arrest and alleged ill-treatment. The investigator also received from G. his own account of his arrest and alleged ill-treatment. G. stated as follows: he had been apprehended together with the applicant at 12.30 a.m. on 15 July 2005; the applicant had been beaten up in room 307 at the police station by two police officers, one of whom had held a rubber truncheon; they had kicked the applicant and hit him with a chair; then they had dragged him into the corridor and called an ambulance, which had arrived twenty minutes later. G. also stated that one of the police officers had introduced himself as Ch.

16. On 18 July 2005 S. issued an order for an expert forensic medical examination to be conducted on the applicant in connection with his complaint of ill-treatment by police officers – notably of his having allegedly been punched and kicked, hit with a chair on the head, and hit with a rubber truncheon. According to the expert's report of the same date, the applicant had the following injuries: a 3.2 cm by 2 cm injury on the parietal area of the head, a stripe-shaped abrasion in the area of the right eyebrow and a bruise on the upper eyelid of the right eye, an irregular-oval-shaped bruise on the left shoulder and two oval-shaped bruises on the left upper arm, abrasions on the right elbow and left forearm, and six stripe-shaped abrasions on the hand. The expert found that all the injuries had been inflicted by a blunt object three or four days before the

examination. The head injury had caused a short-term (that is to say not lasting more than twenty-one days) health disorder, and was therefore classified as minor health damage.

17. On the dates specified below, the investigators of the prosecutor's office of Yoshkar-Ola issued successive refusals to open criminal proceedings against the police officers. The refusals, except for the last one, were systematically revoked by the higher authority within the prosecutor's office for, *inter alia*, not being based on a thorough inquiry, and the investigators were ordered to undertake an additional pre-investigation inquiry.

No.	issued on:	revoked on:
(i)	26 July 2005	10 October 2005
(ii)	14 October 2005	26 December 2006
(iii)	30 December 2006 (served on the applicant after the prosecutor's order to that effect of 23 July 2007)	13 August 2007
(iv)	18 August 2007	

18. The first and the third refusals to open a criminal case were revoked after the applicant lodged appeals with Yoshkar-Ola City Court's under Article 125 of the Code of Criminal Procedure ("the CCrP"). Those appeals were not examined and the proceedings were terminated on the grounds that the decisions had been revoked (Yoshkar-Ola City Court's decisions of 12 October 2005 and 21 August 2007, respectively). The second refusal to open a criminal case was revoked as unlawful and unfounded following the Yoshkar-Ola City Court's decision of 1 December 2006 allowing the applicant's appeal for, *inter alia*, the reason that not all the applicant's injuries had been explained by the investigator. The third refusal to open a criminal case was revoked by the Yoshkar-Ola deputy prosecutor on 13 August 2007 for the reason that the flaws in the inquiry identified in the City Court's decision of 1 December 2006 had not been corrected.

19. In the last decision, of 18 August 2007, the investigator ordered, *inter alia*, pursuant to Article 24 § 1 (2) of the CCrP, that no criminal case be opened for lack of the constituent elements of a crime (Abuse of authority with violence) under Article 286 § 3 (a) of the Criminal Code, in the acts of police officers S.P. and Ch.

20. The investigator established the facts as follows. At 12.40 a.m. on 15 July 2005 a woman was robbed (criminal proceedings were initiated under Article 161 of the Criminal Code in respect of the robbery). At 1.40 a.m. the applicant and G. were arrested on suspicion of committing that crime and taken to the Tsentralnyy police station of Yoshkar-Ola. Upon

their arrival, they were interviewed about the circumstances of the crime. They denied their involvement in the robbery.

21. The investigator stated that the applicant's allegations of ill-treatment by two police officers in room no. 307 had not been confirmed by the inquiry. The investigator relied on police officer S.P.'s report of 15 July 2005 (see paragraph 10 above), which had been confirmed by his and officer Ch.'s "explanations". The investigator also relied on the following "explanations". Z. and E., police officers on duty at the police station during the night from 14 to 15 July 2005, stated that the applicant had been escorted to the police station at 3.30 a.m. on 15 July 2005 on suspicion of committing a robbery; that he had been handed over to police officer S.P. at 4 a.m.; and that sometime after S.P. had come over and told them that the applicant had tried to jump out of the window of S.P.'s office and that his head had been injured during his apprehension. Police officer K. stated that he had heard from S.P. about a suspect trying to jump out of the window and his being apprehended with the use of force. A certain L., who had been detained at the police station at the same time as the applicant and G., stated that he had seen police officer S.P. taking one of two young men to room no. 307 and that he had then heard someone screaming, learning later "from talks" that the young man had tried to jump out of a window.

22. The investigator concluded that when being interviewed at the police station the applicant had attempted to jump out of a window. In order to stop him, physical force had been used. When being grabbed by his hand the applicant had broken away and had hit his head against a safe. That was how he could have received his injuries, which had been recorded by the ambulance and the forensic medical expert.

23. An appeal lodged by the applicant with the Yoshkar-Ola City Court against the investigator's decision of 18 August 2007 was dismissed on 27 October 2009; that decision was upheld, following a further appeal by the applicant, on 21 December 2009 by the Supreme Court of the Mariy El Republic, which found the investigator's decision to have been well-reasoned and based on a full and thorough inquiry.

RELEVANT LEGAL FRAMEWORK

24. Under Article 91 § 1 of the Code of Criminal Procedure ("CCrP"), as in force at the material time, an investigating authority or a prosecutor could arrest a person on suspicion of committing a criminal offence punishable by a prison term in the following circumstances: (i) where the person had been apprehended during or immediately after committing the offence in question; (ii) where a victim of or an eyewitness to a crime had identified the person in question as the perpetrator of the crime; or (iii) where manifest evidence of the crime had been discovered on the body, clothes or belongings of the person concerned or in his or her residence. In

other situations giving rise to suspicion against a specific person, it was possible to arrest him or her in circumstances where he or she had attempted to flee; had no fixed place of residence; his or her identity had not been established; or where an application had been lodged for judicial authorisation to remand the suspect in custody (Article 91 § 2 of the CCrP).

25. Following the escorting of the person before the investigating authority or the prosecutor, it is necessary to draw up, within three hours, an arrest record, noting that the arrestee has been apprised of his or her procedural rights. The arrest record must indicate the time and date it has been drawn up; the time, date, place and grounds for the arrest; and other circumstances of the arrest. It must be signed by an official who has drawn it up and the suspect (Article 92 §§ 1 and 2 of the CCrP). Written notice must be given to a prosecutor within twelve hours and the suspect is to be given access to a lawyer and questioned (Article 92 §§ 3 and 4 of the CCrP).

THE LAW

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

26. The applicant complained about his unrecorded detention in police custody. He relied on Article 5 § 1 of the Convention, which reads as follows:

Article 5 § 1

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

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

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

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

27. The Government submitted that the applicant had not exhausted domestic remedies since (i) he had appealed against the most recent refusal to institute criminal proceedings against police officers only after lodging his application; and (ii) he had not lodged an application for supervisory review in respect of the decisions dismissing his appeal.

28. The Court notes that the applicant lodged appeals under Article 125 of the Code of Criminal Procedure against all the refusals to institute criminal proceedings against the police officers. While one of his appeals was accepted, the other two were not examined. In all those cases the refusals were revoked by the investigating authority for not having been based on a thorough inquiry, and an additional pre-investigation inquiry was ordered. The Court cannot therefore criticise the applicant for lodging his application after yet another refusal (on 18 August 2007) to institute criminal proceedings, without appealing against it first. The applicant subsequently appealed against that refusal too, and his appeal was dismissed by the Yoshkar-Ola City Court's decision of 27 October 2009, which was upheld by the Supreme Court of the Mariy El Republic on 21 December 2009 – that is to say before the examination of the admissibility of the present application by the Court. Accordingly, the first ground of the Government's non-exhaustion plea must be dismissed (see *Karoussiotis v. Portugal*, no. 23205/08, §§ 57 and 87-92, ECHR 2011 (extracts), and *Cestaro v. Italy*, no. 6884/11, § 146, 7 April 2015).

29. The Court furthermore reiterates that it does not regard the supervisory review appeal that was available at the relevant time in Russia as an effective remedy to be exhausted in criminal proceedings (see *Berdzenishvili v. Russia*, (dec.), 29 January 2004, no. 31697/03). The applicant was not therefore required to apply for supervisory review of the decisions rejecting his appeal against the refusal of 18 August 2007 to institute criminal proceedings. That ground for the Government's objection must be dismissed too.

30. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

31. The Government stated that the applicant had been escorted to the police station at 3.30 a.m. on suspicion of committing a robbery, and that he had been released at 4 a.m. No records of the applicant's arrest under the Code of Administrative Offences or the Code of Criminal Procedure had been drawn up. Therefore, there had been no need to inform the applicant of his procedural status and rights or to inform his family of his being held at

the police station. No investigative actions had been carried out by the police officers with the applicant's participation. The situation had fully complied with domestic criminal procedural law.

32. The applicant maintained his complaint.

33. The Court reiterates that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law, but must equally be in keeping with the very purpose of Article 5 – namely, to protect the individual from arbitrariness. What is at stake is both the protection of the physical liberty of individuals and their personal security within a context that, in the absence of safeguards, could result in the subversion of the rule of law and place detainees beyond the reach of the most rudimentary forms of legal protection (see *Kurt v. Turkey*, 25 May 1998, § 123, *Reports of Judgments and Decisions* 1998‑III, and *Fartushin v. Russia*, no. 38887/09, § 50, 8 October 2015).

34. The Government's argument suggesting that the applicant was detained for a half an hour between 3.30 a.m. and 4 a.m. is unsubstantiated and contradicts the documents in the case file showing that the applicant was arrested at 1.40 a.m. on 15 July 2005 on suspicion of committing a robbery (according to the report by the arresting police officer and the investigator's decision of 18 August 2007 – see paragraphs 7, 19 and 20 above); that he was escorted to the police station at 3.30 a.m. and handed over to police officer S.P. at 4 a.m. (according to the records of the police station and the statements by police officers on duty, Z. and E. – see paragraphs 8 and 21 above); that he was interviewed by the latter until around 5 a.m. (according to the applicant's "explanation" and the report by police officer S.P. – see paragraphs 9-10 above); that the ambulance arrived at the police station shortly before 6 a.m. and provided the applicant with medical aid for his head injury (according to the ambulance records – see paragraph 11 above); and that at 9 a.m. criminal proceedings were initiated in respect of the robbery and a number of investigative measures were carried out, including an identity parade with the applicant's participation and his examination as a suspect at 11 a.m., during which he felt so weak because of the head injury that he refused to make any statements and was taken by a police officer to a traumatology centre, from which he left for home (see paragraph 12 above).

35. The Court takes note of the relevant domestic law (see paragraphs 24-25 above), which stipulated that a record of arrest had to be drawn up within three hours of the time at which the suspect was escorted before the authorities. However, no record of the applicant's arrest on suspicion of committing the robbery was drawn up.

36. The foregoing considerations are sufficient to enable the Court to conclude that from 1.40 a.m. until some time after 11 a.m. on 15 July 2005 the applicant was unlawfully detained in police custody on suspicion of committing a criminal offence without any record being made of his arrest.

37. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained that he had been tortured in police custody in order to obtain his confession to the crime of which he had been suspected, and that the State had failed to conduct an effective investigation into those events. 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."

A. Admissibility

39. The Government stated that the applicant had failed to exhaust domestic remedies in respect of his complaint under Article 3. They relied on the same grounds as those indicated at paragraph 27 above.

40. Both grounds of the Government's plea should be dismissed for the same reasons as those stated at paragraphs 28 and 29 above.

41. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

42. The Government submitted that the applicant's allegations were unsubstantiated. The explanation to the effect that his injuries had been self-inflicted had been given by the investigating authorities as a result of a pre-investigation inquiry conducted in compliance with Article 3.

43. The applicant maintained his complaints, noting that the investigator's finding that his multiple injuries could have been self-inflicted as a result of his hitting a safe was improbable.

44. The Court has found above that the applicant was unlawfully held in police custody at the police station between 1.40 a.m. and sometime after 11 a.m. on 15 July 2005. During that period – from 3 a.m. (according to the applicant) or 4 a.m. (according to the police) until around 5 a.m. – he was interviewed about his alleged involvement in the robbery by police officer S.P. in room no 307, in which officer Ch. was also present. He denied committing the robbery. The officers allegedly subjected him to ill-treatment. After his release the applicant was found to have sustained bodily injuries, which were confirmed by medical evidence – in particular a contused wound in the parietal area of the head (which caused him to suffer a health disorder for a period of up to twenty-one days), a bruise and

abrasion in the area of the right eye, and multiple bruises and abrasions on his upper limbs – all of which could have been caused, according to the forensic medical expert, at the time of his alleged ill-treatment (see paragraphs 11, 12 and 16 above). The circumstances of the case, including witness statements (see paragraph 14 above), indicate that he did not have those injuries before his arrest. The Court considers that the injuries are consistent with the applicant's allegations of being beaten *inter alia*, repeatedly on the head with a rubber truncheon.

45. The above factors are sufficient to give rise to a presumption in favour of the applicant's account of events and to satisfy the Court that the applicant's allegations of ill-treatment in police custody were credible.

46. The fact that the alleged ill-treatment took place during the applicant's unrecorded detention attests to the applicant's particular vulnerability *vis-à-vis* the police officers and lends further credence to his story. The Court reiterates that it has dealt with many applications against Russia concerning ill-treatment in police custody that have exposed a systemic problem of delay in documenting the arrest and the status of individuals detained as suspects, during which time those detainees were interviewed without access to a lawyer, were denied other rights due to them as suspects, and fell victim to police abuse (see *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 78-79, 2 May 2017).

47. The Court furthermore observes that the applicant's allegations of his injuries being the result of the ill-treatment by the police officers were dismissed by the investigating authority on the basis, *inter alia*, of the denial of such ill-treatment of the applicant by those same police officers. The explanation that it offered – that the applicant's multiple injuries could have been caused by his accidentally hitting a safe after breaking away from the police officer who had grabbed his hand – is not convincing and is not supported by the forensic medical expert opinion or any other evidence, except for statements by the police officers who had allegedly ill-treated him.

48. The investigating authority based its findings on the results of the pre-investigation inquiry, which is the initial stage in dealing with a criminal complaint under Russian law and should normally be followed by the opening of a criminal case and the carrying out of an investigation if the information gathered has disclosed elements of a criminal offence (see *Lyapin v. Russia*, no. 46956/09, § 129, 24 July 2014). The mere carrying out of a pre-investigation inquiry under Article 144 of the Code of Criminal Procedure of the Russian Federation is insufficient if the authorities are to comply with the standards established under Article 3 of the Convention for an effective investigation into credible allegations of ill-treatment in police custody. It is incumbent on the authorities to institute criminal proceedings and to conduct a proper criminal investigation in which the whole range of

investigative measures may be carried out, including the questioning of witnesses, confrontations and identification parades (ibid., §§ 132-137).

49. The Court has no reason to hold otherwise in the present case. It finds that the investigating authority failed to carry out an effective investigation into the applicant's credible allegations of police ill-treatment, as required by Article 3 of the Convention.

50. Given that the Government's denial of the State's responsibility for the applicant's injuries was based on superficial domestic enquiries that fell short of the requirements of Article 3 of the Convention, the Court holds that the Government have failed to discharge their burden of proof and to produce evidence capable of casting doubt on the applicant's account of events, which it therefore finds established (see *Olisov and Others*, cited above, §§ 83-85, and *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, §§ 102-04, 12 December 2017).

51. As regards the classification of the applicant's treatment by the police officers, it observes that the applicant suffered various acts of physical violence, including being repeatedly hit on the head by a rubber truncheon. Such treatment caused him actual bodily injury and intense physical and mental suffering. The applicant was intentionally subjected to the treatment described above with the aim of extracting from him a confession.

52. The Court finds that the treatment to which the applicant was subjected at the hands of the police amounted to torture (see *Gäfgen v. Germany* [GC], no. 22978/05, § 90, ECHR 2010).

53. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. Lastly, the applicant complained that the authorities had failed to carry out an effective investigation into his complaint of ill-treatment in police custody, which had meant that he would have had no prospects of success if he had lodged a civil claim. He relied on 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."

55. The Government contested that claim pointing out that the applicant had not lodged any claim for compensation.

56. The Court notes that the only element of this complaint which is not subsumed by the procedural limb of the complaint under Article 3 of the Convention is the alleged unavailability of a civil-law remedy in the absence of an effective criminal investigation. However, as noted above, the

applicant never manifested any intention to introduce a civil claim for compensation. Even had he wished to do so, the Court cannot presume that it would inevitably have failed. Accordingly, the Court finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention (see, *mutatis mutandis*, *Janowiec and Others v. Russia* (dec.), nos. 55508/07 and 29520/09, § 124, 5 July 2011).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

57. 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."

58. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage. He also claimed EUR 3,000 in respect of costs and expenses incurred for his legal representation in the domestic proceedings and before the Court.

59. The Government, which considered that there had been no violation of the applicant's rights under the Convention, stated that no award should be made in respect of non-pecuniary damage. They also argued that the claim in respect of legal costs was unsubstantiated and unjustified.

60. Having regard to the violations found, the Court awards the applicant the amount claimed in respect of non-pecuniary damage, plus any tax that may be chargeable.

61. The Court furthermore reiterates that according to its case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. The Court notes that the applicant neither made any payment nor submitted any document establishing his liability to pay for his legal representation. It therefore rejects his claim.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the applicant's allegedly unrecorded detention, his alleged ill-treatment in police custody and the lack of an effective investigation admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 30,000 (thirty thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 1 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Darian Pavli
President