



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

THIRD SECTION

CASE OF KONAKOV v. RUSSIA

(Application no. 731/07)

JUDGMENT

STRASBOURG

3 December 2019

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

In the case of Konakov v. Russia,

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

Alena Poláčková, *President*,

Dmitry Dedov,

Gilberto Felici, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 12 November 2019,

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

PROCEDURE

1. The case originated in an application (no. 731/07) 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 Aleksey Viktorovich Konakov (“the applicant”), on 14 November 2006.

2. The applicant was represented by Ms O.A. Sadovskaya, Mr A.I. Ryzhov, Mr D.V. Yegoshin and Mr S.V. Podyzov, lawyers of the Committee Against Torture, an NGO based in Nizhniy Novogorod. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant alleged that he had been ill-treated by the police and that there had been no effective investigation into the matter.

4. On 2 December 2011 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1982 and lives in Yoshkar-Ola, the Mari El Republic.

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

1. The applicant's account of the events of 12 March 2006

6. At about noon on 12 March 2006 the applicant was apprehended by four men in plain clothes on the street near a shop, "K". The men did not introduce themselves. One of them punched the applicant in the stomach. Two others handcuffed him, dragged him into their car and took him to the Mari El Department of the Federal Drug Control Service ("the Drug Control Service"). He was taken to an office on the third floor, where the officers beat him for three or four hours. According to the applicant, they kicked him in the head and body. One of them forced him on to the ground, sat on his back and hit him in the kidney area. They tied his hands behind his back with a rope and hung him upside down, attempting to approach his hands to his head. They punched him in the ears and spine, hit him in the spine with their heels, twisted his leg and also attempted to strangle him with their hands. Then they put a gas mask on him and blocked the air vent, urging him to confess.

7. At about 7 p.m. that day the applicant was questioned by an investigator.

8. On the same date the police searched the applicant's flat in his presence. They found no drugs in the flat. On several occasions, both on the premises of the Drug Control Service and during the search, the applicant complained that he was feeling ill and asked for an ambulance to be called, but his requests remained unanswered.

2. Official account of the events of 12 March 2006

9. On 12 March 2006 the applicant was arrested by officers D., M. and V. of the Drug Control Service, who had received information about his involvement in drug trafficking.

10. The applicant resisted arrest and attempted to escape. The drug control officers used force against him (see, for the officers' accounts, paragraphs 25-29 below).

11. At 5.50 p.m. an arrest record was drawn up in respect of the applicant. He was advised of his right not to incriminate himself, as well as his right to legal assistance.

12. At 6.10 p.m. on the same date the Yoshkar-Ola Town Prosecutor and the applicant's father were notified of the applicant's arrest.

3. The applicant's transfer to the IVS and his injuries

13. At 11.30 p.m. the applicant was transferred to a cell in the temporary detention facility ("IVS") of the Ministry of the Interior of the Mari El Republic. He was examined by a detention facility doctor in the presence of

two IVS officers and M., the Drug Control Service officer. The applicant complained to the doctor of acute kidney pain.

14. According to the register of medical examinations of persons admitted to the IVS (entry no 194), the following injuries were detected on the applicant upon admission:

“... abrasions on his right cheek, haematoma on the right ear, a bruise on the left ear lobe, multiple bruises on the right shoulder and the right side of the neck, a haematoma on the right elbow, an oedema and an abrasion on the left wrist, an abrasion on the right wrist.”

15. On the same date officer B. recorded the injuries on the applicant’s body (*акт о наличии телесных повреждений*). The applicant made a hand-written “explanation” to the effect that his injuries had been inflicted by the drug control officers during his “sadistic” questioning.

4. *Subsequent events*

16. On 13 March 2006 the applicant was charged with drug trafficking and questioned as a suspect in the presence of a lawyer. He did not confess. He specified during the interview that he had been beaten and insulted by drug control officers on 12 March 2006. He submitted that they had not introduced themselves, had beaten him up in their car and had then taken him to the premises of the Drug Control Service, where he had been ill-treated again with a view to extracting a confession. He provided the same description of the events as in paragraph 6 above. In reply to a question from his lawyer, the applicant said that he would be able to identify the persons who had beaten him, and requested a medical examination.

17. On 14 March 2006 the applicant was released from custody against an undertaking not to leave the town.

B. Forensic medical examination and witnesses’ statements provided by the applicant

1. *Medical evidence*

18. On 13 March 2006 the applicant’s lawyer requested that a forensic examination of the applicant be carried out. On 14 March 2006 the investigator ordered the applicant’s medical examination (*медицинское исследование*).

19. According to forensic medical examination report no. 899 of 15 March 2006, compiled by an expert from the Republican Centre of Forensic Medical Examinations, the applicant had multiple bruises on his neck, jaw, chest, right ear, right side of the back, as well as bruises on the upper abdomen (left side), which could have been inflicted by a solid blunt

object from five to seven and from seven to nine days before the examination, respectively.

20. According to the report, the applicant also had the following injuries:

“- bruises on the face, right postaural area, upper third of the posterior surface of the neck, right occipital region, right hip, right forearm, [which] could have been caused by blunt solid objects with a limited surface area, such as hands or other objects, two to four days prior the [present] examination;

- a surface bruise on the occipital region (right side) and the upper third of the posterior surface of the neck, [which] could have been caused by a blunt solid object with a limited surface area, such as a booted foot, two to four days prior to the examination;

- abrasions on the lower third of the right forearm, interior surface, affecting the right wrist joint, [which] could have been caused by solid objects of a limited surface area, that is handcuffs, one to three days prior to the examination;

- a bruise on the right ear auricle, [which] could have been inflicted one to three days prior to the examination by a solid blunt object of a limited injuring surface, such as part of a hand, for example, the palm;

- abrasions on the lumbar region, [which] could have been caused by a solid blunt object of a limited surface area, one to three days before the examination.”

21. The expert noted that she had been unable to establish the mechanism with which the above injuries had been inflicted with more precision and specified that the traumas had not caused harm to the applicant’s health.

2. *Witnesses’ statements*

22. When questioned by lawyers of a local human rights protection organisation on 7 and 17 April 2006, the applicant’s relatives and Ms Sh., the applicant’s neighbour, testified that they had seen the applicant on the morning of 12 March 2006 in good health.

C. The applicant’s attempts to institute criminal proceedings in connection with the alleged ill-treatment

1. Initial inquiry into the ill-treatment complaint

23. On 13 March 2006 the applicant complained to a local prosecutor that he had been ill-treated.

24. At some point, no later than 18 March 2006, a deputy prosecutor of the Yoshkar-Ola prosecutor’s office opened a “pre-investigation inquiry” into the applicant’s complaint under Article 144 of the Code of Criminal Procedure (*проверка по заявлению о преступлении*). He interviewed the three drug control officers, Mr D., Mr M. and Mr V., who had arrested him, and investigators N. and P. He also took “explanations” from the applicant.

25. The three officers testified that they had arrested the applicant on the street at about 2 p.m. and had then taken him to the investigator. Officer V. stated that the applicant had been taken to the premises of the Drug Control Service at about 2.30 p.m. and had then been transferred to investigator N.

26. All three officers stated that they had introduced themselves and informed the applicant that he was under arrest. The applicant had resisted arrest. Notably, he had pushed the officers, shouted and used coarse language, attempted to hit the officers and to escape. Officer M. specified that at some point the applicant had fallen – and started rolling – on the ground. As a result, the officers had had to use “physical force” or “wrestling techniques”, and had had to handcuff the applicant.

27. Officer V. testified that, once he had been taken to the premises of the Drug Control Service, the applicant had been interviewed by investigator N. – V. had entered N.’s office at one point and had seen N. putting questions to the applicant. No physical force or psychological pressure had been used against the applicant after his arrest, since there had no longer been any need for it.

28. Investigator N. stated on 20 March 2006 that a decision to arrest the applicant had been taken at about 2 p.m. on 12 March 2006. When the applicant arrived at offices of the Drug Control Service, he was already handcuffed. The police officers who accompanied him explained that the applicant had resisted arrest. On an unspecified date N. submitted a supplement to his statement specifying that the applicant had been brought to the premises of the Drug Control Service at about 2 p.m. and placed in office no. 314. N. had not seen any injuries on the applicant. He had informed the applicant of the suspicions against him and invited him to cooperate with the authorities. V. had also been present. They had not used physical or psychological pressure against the applicant. At about 4 p.m. N. had transferred to applicant to investigator P.

29. On 18 March 2006 investigator P. stated that the applicant had been brought to his office at 5.50 p.m. on 12 March 2006. P. had compiled an arrest record in respect of the applicant. He had not seen any injuries on his face. A search of the applicant’s flat had then been conducted. During the search the applicant had complained to his parents that he had been beaten by the drug control officers, and P. had noticed bruises on one [unspecified] side of the applicant’s face. On 13 March 2006 the applicant had requested a medical examination, and P. had granted that request. Neither he nor any of the other drug control officers had exercised any kind of physical or psychological pressure on the applicant.

30. The applicant maintained his account of the events (see paragraphs 6-8 above), referred to the medical reports (see paragraphs 14 and 19-21 above) and insisted that he had been in good health before the arrest.

31. On 23 March 2006 the deputy prosecutor of the Yoshkar-Ola prosecutor's office refused to open criminal proceedings in respect of the police officers for lack of any indication of a crime. He referred to the above "explanations" submitted by the applicant and officers D., M., V. and N., as well as the medical report of 15 March 2006. The deputy prosecutor observed that the applicant had sustained injuries both before and during the arrest on 12 March 2006. He concluded that the injuries sustained during the arrest had resulted from the use of handcuffs and physical force. The deputy prosecutor further found that the police officers had acted lawfully during the applicant's arrest. The applicant had actively resisted arrest and, as a result, the officers had used physical force on him as provided for under Article 13 of the Police Act. They had not had to give the applicant prior notification that physical force would be used against him, since such notification "had been inappropriate" (*предупреждение являлось неуместным*) in the circumstances. As regards the allegations of ill-treatment on the premises of the Drug Control Service, the prosecutor held that they were unfounded, because "the issue of the applicant's confession was not a matter of principle for the investigating authority in view of the guarantees of Articles 49 and 51 of the Constitution". The prosecutor concluded that the applicant's complaint in this connection rather constituted part of his defence strategy aimed at avoiding responsibility for the criminal offences with which he was charged.

2. Subsequent court proceedings

32. On 14 April 2006 the applicant appealed against the deputy prosecutor's decision to the Yoshkar-Ola Town Court. He maintained his account of the events, arguing, in particular, that the arrest record had not contained any information on the use of force against him during the arrest. In addition, the decision of 23 March 2006 contained neither a reference to any document pertaining to the use of physical force and handcuffs during the arrest, nor any details as to why a prior warning about use of force had been deemed "inappropriate". He argued that the police officers had not had – and could not have had – any information that he had been potentially dangerous. He further maintained that his multiple injuries had been sustained when he had already been handcuffed. He pointed out that he had not been provided with any medical assistance and his relatives had not been informed of the arrest in a timely manner. He further noted that witnesses who had seen him before and after his arrest (for instance, during the search of the flat) had not been identified and questioned. The applicant's submissions that he could identify both the scene of the ill-treatment and the officers allegedly involved in it had remained without assessment.

33. On 19 April 2006 the Yoshkar Ola Town Court dismissed the applicant's appeal and upheld the prosecutor's decision as lawful. The court

noted that the applicant had not objected to the contents of the arrest record on 12 March 2006. The court endorsed the prosecutor's findings that the police had been obliged to use force and handcuff the applicant because he had resisted arrest. The court accepted that they had acted in accordance with Article 13 of the Police Act, which permitted police officers to use force in such cases, and that a warning about the intention to use physical force had been inappropriate. The court found that the deputy prosecutor had reasonably assessed the circumstances and examined the applicant's allegations in a sufficiently detailed manner. Furthermore, the court noted that the preliminary investigation into the applicant's criminal case had been completed. It found that the applicant had, in fact, attempted to challenge the unlawful investigative methods, and it was for the first-instance court dealing with his criminal case to assess the admissibility of evidence.

34. On 26 April 2006 the applicant appealed against the decision. He submitted, in particular, that neither the prosecutor nor the first-instance court had established in which way he had resisted the police; the authorities had not specified the nature of the orders he had allegedly resisted; the respective decisions contained no details about his allegedly violent behaviour; the police officers had not provided medical assistance to him; and the arrest record contained no information about the use of force, contrary to the domestic law requirements. He further argued that the prosecutor's and the court's findings had been based solely on the police officers' testimonies and that no assessment of his injuries had been made. He maintained that the authorities had omitted to question several witnesses, including eyewitnesses to the arrest and the search.

35. On 29 May 2006 the Supreme Court of the Mari El Republic upheld the decision on appeal. The court found that all those who had participated in the applicant's arrest had been questioned, and their submissions had received a due assessment by the lower court. It transpired from the inquiry that the applicant had attempted to hit and push the police officers and to escape. The lower court's findings had been sufficiently detailed and had been made in accordance with the domestic law.

3. Further information submitted by the Government

36. On 10 December 2012 Mr Sh., one of the IVS officers on duty on 12 March 2006, gave written explanations to a local police officer within unspecified proceedings. He confirmed that on 12 March 2006 the applicant had been brought to the IVS and examined in the presence of a Drug Control Service officer and an IVS officer on duty, Mr B. The injuries listed in paragraph 14 above had been detected on the applicant on arrival. The applicant had specified that those injuries had been inflicted by the drug control officers.

D. Criminal proceedings against the applicant

37. On 31 May 2006 the Yoshkar-Ola Town Court convicted the applicant of drug dealing and sentenced him to five years' imprisonment. The court noted, *inter alia*, that there was no reason not to trust the police officers' statements.

38. The applicant appealed, arguing, in particular, that he had been ill-treated by drug control officers. On 17 July 2006 the Supreme Court of the Mari El Republic upheld the judgment on appeal, having summarily dismissed the applicant's arguments as ill-founded.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Police Act

39. The Police Act (no. 1026-I of 18 April 1991, as amended, in force at the material time) provided that the duties of the police included the prevention and suppression of criminal and administrative offences and the protection of public order and public safety (section 2).

40. Section 11(7) of the Police Act provided that in discharging their duties, the police had the power to arrest persons suspected of a criminal offence.

41. The police were entitled to use physical force, special equipment or a weapon only in the circumstances specified in the Police Act and in accordance with the rules prescribed by that Act. Police officers had to undergo specific training and be periodically tested for their fitness to act in conditions requiring use of physical force, special equipment or a weapon (section 12(1) and (2)) When using physical force, special equipment or a weapon, the police officer had to:

- warn the person concerned of his intention to use physical force, special equipment or a weapon and give him or her sufficient time to comply with his order, except in cases where a delay in using physical force, special equipment or a weapon might create an immediate danger for the life and health of citizens and police officers or have other serious consequences, or where a warning was impracticable (*является неуместным*) or impossible in the circumstances;

- endeavour to minimise the damage caused by the use of physical force, special equipment or a weapon, to the extent possible depending on the nature and seriousness of the offence, the dangerousness of the person who had committed it and the degree of resistance offered;

- ensure that anyone who was injured as a result of the use of physical force, special equipment or a weapon received first aid and that their relatives were informed without delay;

- inform a prosecutor of any use of physical force, special equipment or a weapon involving injuries or death (section 12(3)).

42. Abuse of the power to use physical force, special equipment or a weapon was punishable by law (section 12(4)).

43. Police officers were entitled to use physical force, including martial arts, to stop a criminal or administrative offence being committed, arrest persons who had committed a criminal or administrative offence or to overcome resistance to a lawful order, if non-violent methods were insufficient to ensure the discharge of police duties (section 13).

44. Section 14 of the Police Act, as in force at the material time, set out an exhaustive list of circumstances in which special means, including rubber truncheons, handcuffs and firearms, could be used. Handcuffs could only be applied to overcome resistance offered to a police officer, to arrest an individual caught in the act of committing a crime and attempting to escape, and to escort arrestees to police stations, to transport and protect them if their behaviour indicated that they were likely to try to escape, cause harm to themselves or other individuals or offer resistance to police officers (section 14(1) (2), (3) and (5)).

B. Other relevant domestic law provisions

45. For a summary of relevant provisions of the Criminal Code and the Code of Criminal Procedure of the Russian Federation, see, in so far as relevant, *Ryabtsev v. Russia* (no. 13642/06, §§ 42-52, 14 November 2013, and *Lyapin v. Russia* (no. 46956/09, §§ 99 et seq., 24 July 2014).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

46. The applicant complained under Articles 3 and 13 of the Convention that he had been ill-treated by the police and that there had been no effective investigation into the matter. Article 3 reads as follows:

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

A. The parties’ submissions

1. The Government

47. The Government submitted that the applicant had attempted to mislead the Court, since according to the medical reports, some of his

injuries had been inflicted prior to his arrest. Furthermore, the inquiry had not revealed any evidence that the applicant had been ill-treated, and it could not be excluded that his remaining injuries might have been inflicted during the arrest. They submitted that he had actively resisted arrest and attempted to escape on 12 March 2006. Referring to sections 12 to 14 of the Police Act as in force at the material time (see paragraphs 41 and 44 above), they argued that in using physical force and “special means” against the applicant, the police had acted within the law. Therefore their actions could not have amounted to a form of degrading or inhuman treatment. All the circumstances relating to the arrest had been subject to a thorough inquiry, which had included the collection of depositions (from the police officers, other public officials, the applicant’s lawyer and others) and medical evidence, such as a forensic examination.

2. The applicant

48. The applicant maintained his complaint. He argued that the injuries recorded by the IVS officers and forensic experts had been inflicted on him while he was under the State’s control, that the State had failed to refute his account of the events, and that the ill-treatment to which he had been subjected had amounted to torture. He further argued that the investigation into his ill-treatment allegations had not been effective. In particular, the authorities had failed to question all the witnesses, including the applicant’s parents and eyewitnesses to the arrest. Police officer Sh. had not been interviewed until six years after the events. He argued that the investigator had failed to address several contradictions between the statements of various officials, as well as between the police officers’ account of the events and his own account regarding such crucial aspects of the case as the time of his arrest and transfer to the investigator, as well as the presence or absence of injuries. The authorities had relied predominantly on the police officers’ statements; had failed to check whether the police officers had notified the prosecutor of the injuries allegedly sustained during the arrest, as required by the Police Act (see paragraph 41 above); and had omitted to conduct various investigative activities, such as an identification parade or confrontations between the applicant and the drug control officers.

B. The Court’s assessment

1. Admissibility

49. 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.

2. *Merits*

(a) Credibility of the applicant's allegations of ill-treatment at the hands of the police officers and the presumption of fact

50. The Court observes that after spending several hours in police custody the applicant was found to have multiple injuries to his face, head, neck, wrists, forearms, hip and back, as recorded by the detention facility officers (see paragraph 15 above) and forensic medical expert (paragraphs 19-21 above). The applicant's description of the alleged ill-treatment was detailed and consistent throughout the proceedings (see paragraphs 16, 30, 32 and 34 above). The expert found on 15 March 2006 that some of the injuries detected on him – namely, those which could have appeared two to four, and one to three days prior to the examination (see paragraph 20 above) – could have been caused by blunt solid objects, such as hands, booted boot and handcuffs. The witness statements suggest that the applicant had no injuries before his apprehension (see paragraph 22 above).

51. In view of the foregoing the Court considers that the applicant's injuries could arguably have resulted from the violence allegedly suffered by him at the hands of the police officers. 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 his allegations of police violence were credible.

(b) Whether an effective investigation was carried out into the applicants' allegations of police ill-treatment

52. The Court further observes that the applicant's consistent allegations of ill-treatment on the premises of the Drug Control Service were summarily rejected as a result 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*, cited above, § 129).

53. The Court reiterates its finding that 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 conduct a proper criminal investigation in which a full range of investigative measures are carried out and which constitutes an effective remedy for victims of police ill-treatment under domestic law (see, among many others, *Lyapin*, cited above, §§ 129 and 132-36; *Devyatkin v. Russia*, no. 40384/06, § 34, 24 October 2017; and *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 80-82, 2 May 2017).

54. 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. As a result of the refusal to conduct a fully-fledged criminal investigation, such important investigative activities as, inter alia, confrontations, identification parades and witnesses' examinations were never carried out. No attempt was made to explain the apparent discrepancies in the parties' accounts of events, including contradictions in the police officers' statements. The deputy prosecutor's conclusions were unreservedly based on the "explanations" collected from three police officers who had allegedly ill-treated the applicant, as well as two investigators. Important witnesses, such as the applicant's parents or the eyewitnesses to the arrest, were not interviewed, and an IVS officer had been questioned in unspecified proceedings six years after the events.

55. The Court further notes specifically the domestic findings to the effect that the injuries had been the result of the use of handcuffs and physical force by the police officers in order to apprehend the applicant who had actively resisted arrest (see paragraph 31 above). The Court reiterates its established case-law that the use of force by the police in the course of arrest operations will only not be in breach of Article 3 of the Convention if indispensable and not excessive. The burden to prove this rests on the Government (see *Rehbock v. Slovenia*, no. 29462/95, §§ 72-78, ECHR 2000-XII, and *Matko v. Slovenia*, no. 43393/08, § 104, 2 November 2006).

56. However, in explaining the applicant's injuries the investigating authority merely referred to the police officers' general statements that they had used force lawfully. The authorities did not establish any specific acts of the police officers in using force and any actions on the part of the applicant which could have justified the use of force, failing to assess whether the use of force was indispensable and not excessive, as required by Article 3 of the Convention (see *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, §§ 94 and 103, 12 December 2017). The domestic decisions in the relevant part contained no more than a general reference to the applicant's "active resistance", to which the appeal court added a brief remark to the effect that the applicant had attempted to hit and push the officers in order to escape. The authorities did not verify whether the police officers tried to use non-violent methods before resorting to force, and the assessment in this part was confined to the deputy prosecutor's statement reiterated by the courts that a prior notification of the use of the physical force "had been inappropriate". In any event, the domestic findings contain no explanation as to how and why, in the course of the applicant's arrest the police officers could have injured the applicant on the head, neck, forearms, back and hip (see *Markaryan v. Russia*, no. 12102/05, § 59, 4 April 2013). No attempt was made to reconcile the police officers' statements with the applicant's injuries, or to distinguish between the injuries at various locations, at all (see *Ryabtsev*, cited above, § 83). The applicant's

allegations of police violence between his arrest and his placement in the pre-trial detention facility were summarily rejected with reference to the police officers' statements (see, in so far as relevant, *Konyayev v. Russia*, no. 9759/09, § 55, 23 March 2019).

57. Having regard to the above elements, the Court finds that the State has failed to carry out an effective investigation into the applicants' allegations of police violence, as required by Article 3 of the Convention.

(c) Whether the Government provided explanations capable of casting doubt on the applicant's account of events

58. The Government stated that the applicant's injuries could have been sustained before his arrest, but did not provide any details or evidentiary basis for this conjecture. Further, they did not exclude the possibility that they might also have been inflicted during the arrest. Given that the Government's explanations, denying the applicant's credible allegations of the police violence, were provided as a result of the superficial domestic inquiry falling short of the requirements of Article 3 (as shown in paragraphs 52-57 above), the Court finds that they cannot be considered satisfactory or convincing. It holds that the Government have failed to discharge their burden of proof and 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*, cited above, §§ 102-04).

(d) Legal classification of the treatment

59. Having regard to the physical and mental effects of the ill-treatment in question, the Court is satisfied that the accumulation of the acts of physical violence inflicted on the applicant on 12 March 2006 amounted to inhuman and degrading treatment, in violation of Article 3 of the Convention (see, among others, *Mostipan v. Russia*, no. 12042/09, §§ 58-61, 16 October 2014; *Nasakin v. Russia*, no. 22735/05, §§ 51-55, 18 July 2013; and *Gorshchuk v. Russia*, no. 31316/09, § 33, 6 October 2015).

(e) Conclusion

60. There has accordingly been a violation of Article 3 of the Convention under its substantive and procedural limbs.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

61. The applicant complained, under Article 13 of the Convention in conjunction with Article 3, that the authorities had failed to carry out an

effective investigation into his complaint of ill-treatment. Article 13 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.”

62. The Government contested that claim, arguing that the applicant was able to challenge the refusal to open criminal proceedings in court and made use of that opportunity.

63. The Court notes that the complaint submitted under Article 13 of the Convention is closely linked to the issue raised under the procedural aspect of Article 3 of the Convention and that, therefore, this complaint should be declared admissible. However, having regard to the finding of a violation of Article 3 under its procedural head on account of the respondent State’s failure to carry out an effective investigation, it considers that it is not necessary to examine this complaint separately under Article 13 of the Convention (see *Lyapin*, cited above, § 144).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

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

66. The Government contested the claim as excessive and ill-founded and considered that the finding of a violation would constitute a sufficient just satisfaction.

67. The Court has found a violation of Article 3 of the Convention in its substantive and procedural aspects. It accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of the violations. It therefore awards the applicant EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, and dismisses the remainder of the claim under this head.

B. Costs and expenses

68. The applicant also claimed EUR 5,457 for the costs and expenses incurred both in the domestic proceedings and before the Court. He

submitted a copy of an agreement between himself and the Committee Against Torture specifying, *inter alia*, that the work by the NGO staff was billed at a rate of EUR 50 per hour and work done by the organisation's experts at an hourly rate of EUR 150. He further provided a breakdown of the costs, which included a total of thirty-four hours' work done by the organisation's experts at an hourly rate of EUR 150, totalling EUR 5,100. He further claimed 7% of that amount, that is EUR 357, in office expenses. He submitted an invoice containing the costs of both thirty-four hours of legal work and "office expenses". He requested that the payment be transferred directly to the representatives' bank account.

69. The Government submitted that the applicant had failed to demonstrate that the expenses claimed had been actually and necessarily incurred.

70. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,600 covering costs under all heads, plus any tax that may be chargeable to the applicant. The award is to be paid directly into the bank account of the applicant's representative, as requested by him. The Court rejects the remainder of the claims under this head.

C. Default interest

71. 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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;
3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to the applicant's representative;

(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 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 3 December 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Alena Poláčková
President