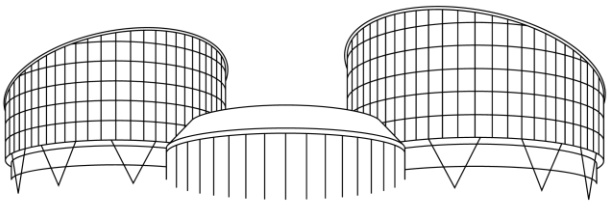

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF GLADYSHEV v. RUSSIA

(Application no. 2807/04)

This version was rectified on 15 March 2010 under Rule 81 of the Rules of Court.

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Gladyshev v. Russia**,**

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Anatoly Kovler,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 2807/04) 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 Yevgeniy Veniaminovich[1] Gladyshev ("the applicant"), on 9 December 2003.

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

3. The applicant alleged, in particular, that he had been subjected to ill-treatment by the police officers, that the domestic authorities had failed to conduct an effective investigation of his complaints of ill-treatment and that his right to a fair trial had been infringed by the use at his trial of confession statements obtained as a result of coercion.

4. On 9 June 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

1. Rectified on 15 March 2010: the text was "Veneaminovich".

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1943. He is currently serving a sentence in Kostroma OT-15/1 correctional colony.

A. Criminal proceedings against the applicant

6. On 9 May 2001 policeman S. stopped the applicant for allegedly driving under the influence of alcohol. Mr S. then drew up an administrative offence report, noting that the applicant had committed an offence under Article 117 of the RSFSR Code of Administrative Offences (alcohol-impaired driving).

7. On 10 May 2001, early in the morning, police officers came to the applicant's home and brought him to Manturovo police station. At the police station several police officers demanded that the applicant confess to killing policeman S. According to the applicant, when he refused to do so he was severely beaten several times. As a result of the beating the applicant wrote a confession statement. After that the applicant was questioned by a prosecutor in the presence of a lawyer P. appointed by the investigator. On 11 May 2001 the applicant repeated his confession statements during the reconstruction of events.

8. On 24 August 2001 the criminal case against the applicant was referred to the Kostroma Regional Court.

9. During the trial the applicant withdrew his self-incriminating statements made during the initial inquiry and pleaded not guilty. He stated that he had been forced to incriminate himself, and provided the court with his medical record. In the course of the proceedings the court requested the Regional Prosecutor to examine the applicant's complaints (see paragraph 22 below) and twice ordered forensic medical examinations of the applicant's injuries (see paragraphs 26 and 28 below). According to the last forensic medical report of 22 October 2002 (see paragraph 29 below), the applicant had a chest trauma with a fracture of the seventh, eighth and tenth ribs which could have occurred on 10 May 2001, the day of the applicant's arrest. These injuries were caused by the impact of a blunt hard object with a narrow surface, possibly by blows with fists or kicks with a booted foot.

10. On 27 December 2002 the court convicted the applicant of the murder of a law enforcement official and illegal manufacture and possession of weapons, and sentenced him to eighteen years' imprisonment. It was found that the applicant had requested Mr S. not to charge him with an administrative offence, and when the latter had refused to do so the applicant had killed him. The applicant's conviction for murder was based

on his self-incriminating statements obtained on 10 May 2001, similar statements made by him during the reconstruction of events on 11 May 2001 and during further interrogations on 30 May and 6 August 2001, statements of witnesses to whom the victim had complained the previous day that the applicant had threatened him, and the presence of the applicant's pistol not far from the crime scene. While the court agreed that the applicant could have received a chest trauma with fractured ribs on 10 May 2001, with respect to the applicant's confession it found as follows:

> "...at the same time the court considers that the bodily injuries of the defendant are not linked to his confession statements during the preliminary investigation, since Gladyshev gave these statements under circumstances which excluded any physical or mental pressure on the part of police officers of the Manturovo police station".

The court considered the applicant's confession statements a mitigating circumstance.

11. The applicant and his lawyer challenged the judgment before the Supreme Court. They contested the admissibility of the evidence obtained as a result of ill-treatment and stated that the judgment was unsubstantiated as there had been no direct evidence of the applicant's guilt. They stressed that no expert examination confirmed that the victim had been killed by the pistol found at the crime scene and the court had failed to examine the applicant's allegation that this pistol had been taken from his home and had been planted at the crime scene.

12. On 26 June 2003 the Supreme Court dismissed the appeal and upheld the judgment of 27 December 2002. It rejected the applicant's inadmissibility plea having referred to the first instance court's finding that the use of force had not been established.

B. Allegations of ill-treatment and investigation into them

13. After being questioned on 10 May 2001 the applicant felt unwell and lost consciousness, and was taken for a medical examination. The forensic expert recorded various injuries to the applicant's body including a suspected chest trauma with fractured ribs.

14. On next day, 11 May 2001, the applicant was escorted to the Manturovo Central Hospital. An X-ray examination did not show fractured ribs. The expert however reported two bruises on the applicant's body which had been inflicted by blunt objects not more than a day before the examination.

15. On 14 May 2001 the applicant's mother requested the Manturovo District Prosecutor to institute criminal proceedings against the police officers for alleged torture and to conduct a medical examination of the applicant. She also complained that the applicant's lawyer could not have access to him. On 15 May 2001 a similar complaint was submitted by the applicant's wife.

16. On 17 May 2001 the applicant was transferred to the SIZO and placed in the SIZO's medical unit as he had hypertonic crisis (severely reduced muscle function) and paraplegia - the applicant was unable to move.

17. On 29 May 2001, the Assistant Prosecutor of Manturovo District issued a decree refusing to institute criminal proceedings against police officers, having found that the applicant's injuries had been caused prior to his arrest. He referred to the applicant's written submissions, his medical record and statements of the lawyer P. that the applicant had not complained of ill-treatment, and concluded that it was in the applicant's interests "to discredit the police officers in order to avoid criminal responsibility".

18. On 1 June 2001 the forensic medical report indicated a bruise on the applicant's abdominal wall and several scratches, which had occurred more than ten days before the examination.

19. On 6 June 2001 the Deputy Kostroma Regional Prosecutor quashed the decision of 29 May 2001 and remitted the matter for further investigation. Questioned on 21 June 2001, the applicant explained that when he was arrested two police officers had severely kicked him. He complained that his mouth was taped and a gas mask put on him in order to shut him up. He also stated that he had written his confession statement in a break between the first and second beatings and suggested that the police officers had ill-treated him out of revenge for the murder of their colleague.

20. On 6 August 2001 investigator M. of the Kostroma Regional Prosecutor's Office, who had investigated the applicant's criminal case, again refused to institute criminal proceedings against police officers on the ground that there was no evidence that an offence had been committed. He questioned the applicant, who had alleged cruelty, and police officers O., T. and L., who had denied any violence, and decided that there was no ground to challenge the credibility of the latter's statements.

21. On 3 September 2001 an X-ray examination showed fractures of the applicant's tenth and eighth left ribs.

22. On 24 September 2001, during the criminal proceedings against the applicant, the Kostroma Regional Court requested the Kostroma Regional Prosecutor to verify the ill-treatment referred to by the applicant. The investigator then ordered an additional medical forensic expert examination.

23. On 15 October 2001 an additional medical forensic expert examination was conducted. It reported a bruise of 40 x 10 cm, which had been inflicted by blunt objects (it had appeared not earlier than two to three days before the applicant's examination of 18 May 2001); a fracture of the eighth rib (it had appeared not more than twelve weeks before the examination of 15 October 2001) and the tenth rib (it had appeared not more than sixteen weeks before the examination of 15 October 2001). The experts thus ruled out the above injuries occurring on 10 May 2001.

24. On 15 October 2001 investigator Ya. of the Kostroma Regional Prosecutor's Office refused to institute criminal proceedings against police officers O., N., L., P., B. and S.. In the course of his investigation, he has questioned the police officers, the applicant, and also the prosecutor who had opened the criminal proceedings against the applicant. The prosecutor confirmed that when he first saw the applicant after questioning on 10 May 2001 the latter could hardly move and had complained that he had been beaten by the policemen. The investigator however relied on the above expert examination to the effect that the injuries complained of could not have been inflicted on 10 May 2001.

25. The Government submitted that on 31 October 2001 the Manturovo District Court had found the decision of 15 October 2001 unlawful. A copy of this decision was not provided.

26. In a view of discrepancies between the experts' conclusions, on an unspecified day the Kostroma Regional Court ordered an additional comprehensive forensic medical examination to be conducted by the Kostroma Regional Bureau of Forensic Medical Examinations. This examination was conducted on 12-19 November 2001, and the relevant part of the report reads as follows:

> "Given an integral assessment of the character and degree of intensity of bruises in their dynamics, coincidence of areas of bruises and rib fractures, as well as particularities of consolidation of rib fractures, the forensic medical experts conclude that the above injuries occurred within a limited period of time, most likely on 10 May 2001.
>
> These injuries were caused by repeated impacts of a blunt firm object with a narrow surface...
>
> These injuries cumulatively led to a lengthy impairment of health for more than three weeks, and consequently caused bodily harm of medium gravity..."

27. Between 10 and 18 December 2001 one of the experts who conducted the above examination, Mr A., was questioned by the court. He confirmed that experts had concluded that the most probable date of the applicant's injuries was 10 May 2001. With respect to results of the previous examination of 15 October 2001 he expressed an opinion that the expert assessed only rib fractures and had not made a global assessment of all injuries.

28. Given that the above examination had not fully dealt with all discrepancies concerning the applicant's injuries, on 18 December 2001 the court ordered the Russian Centre of Forensic Medical Examinations at the Ministry of Health to give a conclusion on the applicant's injuries on the basis of the case materials.

29. On 22 October 2002 the Centre presented their report, according to which the applicant had a chest trauma with fractures of the seventh, eighth and tenth ribs which could have occurred on 10 May 2001, the day of the

applicant's arrest. These injuries were caused by "at least two to three impacts of a blunt firm object with a narrow surface, possibly blows with fists or kicks with a booted foot". The experts ruled out the injuries being the result of a fall.

30. On 22 May 2006 the Manturovo Town Court dismissed an appeal by the applicant against the Prosecutor's Office decision of 15 October 2001.

31. On 13 July 2006 the Kostroma Regional Court quashed this decision and remitted the case for a fresh examination.

32. On 25 July 2006 the Manturovo Town Court again dismissed an appeal by the applicant against the decision of 15 October 2001.

33. On 31 October 2006 the Manturovo Town Court allowed the applicant's complaint, recognised the decision of 15 October 2001 as ill-founded and obliged the Prosecutor's Office to rectify shortcomings.

34. On 6 June 2007 the investigator of the Manturovo District Prosecutor's Office quashed the decision of 15 October 2001 and instituted criminal proceedings on the basis of alleged ill-treatment of the applicant on 10 May 2001.

35. On 1 April 2008 the applicant lodged a claim with the Sverdlovskiy District Court of Kostroma against the Kostroma Region Police Department, seeking compensation for non-pecuniary damage caused by alleged ill-treatment. On 3 June 2008 the proceedings were suspended following court orders sent to the Manturovo and Yaroslavl Courts.

36. On 5 August 2008 the preliminary investigation of the alleged ill-treatment was suspended in accordance with Article 208 (1) § 1 of the Russian Code of Criminal Procedure (failure to identify the culprits).

II. RELEVANT DOMESTIC LAW

A. Civil law remedies against illegal acts by public officials

37. Article 1064 § 1 of the Civil Code of the Russian Federation provides that damage caused to a person shall be compensated in full by the tortfeasor. Pursuant to Article 1069, a State agency or a State official shall be liable to a citizen for damage caused by their unlawful actions or failure to act. Such damage is to be compensated at the expense of the federal or regional treasury. Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage shall be compensated irrespective of any award for pecuniary damage.

B. Criminal law remedies against illegal acts by public officials

1. Applicable criminal offences

38. Article 117 § 2 (f) of the Criminal Code of the Russian Federation makes acts of torture punishable by up to seven years' imprisonment. Pursuant to Article 286 § 3 *(a)* and *(в)* the abuse of official power associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment.

2. Investigation of criminal offences

39. The Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, the CCrP), establishes that a criminal investigation may be initiated by an investigator or prosecutor upon the complaint of an individual or obtaining information about the offence committed from other sources (Articles 140 and 146). Within three days of receipt of such a complaint the investigator or prosecutor must carry out a preliminary inquiry and make one of the following decisions: (1) to open criminal proceedings if there are reasons to believe that a crime has been committed; (2) to refuse to open criminal proceedings if the inquiry reveals that there are no grounds to initiate a criminal investigation; or (3) to refer the complaint to the competent investigative authority. The complainant must be notified of any decision taken. The refusal to open criminal proceedings is amenable to an appeal to a higher prosecutor or a court of general jurisdiction (Articles 144, 145 and 148).

40. Article 29 § 4 of the Code provides that if the trial of a criminal case reveals circumstances that facilitated the commission of an offence, or violations of citizens' rights and freedoms, the court may render a special ruling (*частное определение*) to draw the attention of appropriate organisations and officials to such circumstances or violations of the law, which require adequate measures to be taken.

C. Confession as a basis for conviction

41. Article 77 of the RSFSR Code of Criminal Procedure provided that a conviction cannot rest solely on the admission of the accused.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained that after his arrest he had been subjected to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation of that incident. The Court will examine this complaint from the standpoint of the State's negative and positive obligations flowing from Article 3, which reads as follows:

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

A. Submissions by the parties

1. The Government

43. The Government submitted at the outset that this part of the application had to be rejected for non-exhaustion of domestic remedies, as the civil proceedings on the applicant's tort claim were pending.

44. The Government further denied that Article 3 of the Convention had been violated in the present case and that the police officers had subjected the applicant to inhuman and degrading treatment. They referred to the results of the forensic expert examination of 15 October 2001, according to which the injuries complained of could not have been inflicted on 10 May 2001. With respect to the cause of the applicant's injuries the Government argued that the applicant had fallen down several times whilst escaping the crime scene.

45. Finally, the Government stressed that the applicant's allegations of ill-treatment had been thoroughly examined by the prosecution authorities and domestic courts. Following confrontation between the applicant and police officers, questioning of the police officers and the lawyer who was present during the applicant's interrogation on 10 May 2001, and on the basis of the forensic medical examinations, the applicant's allegations were found to be unsubstantiated.

2. The applicant

46. The applicant firstly disputed the Government's assertion that his injuries could have been sustained due to several falls from his own height. He noted that such an explanation had been explicitly rejected by the forensic expert examination of 22 October 2002, conducted by five highly proficient experts. The applicant found peculiar that the Government in their

submissions referred to the earlier examination of 15 October 2001 conducted by one expert.

47. He further argued that examinations of his complaints had been superficial, and that notwithstanding the experts' conclusion of 22 October 2002 that the injuries could have been sustained on 10 May 2001, the criminal proceedings had been instituted only in June 2007. Such a significant lapse of time rendered the investigation ineffective.

B. The Court's assessment

1. Admissibility

48. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. However, Article 35 § 1 does not require that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, Reports 1996-VI).

49. The Court notes that Russian law provides civil remedies against unlawful actions attributable to the State or its agents (see paragraph 37 above). However, it considers that these remedies cannot be regarded as sufficient for a Contracting State's obligations under Article 3 of the Convention in cases like the present, as they are aimed at awarding damages rather than identifying and punishing those responsible (see *Barta v. Hungary*, no. 26137/04, § 46, 10 April 2007; and *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII). The Court, therefore, dismisses the Government's objections as to non-exhaustion of domestic remedies.

50. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Alleged ill-treatment

51. The Court reiterates that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-... ; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel*

v. France, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

52. The Court further reiterates that to fall under Article 3 of the Convention ill-treatment must attain a minimum level of severity. The standard of proof relied upon by the Court is that "beyond reasonable doubt" (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII (extracts)). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

53. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). The Court must apply a particularly thorough scrutiny where the applicant raises an arguable complaint of ill-treatment (see, *mutatis mutandis*, *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 32, and *Avşar v. Turkey*, cited above, § 283).

54. Turning to the facts of the present application the Court notes that on being arrested and questioned on 10 May 2001 the applicant was examined by a forensic medical expert, who recorded various injuries to the applicant's body and suspected a chest trauma with broken ribs. The applicant complained that he had been severely beaten. Fractures of the left ribs were later supported by numerous medical examinations. Refuting the applicant's allegation the Government referred to the expert conclusion of 15 October 2001 to the effect that the injuries complained of could not have occurred on 10 May 2001. The Court firstly notes that according to that conclusion a fracture of the applicant's ribs appeared not more than twelve and sixteen weeks before the examination of 15 October 2001, which is no earlier than July and June 2001 respectively. The same report also indicated

a bruise which had been inflicted by blunt objects and which had appeared no earlier than two to three days before the applicant's examination of 18 May 2001 (see paragraph 23 above). Thus the Government did not claim that the injuries could have predated the applicant's arrest.

55. The Court has also had regard to two further forensic examinations, conducted in November 2001 and October 2002 by groups of qualified experts of the Kostroma Regional Bureau of Forensic Medical Examinations and Russian Centre of Forensic Medical Examinations at the Ministry of Health (see paragraphs 26 and 29 above). In both reports the experts reached a conclusion that the injuries complained of could have occurred on 10 May 2001. The Government failed to submit any evidence to disprove this finding or any credible explanations as to how and when the bruises and rib fractures came about whilst the applicant was in custody, in detention on remand.

56. The Court further finds unfounded the explanation adduced by the Government that the applicant's injuries were incurred when the applicant fell down whilst trying to leave the crime scene. It does not lose sight of the expert's finding that the applicant's injuries were caused by impacts of a blunt firm object with a narrow surface, possibly by blows with fists or kicks with a booted foot, and could not have resulted from a fall (see paragraph 29 above), a finding which was not contradicted by any of the other findings.

57. Finally, the Court refers to the conclusion of the Kostroma Regional Court, which examined the applicant's case, that the applicant could have received a chest trauma with fractured ribs on 10 May 2001 (see paragraph 10 above). Having regard to the applicant's consistent and detailed allegations, corroborated by the results of several forensic medical examinations, and in the absence of any convincing and plausible explanation as to the origin of the injuries found on the applicant, the Court finds it established to the standard of proof required in Convention proceedings that the above injuries were the result of the ill-treatment of which the applicant complained.

58. In view of the above, the Court finds a violation of the substantive limb of Article 3 of the Convention.

(b) Alleged inadequacy of the investigation

59. The Court notes that in a number of judgments it has found that where a credible assertion is made that an individual has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. The investigation into arguable allegations of ill-treatment must be thorough.

This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, §§ 104 et seq., and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. Furthermore, the investigation must be expedient (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV, and *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI).

60. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 for ill-treatment of the applicant (see paragraph 57 above). The applicant's complaint in this regard is therefore "arguable" and the authorities thus had an obligation to carry out an effective investigation into the circumstances in which the applicant sustained his injuries (see *Krastanov*, cited above, § 58).

61. The Court observes that the investigation of the applicant's complaints commenced in May 2001. These complaints were also a subject of review by the domestic courts both during examination of the criminal charges against the applicant and in the course of proceedings on his appeals against the prosecuting authorities' decisions not to institute criminal proceedings against the police officers. The parties did not dispute that there was an inquiry; it is therefore to be examined whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible, and accordingly whether the inquiry was "effective".

62. It is to be noted that the investigation was suspended in August 2008 for failure to identify suspects. It thus lasted for more than seven years without any final decision. The proceedings were discontinued on several occasions in view of the lack of prima facie evidence of criminal conduct on the police officers' behalf. Subsequently they were reopened and the case was remitted for further investigation. In the Court's opinion, repeated remittals of a case for further investigation may disclose a serious deficiency in the domestic prosecution system (see, in the context of Article 6 of the Convention, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003, applied in the context of Article 3 in *Kozinets v. Ukraine*, no. 75520/01, § 61, 6 December 2007).

63. The Court also notes omissions capable of calling into question the reliability and effectiveness of the investigation. The first decision of 29 May 2001 not to institute criminal proceedings was based mostly on the applicant's written statements and his medical record. On 6 August 2001

three police officers were questioned for the first time and it was not until October 2001 that the investigator questioned three more officers who had participated in the events. The Court cannot overlook either the fact that the decision of 6 August 2001 not to institute criminal proceedings against police officers was issued by the same investigator who had opened and conducted the investigation of the criminal case against the applicant, and who was thus very close to the police officers who brought about his confession.

64. Furthermore, having relied on the experts' conclusion of 15 October 2001 that the rib fractures had occurred no earlier than June-July 2001, the investigator made no attempt to establish how the applicant – in detention throughout - sustained that chest injury. It is also apparent from the decisions not to prosecute police officers of 29 May and 6 August 2001 that the prosecuting authorities considered that the applicant had an interest in discrediting the police officers to avoid criminal responsibility, but did not question the credibility of the police officers themselves, in respect of whom the complaint had been made (see paragraphs 17 and 20 above).

65. The Court further observes that the prosecuting authorities' decisions did not include any statements from witnesses who were not police officers. While the investigating authorities may not have been provided with the names of individuals who could have seen the applicant at the police station or later in the detention facility or might have witnessed his alleged beatings, they do not appear to have taken any steps on their own initiative to identify other individuals who were in the Manturovo police station at the relevant time and who might have been able to testify about the applicant's injuries. The Court therefore finds that the investigating authorities' failure to look for corroborating evidence and their deferential attitude to the police officers must be considered to be a particularly serious shortcoming in the investigation (see *Aydın v. Turkey*, 25 September 1997, § 106, *Reports of Judgments and Decisions* 1997-VI, and *Nadrosov v. Russia*, no. 9297/02, § 44, 31 July 2008).

66. Finally, the Court observes that whilst the forensic experts' reports of November 2001 and October 2002 stated in clear terms that the applicant's injuries could have occurred on 10 May 2001 and were caused by "impacts of a blunt firm object with a narrow surface, possibly blows with fists or kicks with a booted foot", the Manturovo Town Court both in May and in July 2006 dismissed the applicant's appeals against the decision of 15 October 2001. It was only on 6 June 2007, about five years after the experts' reports, that the criminal proceedings were instituted, and no investigative process took place during that period. Moreover, having acknowledged that the applicant could have received a serious chest trauma under the circumstances he complained of, the Kostroma Regional Court failed to issue any special ruling according to Article 29 § 4 of the Code of

Criminal Procedure to draw the attention of the relevant authorities to this fact and for adequate measures to be taken (see paragraph 40 above).

67. In the light of the shortcomings identified above, the Court concludes that the investigation into the alleged ill-treatment was ineffective and that the domestic authorities failed to make enough meaningful attempts to bring those responsible for the ill-treatment to account.

68. The Court thus holds that there has been a violation of the procedural limb of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

69. The applicant further complained that his right not to incriminate himself and his right to a fair trial had been infringed by the use at his trial of his confession statements obtained as a result of coercion. He relied on Article 6 § 1 of the Convention which, in so far as relevant, provides:

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

A. Submissions by the parties

1. The Government

70. The Government referred to the Court's well-established case-law to the effect that the admissibility and evaluation of evidence fell within the competence of the domestic courts, and the Court had to verify whether the proceedings as a whole were fair. In the present case the essential requirements of a fair trial were respected, the applicant was questioned in the presence of his lawyer, and had explained to him his right not to incriminate himself.

71. They further stressed that during the pre-trial investigation the applicant had complained of ill-treatment but he had never linked it to the confession. The domestic judicial authorities thus reasonably found his confession admissible evidence, as there had been no ground for the applicant to be afraid of abuse by the police officers.

2. The applicant

72. The applicant underlined that he had been convicted on the basis of his pre-trial self-incriminating statements only, without any real evidence of his involvement in the crime. He complained about ill-treatment both during pre-trial and trial investigations; however the courts failed to establish a cause and effect relationship between his guilty plea and bodily injuries. He found ludicrous the Kostroma Court's finding that he had been beaten but

his confession had been obtained "under circumstances which excluded any physical or mental pressure".

B. The Court's assessment

1. *Admissibility*

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

2. *Merits*

(a) General principles established under the Court's case-law

74. The Court reiterates that it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *Heglas v. the Czech Republic*, no. 5935/02, § 84, 1 March 2007). It is therefore 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 or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where violation of another Convention right is concerned, the nature of the violation found (see *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V, and *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 76, ECHR 2001-IX).

75. Particular considerations apply in respect of the use in criminal proceedings of evidence recovered by a measure found to be in breach of Article 3 of the Convention, even if the admission of such evidence was not decisive in securing the conviction. The use of such evidence, obtained as a result of a violation of one of the core rights guaranteed by the Convention, raises serious issues as to the fairness of the proceedings (see *Jalloh v. Germany* [GC], no. 54810/00, §§ 99 and 104, ECHR 2006-...; *Göçmen v. Turkey*, no. 72000/01, § 73, 17 October 2006; and *Harutyunyan v. Armenia*, no. 36549/03, § 63, ECHR 2007-...).

(b) Application of those principles to the present case

76. In the present case the Court notes that the Kostroma Regional Court, which was seized of the criminal proceedings for murder against the applicant, went to considerable lengths in response to the applicant's complaints of ill-treatment. It ordered the prosecuting authorities to carry out an inquiry into the applicant's complaints, and appointed additional comprehensive medical examinations to rectify discrepancies between various medical documentation (see paragraphs 9, 22, 26 and 28 above).

77. On 27 December 2002, when the applicant was convicted, the Kostroma Court had before it the results of a series of enquires. In particular, it had before it the conclusions of the Russian Centre of Forensic Medical Examinations at the Ministry of Health of 22 October 2002, which had been requested because previous findings had been inconsistent. In its report, the Centre concluded that three of the applicant's ribs had been broken, that the injuries were caused by "a blunt firm object with a narrow surface, possibly ... fists or kicks with a booted foot", that the injuries had not been caused by a fall, and that the injures could have occurred on 10 May 2001 (see paragraph 29 above). The court accepted that the applicant had suffered the injuries, but nevertheless found that the circumstances under which he had confessed "excluded any physical or mental pressure on the part of police officers" (see paragraph 10 above).

78. The Court notes that the self-incriminating statement of the applicant of 10 May 2001 formed part of the evidence produced against him. It was not the only evidence against him, as his subsequent statements were also adduced, and there was a limited amount of other indirect evidence (witnesses who had spoken to the victim the previous day, and a pistol near the scene of the crime, see paragraph 10 above). The Kostroma Court did not find the initial confession inadmissible, and the Supreme Court did not allude to the question of the circumstances of the interrogation or the admissibility of the statements made during it (see paragraphs 10-12 above).

79. In the light of the Court's finding (see paragraphs 57-58 above) that the applicant was subjected to ill-treatment contrary to the substantive provisions of Article 3 when he confessed on 10 May 2001, the uncontested fact that the applicant's initial statements formed a relevant part in his conviction, and the way in which the Kostroma Court dealt with the evidence before it, the Court finds that reliance on the applicant's initial statements rendered his trial unfair. There has accordingly been a violation of Article 6 § 1 of the Convention.

80. In view of this conclusion, the Court does not consider it necessary to examine separately the applicant's argument that the use of his confession statements breached his right not to incriminate himself (see *Harutyunyan*, cited above, § 67).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

81. Lastly, the applicant complained under Article 5 § 3 that his pre-trial detention had been excessively long, and under Article 6 § 1 about the overall length of the criminal proceedings against him. He also relied on Article 13 of the Convention.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed 50,000 euros (EUR) in compensation for non-pecuniary damage sustained as a result of the ill-treatment and EUR 100,000 for non-pecuniary damage caused by unfair trial.

85. The Government submitted that no violation of the Convention had taken place, that the amounts claimed were excessive and that no evidence of suffering or other loss had been adduced. In any event, they considered that any finding by the Court of a violation would constitute sufficient just satisfaction in the present case.

86. The Court firstly reiterates that the applicant cannot be required to furnish any proof of the non-pecuniary damage he sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). It further observes that it has found serious violations in the present case. The Court accepts that the applicant must have been caused humiliation and anxiety as a result of the ill-treatment and failure to investigate it properly, as well as the subsequent use of evidence obtained through ill-treatment at the trial. It considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Nevertheless, the particular amounts claimed appear excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

87. The Court further notes that in the present case, apart from finding a violation of Article 3 of the Convention, it has also found a violation of

Article 6 § 1 of the Convention. It reiterates that when an individual has been convicted following proceedings that have entailed breaches of the requirements of Article 6 of the Convention, a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redressing the violation (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV, and *Popov v. Russia*, no. 26853/04, § 264, 13 July 2006). The Court notes in this connection that Article 413 of the Code of Criminal Procedure of the Russian Federation provides for the reopening of criminal proceedings if a violation of the Convention has been established (see *Shulepov v. Russia*, no. 15435/03, § 46, 26 June 2008).

B. Costs and expenses

88. The applicant made no claim for costs and expenses. Noting that the applicant was paid EUR 850 in legal aid by the Council of Europe, the Court makes no award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the applicant's ill-treatment by the police, the ineffectiveness of the investigation into his allegations of ill-treatment and use at the trial of evidence obtained as a result of coercion admissible and the remainder of the application inadmissible;

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

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

4. *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, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Peer Lorenzen
Deputy Registrar	President