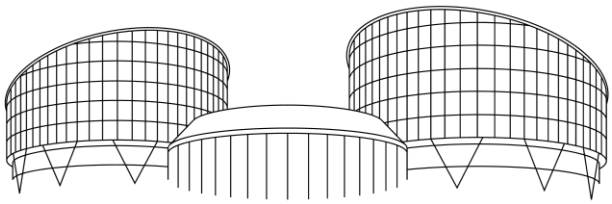

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SALIKHOV v. RUSSIA

(Application no. 23880/05)

JUDGMENT

This version was rectified on 24 May 2012
under Rule 81 of the Rules of Court

STRASBOURG

3 May 2012

FINAL

03/08/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

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

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

Nina Vajić, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 10 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 23880/05) 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 Valey[1] Mindyvaleyevich Salikhov ("the applicant"), on 1 June 2005.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya and Ms E. Leontyeva, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 20 May 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1965 and lived in Novosibirsk before his arrest.

[1] Rectified on 24 May 2012: the text was "Valery"

5. The following facts are based on the documents produced by the parties and on the applicant's submissions in so far as they have not been disputed by the Government.

A. The incident of 22-23 June 2004 and the related proceedings

6. At 8 p.m. on 22 June 2004 the applicant was arrested in the Chelyabinsk Region on suspicion of rape and placed in the interview room of the Uysk police station. At 10 p.m. Mr Zh., an investigator with the Uysk district prosecutor's office, drafted an arrest record.

7. At about midnight on that day the applicant was taken out of the room into the corridor and told to hand over his underwear for examination by an expert. He replied that he was prepared to do that on condition that another pair of underwear was provided to him by the police or by his relatives.

8. Thirty minutes later Mr M., the head of the criminal investigation department, the police officer Mr F. and other police officers entered the interview room in which the applicant was locked, and started beating him with rubber truncheons. They handcuffed him and dragged him out of the room into the corridor.

9. The applicant was brought to the office of Mr M. where the following persons were also present: the investigator Mr Zh., Mr F. and two or three other officers, a forensic police expert, and two attesting witnesses, Mr L. and Mr R., both residents of Uyskoye village.

10. The applicant was thrown on to the table face down and beaten on the back. His head struck the central unit of a computer. The officers forcibly removed his trainers, tracksuit bottoms and underwear, took the underwear away and told him to get dressed. The applicant refused to get dressed, because he was handcuffed and his tracksuit bottoms were torn.

11. The officers M. and F. returned him to the interview room and threw him on the table on his stomach. M. hit him on the back with a rubber truncheon, removed the handcuffs and then went out and locked the door.

12. F. returned half an hour later, put handcuffs on the applicant and took him again to M.'s office where other officers were also present. The applicant was only wearing a T-shirt and socks.

13. The forensic expert attempted to take a hair sample from the applicant's groin using a comb. He was unsuccessful, and M. cut some hair with scissors.

14. The applicant was then laid on the table facing the desk and M. started clipping his fingernails. In the process the applicant's fingers began bleeding.

15. Once these procedures had been completed, the applicant was taken back to the interview room, which contained a table and two chairs. The handcuffs were removed. He was still wearing only a T-shirt and socks.

16. The applicant remained there overnight, until noon on 23 June 2004. At noon he was transferred to a detention cell and given some clothing which his relatives had brought for him.

17. On 24 June 2004 the applicant was taken to a doctor for an examination. While there he asked the doctor to record his injuries. The doctor refused, saying he had had no instructions in that respect.

18. On the same day the applicant was brought before a judge with a view to deciding on the question of detention on remand. During those proceedings the applicant described his injuries to the judge, who remanded him in custody but did not otherwise take note of the applicant's complaints.

19. On 25 June 2004 the applicant complained to the Uysk district prosecutor about the forceful removal of his underwear, beatings and the cutting of his fingernails. On 29 June 2004 a deputy prosecutor heard him in person.

20. On 1 July 2004 the deputy prosecutor refused to institute criminal proceedings on the basis of the statements from officers M. and F. and investigator Zh. which read as follows:

> "It follows from M[.]'s statement that Salikhov refused to perform procedural acts voluntarily, struggled to break loose and accidentally struck his head against the computer. He was not intentionally beaten by anyone. After his fingernails had been removed and his groin shaven, Salikhov was told to get dressed. He refused to get dressed. He was taken by the corridor to the detention wing. He was wearing a T-shirt and socks...
>
> F. explained that... Salikhov had refused to take part in procedural acts. He was held by the hands while his underwear was being removed. He broke loose and struck his head against the computer. He refused to get dressed...
>
> Zh. stated that... Salikhov had struck his head against the computer when his underwear was being removed. He did not make any threats against Salikhov. He said that if Salikhov refused to hand over his underwear voluntarily, it would be taken by force because it was needed. Salikhov refused to get dressed of his own will..."

The decision did not mention the applicant's version of the events.

21. The applicant contested the refusal in court. On 19 August 2004 the Uyskiy District Court of the Chelyabinsk Region rejected his complaint, finding as follows:

> "Pursuant to Article 202 § 1 of the Code of Criminal Procedure, the investigator may obtain samples from the suspect ... It follows from the statements by Mr Zh[.], Mr F[.] and [the head of the investigators' group] Ms Z[.] that they did not use any unlawful means on Mr Salikhov or made any treats against him..."

22. On 14 January 2005 the Chelyabinsk Regional Court summarily upheld that decision on appeal.

B. The events of 24 June and 1 July 2004 and the related proceedings

23. At about 9 p.m. on 24 June 2004 the applicant was taken out of the cell – where he was detained on remand – into the corridor, where the investigators Zh. and Z. and a nurse from the Uysk emergency station were present.

24. The investigators told the applicant that they wanted to take a blood sample from him. The applicant refused to give blood in the absence of counsel.

25. At 9 a.m. the following morning investigator Zh. visited the applicant in his cell. Counsel for the applicant was also present. The investigator showed him a copy of a decision that a blood sample should be taken for a comparative study, and asked the applicant to comply. The applicant refused to give blood voluntarily and counsel maintained that a sample could not be taken against his will.

26. Half an hour later escort officers K. and D. took the applicant out of the cell into an office where the investigator Zh., the nurse, and two attesting witnesses, Kh. and I., were waiting for him. The investigator requested the applicant to give blood. The applicant refused. The investigator asked the escort officers to hold the applicant still but they refused, stating that it was beyond their call of duty. The nurse declined to take blood against the applicant's will. Thereafter, the applicant was brought back to his cell.

27. At 9 p.m. on 1 July 2004 the applicant was taken from his cell and into the corridor. The investigators Zh. and Z., the head of the police station R. and his deputy Is., officers-on-duty Ye. and A., as well as the nurse, were waiting there for him. The applicant again refused to give blood.

28. The investigator ordered him to be handcuffed and the nurse tried to take blood, but could not get near enough to the applicant. The officers then threw him on the floor, face down with his hands behind his back. Ye. sat on his neck, A. on his legs, and R. and Is. held his hands. The nurse again attempted to use a syringe but, as he kept jerking his arms, she stopped.

29. The applicant complained to the district prosecutor, the internal security department of the police and the Ombudsman of the attempted taking of a blood sample by force. He did not receive any replies.

30. On 13 October 2004 he lodged a complaint about a violation of his constitutional rights and ill-treatment with the Uyskiy District Court.

31. The District Court heard the applicant, the investigators Zh. and Z., and the officers Is., Ye. and A. and dismissed the applicant's complaint on 28 December 2004, finding as follows:

> "Salikhov claimed ... that attempts to take a blood sample by force and the use of handcuffs had amounted to torture. Article 21 of the Russian Constitution prohibits the use of torture. Article 1 of the Convention against Torture defines torture as any act by which severe pain is inflicted on a person for obtaining a confession, punishing or intimidating him. The court did not see any evidence that severe pain had been

> inflicted on Salikhov on 24, 25 June or 1 July 2004, this followed from the statements by the witnesses and Salikhov's own testimony. The use of handcuffs was permitted under section 45 of the Pre-Trial Detention Act. As the witnesses stated in court, Salikhov had been handcuffed after he had started using obscene language against the nurse and police officers and jerking his hands, that is, they were used for putting an end to his unlawful conduct. Thus, the court finds no violation of Salikhov's constitutional rights because a blood sample was not taken, because he was not subjected to torture, and because the use of handcuffs was lawful."

32. On 5 April 2005 the Chelyabinsk Regional Court upheld that decision on appeal in a summary fashion.

C. Conditions of detention at the Uysk police station

33. Following his detention on remand, the applicant was placed in remand prison IZ-74/1. During the investigation of the criminal case against him, he was, on a number of occasions in the period from 22 June 2004 to 1 April 2005, detained in the detention unit of the Uysk police station, for a total duration of seventy-five days.

34. Cells were equipped with beds made of sheet metal. No mattresses, blankets, pillows or bed linen were provided. There were no toilets inside the cells; detainees were given buckets without covers or handles. Access to daylight and fresh air was limited. There was no opportunity for outdoor exercise; the only light bulb was dim. No breakfast or dinner was served and the midday meal was limited to a slice of bread and a bowl of soup.

35. The applicant complained to the prosecutor's office about the conditions of his detention at the Uysk police station, lack of sleep and malnutrition. In addition, he repeated his complaint before the Uysk District Court at the hearing on 9 August 2004.

36. On 18 August 2004 the Uysk prosecutor replied to the applicant that there had been numerous (unspecified) breaches of the legal requirements relating to the conditions of detention. By letter of 18 October 2004, the prosecutor additionally informed him that on 23 August 2004 he had instructed the head of the Uysk police station to remedy those breaches and to take disciplinary action against those responsible.

37. By a letter dated 19 November 2004, the regional police headquarters informed the applicant that mattresses and bed linen had been purchased and distributed to all inmates. They also stated that buckets with covers and handles were available in all cells and that one hour of outdoor exercise was possible on a daily basis. Food was purchased from the local consumers' union for a total amount of twenty-four Russian roubles (less than one euro) per person per day.

38. On 20 September 2005 the deputy Uysk prosecutor issued a formal requirement to the head of the Chelyabinsk Region police and the chief officer of Uysk police station to remedy the violations of the laws relating to pre-trial detention of suspects and defendants. The prosecutor deputy noted

that, in breach of the relevant laws and regulations, the detainees at the Uysk police station were not provided with bedding, that the cells were not equipped with toilets or water taps, that cell no. 2 was overcrowded, that there was no opportunity for outdoor exercise, and that food was distributed only once a day on weekdays and not provided at all at weekends.

39. On 12 October 2005 the head of the Chelyabinsk Region police reported to the Uysk district prosecutor that his requirement had been examined and that the conditions of detention in the Uysk police station had indeed fallen short of the statutory requirements. The deficiencies were largely due to insufficient funding from the federal budget. However, a renovation of the Uysk police station at the expense of the regional budget was planned for 2006.

40. On 26 October 2005 the chief officer of Uysk police station also acknowledged, in his report to the Uysk district prosecutor, that the conditions at the Uysk police station were unsatisfactory but renovation would be carried out in 2006.

D. Alleged ill-treatment on 21 October 2004

41. As indicated above, the applicant spent a total of seventy-five days of his detention on remand in cells of the Uysk police station. One of those occasions was on 21 October 2004 when the applicant was brought to Uysk police station from the remand prison at about 4 p.m. The applicant was locked in cell no. 1.

42. Soon afterwards police officer Mr P. told the applicant to leave the cell and follow him. The applicant refused to leave the cell without the investigator and counsel being present.

43. The chief officer of the police station, Mr R., accompanied by officers Mr Pr., Mr Ye. and Mr V., entered the cell and ordered his subordinates to "wrap him up" and take him to the hospital for a medical check-up. The officers started dragging the applicant off the bed by the feet, hitting and punching him. Someone banged his head against the bed. He was handcuffed and taken out into the corridor. The applicant was shouting and swearing at the policemen.

44. The applicant wore socks but no shoes. He was dragged into the courtyard, pulled through the slush and puddles and placed into a prison van.

45. The applicant was brought to the hospital where a nurse put some questions to him. The applicant spotted investigator Zh. nearby and requested him to secure the presence of his counsel.

46. The applicant was then taken to the court-house. Counsel M. met him there and told him that a hearing concerning an extension of his detention period would now take place. The applicant replied that he would

come to the hearing as he was: barefoot, wet and dirty, with blood from wounds on his forehead and face.

47. The escorting officers took the applicant into the hearing room. The applicant told the judge that he was ready to take part in the hearing, but drew the judge's attention to his lamentable appearance. The judge replied that "nothing dramatic had happened" and opened the hearing. At the close of the hearing the judge approved an extension of the authorised period of detention for a further three months.

48. The applicant appealed, complaining in addition about the circumstances in which he had been brought to the hearing. On 12 November 2004 the Chelyabinsk Regional Court rejected his appeal against the extension order but did not address the other complaints made.

49. Furthermore, on 25 October 2004 the applicant complained to the District Court that the hearing record made no mention of his complaint about the conditions in which he had been transported to the courthouse. On 3 November 2004 a judge of the District Court rejected his application for the correction of the hearing record, noting that "all statements, questions and answers had been recorded exactly as they had been made by the participants to the hearing".

50. On 27 October 2004 the applicant complained to the Uysk prosecutor that the escorting officers had acted unlawfully.

51. On 19 November 2004 the deputy prosecutor of the Uysk district refused to institute criminal proceedings, finding as follows:

> "On 21 October 2004 Salikhov was escorted from remand prison no. IZ-74/1 to the Uysk police station for an extension of his authorised detention period. According to the applicable requirements of criminal law, a medical specialist must examine the detainee and determine whether he is fit to remain in custody. Salikhov was invited to follow the escorting officers. He refused and insisted on seeing his counsel and the head of the police station.
>
> Medical examination is not a procedural act, it does not require a separate decision by the investigator. It follows that there was no breach of the criminal procedure in respect of Salikhov.
>
> The actions of the escorting officers in respect of Salikhov were lawful because he refused to go out of the cell, behaved aggressively and used obscene language against the policemen. By decision of 10 November 2004, a criminal case was instituted against Salikhov for insulting public officials."

52. According to the applicant, he challenged the deputy prosecutor's decision before the Uysk District Court but he was not informed about the outcome of the proceedings. According to the Government, first the Uysk District Court on 28 December 2004 and then the Chelyabinsk Regional Court on 5 April 2005 had examined the deputy prosecutor's decision and upheld it as lawful and justified. However, the copies of the judicial decisions of those dates produced by the Government concerned the applicant's appeal against the deputy prosecutor's decision of 13 October

2004 (see paragraphs 30 and 31 above) and no other decisions issued on the same dates were submitted.

E. Trial and conviction

53. The applicant stood trial before the Uysk District Court of the Chelyabinsk Region. The victim, Ms K., and the witnesses Ms V. and Ms Kar. did not appear at the hearings and the prosecution requested that their pre-trial statements be read out. The court granted the request, overriding the applicant's objections, referring to reports by the police officers to the effect that they had moved home and their current whereabouts were not known.

54. The applicant's line of defence was that of consensual intercourse. He did not deny having had sex with Ms K., but maintained that all contacts had been voluntary. In his submission, it was of fundamental importance to have Ms K. examined in open court.

55. The trial court examined in particular the following evidence:

– the pre-trial statement by the victim K. She stated that on 20 June 2004 she had agreed to meet with her friend Mr V. While waiting for him, she was drinking coffee and chatting with her friends, Ms V. and Ms Kar. Mr V. came at about 11 p.m. and brought along two friends, the applicant and his co-defendant. The two girls were gone twenty minutes later. At about 2 a.m. she fell asleep. In the morning she asked the applicant and his co-defendant to leave, but they refused. Instead, they beat her with a plastic bottle on the head, undressed her by force and repeatedly raped her. After they left, she fell asleep and only woke up at about 8 p.m. on 21 June 2004.

– the pre-trial statements by the witnesses Ms V. and Ms Kar. They stated that they had been visiting Ms K. at her home on the night of the events and had seen a very drunk Mr V. come in late with two friends. After a while they left and on the following day Ms K. told them that she had been raped.

– the testimony from Ms M., Ms K.'s grandmother. She testified that at the material time K. had rented a flat elsewhere and moved out. On 22 June 2004 K. came in late at night, she was pale and shaking, but M. abstained from putting any questions to her. Only a few days later K. said that she had been raped, without giving any details.

– the testimony from Mr V. He testified that he used to date K. On 20 June 2004 he got the news that the applicant and his co-defendant had been released from prison and they decided to celebrate. They came to the flat and got drunk with the girls. He spent the night on the sofa together with K. and then got up very early and left for work.

– the testimony from the forensic expert Z. She testified that the applicant's and his co-defendant's underwear bore traces of epithelium cells

that could belong to a woman with Type A blood. No blood or skin cells were found in their nail clippings.

– the testimony from the forensic expert S. She stated that she had examined the victim K. on 23 June 2004 and found superficial abrasions and bruises. The injuries had been inflicted one or two days before the examination and they could have resulted from rape or other impact. No damage to the genital or anal area was detected.

– the testimony from the police officer B. who worked in the missing persons unit of the Uysk district police. He stated that Ms K. had been on the list of missing persons since 28 February 2005 and that there were grounds to believe that she had been a victim of loan sharks to whom she had not repaid the debt. His report to the effect that he had gone to Chelyabinsk to search for K. was untruthful, as he had never gone to Chelyabinsk and as he had drafted the report "just like that, with no real information" because the investigator Za. had asked him to do so. He had been unable to locate Ms Kar. because she had moved out of the Uyskoy village; he had once seen Ms V. but he did not know where she lived.

– the forensic biology reports prepared by the experts Z. and S.

56. On 31 March 2005 the District Court found the applicant and one co-defendant guilty as charged, finding as follows:

> "The materials of the pre-trial investigation and judicial inquiry support the finding that the defendant Salikhov is guilty of the offences of [aggravated rape and non-consensual sexual intercourse]. The defendant did not deny that he had engaged in sexual intercourse with K. on 21 June [2004] in the day-time at the following address ... The findings of a forensic biology report ... corroborated the fact of sexual intercourse by Salikhov and K. The following evidence confirms the **non-consensual** and **violent** nature of the intercourse between Salikhov and K.: the statements by the victim K. made during the pre-trial investigation and read out in court; the statements by the witnesses Ms V. and Ms Kar. made during the pre-trial investigation and read out in court; the testimony by the witness Ms M. and the witness Mr V. which were logical and consistent and which the court finds no reason to doubt. An indirect indication of the non-consensual and violent nature of the intercourse follows from the testimony of Mr B. in the part in which he stated: 'K. said: Maybe you've had enough sex for today? Salikhov replied: [K.] is a smart girl, she's got it right, - and took her to the bedroom.' which implies the non-consensual nature of the intercourse between Salikhov and K. Furthermore, the injuries found on K.'s body – bruises on the outer surface of the hips, neck, shoulders and abrasions on the forearms – also confirm that Salikhov had had a sexual intercourse with her and forced her to perform oral sex on him; the expert S. stated before court that the timing of injuries did not contradict the information on Salikhov's criminal acts [*sic*] and that such injuries might be the product of a non-consensual sexual intercourse... The fact that the forensic study did not uncover any injuries to K.'s genital or anal area does not exclude the possibility that sexual acts had been performed on K.'s against her will; the expert S. explained to the court that a forcible intercourse is possible without injuring the genitals or the anal opening and that she could not categorically exclude that there might be some indications of violent sexual intercourse. The scene of the offence (a fourth-floor flat), the identity of the participants (two men, both recently released from penitentiary facilities, one of them infected with tuberculosis, and a young woman), the number

and frequency of sexual intercourse and violent acts demonstrate that the intercourse was carried out against the victim's will."

57. In addition, the District Court found the applicant guilty of insulting six police officers on 21 October 2004 (see paragraphs 41-47 above). The finding of his guilt was founded on the statements by the police officers. The court held that the application of handcuffs had been lawful because the applicant had refused to leave the cell.

58. The applicant was sentenced to three years and six months' imprisonment in a high-security colony.

59. On the same day the District Court issued two separate decisions "concerning breaches of law committed during the pre-trial investigation". The first decision related to a belated notification of the decision to prepare the forensic biology report: the report was requested on 25 June 2004 but the applicant was only informed of it on 29 June 2004. The second decision concerned the report by the police officer B., which stated that, further to a prosecutor's request, on 15 November 2004 he had visited the registered residence of the victim K. in Chelyabinsk and talked to the neighbours, but no one had seen her or knew her. According to the officer's testimony in court, he had never gone to Chelyabinsk or talked to anyone there and that he had written the report "just like that, with no real information". The District Court considered this to be a gross violation of criminal procedure and requested the chief officer of the Uysk police station to take measures and report back to the court.

60. In his statement of appeal, the applicant submitted in particular that pre-trial written depositions by the victim and eyewitnesses had been read out in breach of the domestic law.

61. On 23 May 2005 the Chelyabinsk Regional Court rejected the appeal and upheld the conviction in substance. The appeal court found, in particular, that the first-instance court had taken "sufficient measures" to secure Ms K.'s appearance.

II. RELEVANT DOMESTIC LAW

A. Taking of samples

62. Article 202 of the Code of Criminal Procedure regulates the way in which samples may be obtained for a comparative study. The investigator may obtain samples of handwriting or body fluids from a suspect or defendant if it is necessary to check whether or not he or she has left traces in a specific place or on material evidence (paragraph 1). It is prohibited to obtain samples by methods that endanger the individual's life and limb or diminish his honour and dignity (paragraph 2). If necessary, samples can be taken by a specialist (paragraph 3).

B. Use of handcuffs and rubber truncheons

63. The Pre-Trial Detention Act, no. 103-FZ of 15 July 1995, provides that handcuffs may be used on a suspect or accused to put a stop to unlawful resistance on his part and to prevent him from escaping or from causing harm to others or himself (section 45).

64. The Police Act, no. 1026-I of 18 April 1991, in force at the material time, sets out an exhaustive list of circumstances in which special means, including rubber truncheons and handcuffs, and firearms may be used.

65. Handcuffs may 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 bring arrestees to police stations, to transport and protect them if their behaviour allows the conclusion that they are liable to escape, cause harm to themselves or other individuals or offer resistance to police officers (section 14 § 1 (2, 3, 5)).

66. Rubber truncheons may only be used to fend off an assault on police officers or civilians, overcoming resistance offered to a police officer, or putting an end to mass breaches of public order or group actions that interfere with the functioning of transport, communications or organisations (section 14 § 1 (1, 2, 7)).

C. Examination of witnesses in criminal proceedings

67. The Code of Criminal Procedure provides that witnesses are to be examined directly by the trial court (Article 278). Statements given by the victim or a witness during the pre-trial investigation can be read out with the consent of the parties in two cases: (i) if there is a substantial discrepancy between those statements and the testimony before the court; or (ii) if the victim or witness has failed to appear in court (Article 281).

68. If a witness does not obey a summons to appear without a good reason, the court may order that the police or the bailiffs should bring him to the courtroom by force (Article 113).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN CONNECTION WITH OBTAINING SAMPLES

69. The applicant complained that the forcible removal of his underwear accompanied by beatings and the cutting of his fingernails, as well as the attempt to take a blood sample by force, breached Article 3 of the

Convention. He also complained that no effective investigation was carried out into this incident. Article 3 of the Convention provides as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

71. The Government submitted that the forcible removal of the applicant's clothing and the taking of nail clippings had been required for the protection of the rights of the victim in the criminal case, as well as for the purpose of ensuring "objectivity of criminal proceedings". The applicant had been asked to give samples voluntarily but he had refused, and the samples had had to be obtained by force. The blood sample was not taken because the applicant behaved aggressively, waving his arms and using obscene language. The applicant was handcuffed in accordance with sections 43 and 45 of the Pre-trial Detention Act. The taking of samples and the use of handcuffs were found to have been lawful by the Russian courts. The Government considered that there was no violation of Article 3 under its substantive or procedural limbs.

72. The applicant stressed that he had resisted the removal of his underwear and clipping of his fingernails because the decision on commissioning a forensic study had not been notified to him and he had therefore believed that the police were acting unlawfully. The belated notification of the decision was subsequently established by the separate decision of the Uysk District Court of 31 March 2005. Furthermore, it was not necessary to cut his fingernails to obtain nail clippings. The investigator M. had cut his nails together with a layer of skin, which resulted in bleeding and intense pain. The investigator violently pushed the applicant against the table and he hit his forehead against the computer. The removal of his underwear was not only violent but also degrading, because no replacement underwear was provided and the applicant was paraded naked from the waist down around the police station. The humiliation and violence to which the applicant was subjected could not be justified by the need to obtain the samples by force. The investigation into his complaints was

incomplete and one-sided, because the decision only reflected the version of events as put forward by the police officers; no attempts were made to examine any witnesses or collect forensic evidence. The applicant believed that Article 3 had been breached both under its substantive and procedural limbs.

2. The Court's assessment

(a) Compliance with Article 3 as regards the alleged ill-treatment by the police

73. The Court reiterates the applicable principles as they have been summarised in the leading case *Jalloh v. Germany* ([GC], no. 54810/00, ECHR 2006-IX ..., internal references omitted):

> "69. With respect to medical interventions to which a detained person is subjected against his or her will, Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance. The persons concerned nevertheless remain under the protection of Article 3, whose requirements permit of no derogation. A measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading...
>
> 70. Even where it is not motivated by reasons of medical necessity, Articles 3 and 8 of the Convention do not as such prohibit recourse to a medical procedure in defiance of the will of a suspect in order to obtain from him evidence of his involvement in the commission of a criminal offence. Thus, the Convention institutions have found on several occasions that the taking of blood or saliva samples against a suspect's will in order to investigate an offence did not breach these Articles in the circumstances of the cases examined by them.
>
> 71. However, any recourse to a forcible medical intervention in order to obtain evidence of a crime must be convincingly justified on the facts of a particular case. This is especially true where the procedure is intended to retrieve from inside the individual's body real evidence of the very crime of which he is suspected. The particularly intrusive nature of such an act requires a strict scrutiny of all the surrounding circumstances. In this connection, due regard must be had to the seriousness of the offence in issue. The authorities must also demonstrate that they took into consideration alternative methods of recovering the evidence. Furthermore, the procedure must not entail any risk of lasting detriment to a suspect's health.
>
> 72. Moreover, as with interventions carried out for therapeutic purposes, the manner in which a person is subjected to a forcible medical procedure in order to retrieve evidence from his body must not exceed the minimum level of severity prescribed by the Court's case-law on Article 3 of the Convention. In particular, account has to be taken of whether the person concerned experienced serious physical pain or suffering as a result of the forcible medical intervention.

> 73. Another material consideration in such cases is whether the forcible medical procedure was ordered and administered by medical doctors and whether the person concerned was placed under constant medical supervision.
>
> 74. A further relevant factor is whether the forcible medical intervention resulted in any aggravation of his or her state of health and had lasting consequences for his or her health."

74. The Court notes that the Government did not dispute the applicant's account of the events, which it will accordingly use as the factual basis for its assessment.

75. It is observed at the outset that the clipping of the applicant's fingernails and the attempt to take his blood were not required by medical reasons, that is, they were not needed to protect the applicant's health. Rather, those procedures were aimed at securing evidence of a rape. This finding does not of itself warrant the conclusion that the intervention contravened Article 3, as the Convention does not, in principle, prohibit recourse to a forcible medical intervention that will assist in the investigation of an offence (see *Jalloh*, cited above, §§ 70 and 76). Nevertheless, any interference with a person's physical integrity carried out with the aim of obtaining evidence must be the subject of rigorous scrutiny, with the following factors being of particular importance: the extent to which forcible medical intervention was necessary to obtain the evidence, the health risks for the suspect, the manner in which the procedure was carried out and the physical pain and mental suffering it caused, the degree of medical supervision available and the effects on the suspect's health. In the light of all the circumstances of the individual case, the intervention must not attain the minimum level of severity that would bring it within the scope of Article 3. The Court will now examine each of these elements in turn.

76. As regards the extent to which the forcible medical intervention was necessary to obtain the evidence, the Court notes that rape is a serious criminal offence and that States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact legislation which provides effective punishment for the crime of rape and to apply them in practice through effective investigation and prosecution (see *M.C. v. Bulgaria*, no. 39272/98, § 153 *et passim*, ECHR 2003-XII). The purpose of the medical intervention was the collection of biological samples which could be later examined for traces of the victim's blood or epithelial cells. Such traces being by their nature fragile and perishable, time was of the essence and the procedures had to be carried out urgently. The domestic law did not make the collection of biological samples conditional on the suspect's consent; nor did it prohibit the investigative authorities from resorting to coercive measures should the suspect refuse to cooperate (see paragraph 62 above). It follows that the forcible intervention was not unlawful in domestic legal terms, however, the question remains whether or not recourse to physical

force was necessary to obtain the evidence in the particular circumstances of the case.

77. It appears that the applicant had initially demonstrated willingness to cooperate with police demands. He had agreed to hand over his underwear on condition that he was provided with another pair. This condition was not unreasonable or particularly difficult to satisfy and the Court sees no explanation as to why the police favoured instead the use of force, proceeding as they did to beat the applicant with rubber truncheons, to handcuff him and to drag him through the corridor. The situation quickly degenerated and violence escalated to the point where the applicant was not invited to submit voluntarily to the clipping of his nails but rather was overpowered and pinned down by force against the table during the procedure. The Court cannot speculate how the events could have unfolded, or whether the applicant would have consented to giving biological samples had the police officers not resorted to violence, but the fact remains that in the circumstances of the case the police violence was gratuitous and that the use of brute force did not appear to have been justified by the applicant's conduct. Accordingly, the Court is not satisfied that the forcible medical intervention was essential to obtaining the evidence.

78. The Court further notes that before and during the interventions the applicant was repeatedly beaten with a rubber truncheon, that he had been pushed around and injured his head against a desktop computer, and that when attempting to take a blood sample the police officers had pinned him to the floor, using their weight on his limbs and head. It has been the Court's constant position that any recourse to physical force in respect of a person deprived of his liberty 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, among many others, *Kopylov v. Russia*, no. 3933/04, §§ 160-165, 29 July 2010; *Dedovskiy and Others v. Russia*, no. 7178/03, § 81, 15 May 2008; *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; and *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336). As the Court has already found above, the applicant appeared to have been initially disposed to cooperate with the police, without making any excessive or unreasonable demands, and nothing in the applicant's demeanour could be interpreted as an assault upon, or resistance to, the police orders. In these circumstances, the use of a rubber truncheon and handcuffs was not only unnecessary but also in breach of the applicable provisions of Russian law (see paragraph 66 above). The gratuitous violence to which the police officers deliberately resorted was not and could not be conducive to facilitating the collection of forensic evidence. Rather, it was intended to arouse in the applicant feelings of fear and inferiority and to break his psychological resistance. The purpose of that treatment was to debase the applicant and drive him into submission. Moreover, the treatment to which the applicant was subjected

in the instant case had an additional element of humiliation, because he was stripped of his underwear and paraded naked from the waist down through the corridors of the police station, with his hands cuffed behind his back.

79. Discussion of the health risks associated with forcible medical intervention appears superfluous in the circumstances of the present case. Nevertheless, the Court cannot but note the applicant's submission that the clipping of his nails so close to the skin that his fingers started bleeding must have been painful. The procedure was carried out by an investigator, without appropriate supervision by a medical specialist, and deviated from the established best practice in the field of forensic medicine in that it did not appear to have represented the least intrusive method of retrieving required samples of material from under his fingernails.

80. The foregoing considerations are sufficient to enable the Court to conclude that the forcible medical intervention and the beatings that accompanied it went beyond the minimum level of severity required to bring the situation within the scope of Article 3. The applicant therefore has been subjected to inhuman and degrading treatment in breach of that provision.

81. Accordingly, there has been a violation of Article 3 under its substantive limb.

(b) Compliance with Article 3 as regards the effectiveness of the investigation

82. The Court further reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision requires by implication that there should be an effective official investigation. For the investigation to be regarded as "effective", 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. They must take the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. 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, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 102 et seq., *Reports of Judgments and Decisions* 1998-VIII).

83. The applicant complained to the prosecutor about the beatings inflicted by the police, the forceful removal of his underwear, clipping of his nails and attempted taking of a blood sample. His detailed account of the events, together with the visible bodily injuries, amounted to an "arguable claim" of ill-treatment. Accordingly, the authorities had an obligation to

carry out an effective investigation into the circumstances of the alleged ill-treatment.

84. In the Court's view, the manner in which the inquiry was conducted reveals the investigative authorities' determination to dispose of the matter in a hasty and perfunctory fashion (compare *Kapanadze v. Russia*, no. 19120/05, § 47, 10 February 2011, and *Denis Vasilyev v. Russia*, no. 32704/04, § 155, 17 December 2009). The decisions refusing to institute criminal proceedings were limited in scope to the statements of the police officers and investigators, all of whom denied using any physical force on the applicant. The applicant's version of events was not mentioned, and it does not appear that the deputy prosecutor interviewed him or arranged a confrontation between him and the police officers from the Uysk police station who had allegedly been involved in the ill-treatment. Moreover, no genuine attempt was made to explain the origin of a bruise on the applicant's head or to examine whether the use of force for collecting forensic evidence was compatible with the requirements of the domestic law and proportionate to the legitimate aim pursued.

85. The Court further notes that there was an apparent link between the officials responsible for the investigation and those allegedly involved in the ill-treatment (compare *Mikheyev*, cited above, § 115). The inquiry had been conducted by the Uysk deputy prosecutor, who had been the immediate superior of Mr Zh., an investigator with the Uysk prosecutor's office, who had been present throughout the attempted medical interventions and witnessed the ill-treatment inflicted by the police office on the applicant. In these circumstances, the inquiry fell short of the requirement of independence.

86. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment. Accordingly, there has also been a violation of Article 3 under its procedural aspect.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF CONDITIONS OF DETENTION

87. The applicant alleged a violation of Article 3 on account of the appalling conditions in which he had been detained at the Uysk police station.

A. Admissibility

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

B. Merits

89. The Government accepted that the conditions of the applicant's detention had been in breach of Article 3.

90. The Court reiterates that it has already examined the conditions of detention obtaining in police stations in various Russian regions and found them to be in breach of Article 3 (see *Kuptsov and Kuptsova v. Russia*, no. 6110/03, § 69 et seq., 3 March 2011; *Nedayborshch v. Russia*, no. 42255/04, § 32, 1 July 2010; *Khristoforov v. Russia*, no. 11336/06, §§ 23 et seq., 29 April 2010; *Shchebet v. Russia*, no. 16074/07, §§ 86-96, 12 June 2008; and *Fedotov v. Russia*, no. 5140/02, § 67, 25 October 2005).

91. Although it does not appear that the Uysk police detention unit suffered from the problem of overcrowding to the same extent as did some other units in previous cases, the sanitary conditions there, as described by the applicant and the domestic supervising authorities, were just as appalling. The situation where inmates had to use buckets to relieve themselves – in the presence of other inmates – can only be described as degrading. The Court also takes note of other deficiencies of the unit acknowledged by the domestic authorities, such as the lack of bedding, restricted access to running water and no provision for outdoor exercise, which must have undoubtedly contributed to the distress that the applicant felt. The Court is particularly struck by the inadequate catering arrangements: it transpires from the prosecutor's letters that food was given only once a day and only on weekdays.

92. Having regard to the cumulative effect of the factors analysed above, the Court considers that the conditions in which the applicant was held at the Uysk police station diminished his dignity and caused him distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention. It follows that the conditions of the applicant's detention amounted to inhuman and degrading treatment.

93. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention at the Uysk police station.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN CONNECTION WITH THE EVENTS OF 21 OCTOBER 2004

94. The applicant complained that the conditions in which he had been taken to the court-house on 21 October 2004 had amounted to inhuman or degrading treatment in breach of Article 3 of the Convention. He also complained that no effective investigation was carried out in this respect.

A. Admissibility

95. The Court notes that the this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Although the outcome of the applicant's judicial appeal against the prosecutor's decision refusing institution of criminal proceedings cannot be established with certainty (see paragraph 52 above), the Court notes that it is incumbent on the Government to raise any objections as to the non-exhaustion of domestic remedies, and that they have not raised any such objections in the instant case. Accordingly, the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

96. The Government submitted that the applicant had refused to leave his cell to go to the court-house, and had offered strong resistance to the escorting police officers. He had been handcuffed in accordance with section 14 of the Police Act and taken outside. However, he had continued to behave aggressively, spitting at police officers; his spittle had hit their faces and uniform. Having examined the applicant's complaint, the district prosecutor had refused to institute criminal proceedings, but the applicant himself was subsequently convicted of insulting State officials. The investigation into the applicant's complaints was thorough, diligent and independent. The Government concluded that there had been no violation of Article 3 under its substantive or procedural limb.

97. The applicant maintained that he had not been told where he would be taken and that it was for that reason that he had refused to comply with the police orders and leave the cell. The officers had started dragging him out and had struck his head against a bedpost. The applicant's reaction had been one of protest against harsh and brutal treatment. The use of force by the police was manifestly out of proportion to the resistance he had offered. The applicant pointed out that he had shown a wound on his forehead and his wet and ragged clothing to the judge, who had paid little heed to his statements. The inquiry into his complaints had been superficial, as the investigator limited its scope to obtaining statements from the police station. The applicant believed that there had been a violation of Article 3 under both its substantive and procedural limbs.

2. The Court's assessment

(a) Compliance with Article 3 as regards the alleged ill-treatment by the police

98. The Court notes that in the late afternoon of 21 October 2004 the applicant was brought to Uysk police station from the remand prison, which was located some 165 kilometres away. Shortly thereafter a police officer told him to get out of the cell and to follow him. It cannot be established with certainty whether or not the applicant was informed where he would be taken, however, the fact remains that he refused to do as he was told.

99. The police officers chose to overcome the applicant's resistance by force. Four officers overpowered him and dragged him out of the cell by the legs, punching and beating him. In the process, the applicant hit his head against a bedpost and was injured on the forehead. The Court reiterates once again that any recourse to physical force which has not been made strictly necessary by the detainee's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. The concept of strict necessity implies that in situations such as the one obtaining in the instant case the use of force should be a means of last resort rather than an automatic reaction on the part of the police officers to any resistance they may encounter from a detainee. In the present case the officers did not make any attempt to negotiate with the applicant by, for example, stating clearly why and where they were going to take him, and for how long, or otherwise to secure his cooperation by non-violent means. Even if they had not managed to cajole him into following them, it would have been sufficient to immobilise him so he could be taken out of the cell. The beatings and punches they inflicted on him amounted to gratuitous violence of a retaliatory nature or a form of reprisal or corporal punishment (see *Dedovskiy and Others*, § 83 *in fine*, cited above). The Court considers that such conduct by the police was in breach of the guarantee against inhuman treatment.

100. It is further noted that the police did not allow the applicant to put on his shoes and that they dragged him across the courtyard through the autumnal slush and puddles. As a consequence, the applicant's clothing got wet and covered in mud, he stayed in his damp and ragged clothes and barefoot on the journey in the prison van, at the court-house throughout the hearing on the detention matter, and on the way back to the remand centre. The applicant's undignified appearance before a court of law must have caused him emotional distress and physical inconvenience. The treatment to which the applicant was subjected was unnecessary, and did not pursue any identifiable purpose other than to belittle, debase and humiliate him. The Court reiterates that in the case of *Hurtado v. Switzerland* (no. 17549/90) the former Commission determined that the applicant's wearing of soiled clothing for one day, during a hearing before a judge and on various

journeys, resulting from the failure of the authorities to take elementary hygiene measures, was humiliating and debasing and therefore degrading within the meaning of Article 3 (see the former Commission's report of 8 July 1993, Series A no. 280-A). The Court considers that the situation was similar in relevance to that obtaining in the present case, and that the treatment suffered by the applicant should likewise be characterised as degrading.

101. In the light of the foregoing considerations, the Court finds that in the late afternoon of 21 October 2004 the applicant was ill-treated by the police in breach of Article 3 of the Convention and that the treatment inflicted on him was both inhuman and degrading. There has therefore been a violation of that provision under its substantive limb.

(b) Compliance with Article 3 as regards the effectiveness of the investigation

102. The Court notes that the applicant appeared before a judge in wet and dirty clothing and that he bore recent and prominently visible injuries on his face. He described the treatment to which the police had subjected him and insisted that it be recorded in the minutes. Under such circumstances, the Court considers that the applicant had an "arguable claim" of ill-treatment and that the authorities had an obligation to carry out an effective investigation into the events.

103. The Court notes, however, that, confronted with visible injuries on a detainee supplemented by his detailed account of ill-treatment, the judge limited his intervention to a dismissive remark and failed to take any measures with a view to launching an official inquiry into the matter. Nor did the prosecutor, who was also in court and must have witnessed the injuries, take any action. The Court considers that in a situation where a person who is under the effective control of the authorities displays easily visible injuries, the authorities must act of their own motion once the matter has come to their attention and not leave it to the initiative of the injured individual to lodge a formal complaint.

104. As it happened, the applicant lodged a formal complaint with the Uysk prosecutor's office, but the institution of criminal proceedings against the police officers was refused by a decision of 19 November 2004. By the same decision, he was told that a criminal case had been opened against him in connection with his aggressive behaviour and spitting at the policemen. Judging from the contents of the decision, the deputy prosecutor took no independent investigative steps. He did not seek to hear the applicant's version of events, nor did he obtain any medical certificate attesting to the degree and extent of his injuries. He relied entirely on the statements given by the police officers, who had a vested interest in the outcome of the proceedings. The Court cannot consider that the inquiry was sufficient in scope or that it represented a serious attempt to find out what happened. Nor was the investigation effective in the sense of being capable of leading to a

determination of whether the force used by the police was or was not justified in the circumstances (compare *Kaya v. Turkey*, 19 February 1998, § 87, *Reports of Judgments and Decisions* 1998-I).

105. Finally, the Court observes that the independence of the authority which conducted the investigation, the Uysk prosecutor's office, was open to doubt. This was the same authority that filed criminal charges against the applicant for insulting police officers and carried out an investigation of these charges. Not only did this create a conflict of interest but in doing so the prosecutor's office had clearly indicated its preference to uphold the version of events given by the police officers, and could not therefore fulfil the requirements of independence and impartiality as regards the inquiry into the applicant's complaints of ill-treatment.

106. In the light of the serious deficiencies identified above, the Court concludes that the investigation into the ill-treatment was neither effective nor independent, and that there has therefore been a breach of Article 3 also under its procedural limb.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

107. The applicant complained under Article 6 §§ 1 and 3 (d) that he was unable to examine in open court the victim Ms K. and the witnesses Ms V. and Ms Kar. who were the key witnesses for the prosecution. The relevant parts of Article 6 provide as follows:

> "1. In the determination of... any criminal charge against him, everyone is entitled to a fair... hearing...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him..."

A. Admissibility

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

B. Merits

1. The parties' submissions

109. The Government submitted that the Russian authorities had taken all possible measures to establish the whereabouts of Ms K., Ms Kar. and Ms V. by means of sending summons, making address inquiries, issuing decisions that they should be obliged to appear and interviewing their relatives and friends. However, it proved to be impossible to locate them and ensure their attendance during the trial. Their written statements made at the pre-trial stage were read out in open court with due respect for the rights of the defence. In any event, their testimony had not been decisive: the finding of the applicant's guilt rested on statements by other witnesses, forensic evidence, the applicant's own confession and testimony by his co-defendant. The Government considered that there was no violation of Article 6 §§ 1 and 3 (d).

110. The applicant stressed that he had not waived his right to have the witnesses Ms K., Ms Kar. and Ms V. examined in open court. He had objected to the reading out of their statements at the pre-trial investigation stage. Ms K.'s testimony was of decisive importance for the case: she had been alone in the flat with the applicant and his co-defendant. The other witnesses were not present at the scene and their statements covered periods of time which preceded or followed the alleged rape. The forensic evidence confirmed that the sexual act had taken place, but only Ms K. could testify as to the non-consensual or violent nature of the act and describe that the defendants had acted in collision with each other. The applicant did not have the opportunity to examine Ms K. either at the stage of the pre-trial investigation or in court. As the District Court's decision of 31 March 2005 demonstrated, the police officer's report about the alleged impossibility to locate Ms K. was a forgery. The Russian authorities did not make any real attempt to find her and secure her attendance at trial. There was therefore a violation of Article 6 §§ 1 and 3 (d).

2. The Court's assessment

111. The Court reiterates that the guarantees in paragraph 3 (d) of Article 6 are specific aspects of the right to a fair hearing set forth in paragraph 1 of this provision which must be taken into account in any assessment of the fairness of proceedings. Article 6 § 3 (d) enshrines the principle that, before an accused can be convicted, all evidence against him must normally be produced in his presence at a public hearing with a view to adversarial argument. Exceptions to this principle are possible but must not infringe the rights of the defence, which, as a rule, require that the accused should be given an adequate and proper opportunity to challenge and question a witness against him, either when that witness makes his

statement or at a later stage of proceedings (see *Lucà v. Italy*, no. 33354/96, §§ 39-40, ECHR 2001-II).

112. There are two requirements which follow from the above general principle. First, there must be a good reason for the non-attendance of a witness. Second, when a conviction is based solely or to a decisive degree on depositions that have been made by a person whom the accused has had no opportunity to examine or to have examined, whether during the investigation or at the trial, the rights of the defence may be restricted to an extent that is incompatible with the guarantees provided by Article 6 (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 119, 15 December 2011).

113. Nonetheless, even where a hearsay statement is the sole or decisive evidence against a defendant, its admission as evidence will not automatically result in a breach of Article 6 § 1. At the same time where a conviction is based solely or decisively on the evidence of absent witnesses, the Court must subject the proceedings to the most searching scrutiny. The question in each case is whether there are sufficient counterbalancing factors in place, including measures that permit a fair and proper assessment of the reliability of that evidence to take place. This would permit a conviction to be based on such evidence only if it is sufficiently reliable given its importance in the case (see *Al-Khawaja and Tahery*, cited above, § 147).

114. The Court will therefore have to consider three issues in the instant case: first, whether a reasonable effort was made by the authorities to secure the appearance of the defaulting witnesses in court; second, whether their untested evidence was the sole or decisive basis for the applicant's conviction; and third, whether there were sufficient counterbalancing factors, including strong procedural safeguards, to ensure that the trial, judged as a whole, was fair within the meaning of Article 6 §§ 1 and 3 (d).

115. The applicant stood trial on the charge of rape of Ms K. He did not deny having had sexual intercourse with Ms K. but maintained that it had been a consensual and voluntary act. There were no direct witnesses to the intercourse: the applicant, his presumed accomplice and Ms K. had been the only ones present in her room during the events. Ms K.'s girlfriends (Ms V. and Ms Kar.) had left shortly after the applicant's arrival at Ms K.'s place, and Ms K.'s former boyfriend (Mr V.) had been so drunk that he had fallen fast asleep in the adjoining room. The witnesses, including Ms K.'s grandmother, had heard about the alleged rape from Ms K. and their testimony was hearsay. The forensic evidence did not establish a link between minor injuries on Ms K.'s body and the biological samples taken from the applicant. In these circumstances, the Court finds that the finding of the non-consensual nature of the intercourse rested, to a decisive extent, on Ms K.'s pre-trial depositions, and that in order to receive a fair trial the applicant should have had an opportunity to examine her in open court.

116. The Government claimed that the domestic authorities had taken "all possible measures" to locate the defaulting witnesses by sending summons, making address inquiries, interviewing relatives and friends and ordering the police to bring them to the courtroom. The Court, however, notes that they did not produce any documents in support of their submissions, whereas the domestic judgments did not contain any information on the measures that had been deployed to secure the attendance of the witnesses. On the other hand, it appears from the District Court's separate decision issued on the date of the applicant's conviction that the police officer's report of a visit to Ms K.'s home and conversations with her neighbours had been a fabrication. The police officer had admitted to the court that he had not gone to her residence or attempted to locate her, but had drafted the report because the investigator had asked him to do so.

117. The Court is struck by the passive attitude of the Uysk District Court, which was fully aware of the fraud committed by the police officer and considered it to be a gross violation of the rules of criminal procedure, yet made no effort to secure the attendance of the crucial witness for the prosecution. In these circumstances, the District Court's decision that Ms K.'s pre-trial statement should be read out because the potential means of locating her had been exhausted, appears unjustified and lacking a basis in fact. The Chelyabinsk Regional Court did not examine this matter in any detail, and summarily rejected the applicant's appeal, referring to non-specific "sufficient measures" which had allegedly been taken to secure Ms K.'s appearance.

118. It has not therefore been shown that that the Russian authorities have taken sufficient and adequate measures to secure Ms K.'s appearance, and she never appeared to testify before a court in the presence of the applicant. The applicant was not provided with an opportunity to scrutinise the manner in which Ms K. had been questioned by the police, nor was he then or later provided with the opportunity to have questions put to her. Furthermore, as Ms K.'s statements to the investigator were not recorded on video, neither the applicant nor the judges were able to observe her demeanour under questioning and thus form their own impression of her reliability (compare *Makeyev v. Russia*, no. 13769/04, § 42, 5 February 2009). Finally, the Court notes that the domestic courts did not put in place any counterbalancing arrangements which could have compensated for the difficulties caused to the defence by the admission of untested evidence (compare *Bonev v. Bulgaria*, no. 60018/00, § 44, 8 June 2006, and, by contrast, *Al-Khawaja and Tahery*, cited above, §§ 156-158).

119. Having regard to the fact that the applicant was not afforded any opportunity to question Ms K., whose testimony was of decisive importance for establishing his guilt or otherwise of the offence of which he was later convicted, and that the authorities failed to make a reasonable effort to secure her presence in court or compensate for the difficulties experienced

by the defence on account of the admission of her evidence, the Court finds that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention. This finding makes it unnecessary to pursue a separate examination of the complaint about the non-attendance of two other witnesses, Ms V. and Ms Kar.

V. ALLEGED HINDRANCE TO THE APPLICANT'S RIGHT OF INDIVIDUAL PETITION

120. By a letter of 15 June 2010, the applicant also complained under Articles 3 and 34 of the Convention that on 22 July 2009 he had been beaten up by the prison director in connection with his refusal of the Government's offer of a friendly settlement. He submitted a statement from Mr Z. who indicated that in May 2010 he had heard from the applicant that the applicant had been beaten up by the prison governor.

121. The Court observes that the applicant's allegations are not supported by any evidence, and that Mr Z.'s statement is hearsay based on the applicant's own words. Moreover, it is unclear why he chose to wait for almost a year after the events before bringing this matter to the attention of the Court.

122. It follows that the allegation of hindrance to the right of individual petition has not been made out and must be rejected as unsubstantiated.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

123. 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

124. The applicant claimed in total 110,000 euros (EUR) in respect of non-pecuniary damage.

125. The Government considered that the claim was excessive.

126. The Court has found that the applicant was a victim of inhuman and degrading treatment on more than one occasion, which was not investigated in an effective manner, and that he was denied a fair trial. Deciding on an equitable basis, it awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

127. The applicant also claimed EUR 6,000 for legal costs (exclusive of legal aid) and EUR 700 for various expenses, including postal and copying expenses.

128. The Government pointed out that no supporting documents were provided.

129. 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 1,000 for the proceedings before the Court, plus any tax that may be chargeable on the applicant.

C. Default interest

130. 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 application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs on account of the circumstances in which the forensic evidence was taken;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention at the Uysk police station;

4. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs on account of the circumstances surrounding the applicant's transport to the court-house on 21 October 2004;

5. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;

6. *Holds* that the allegation of hindrance to the right of individual petition under Article 34 of the Convention has not been made out;

7. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement:

(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 3 May 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President