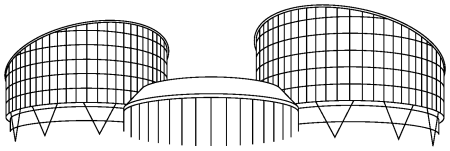

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TURBYLEV v. RUSSIA

(Application no. 4722/09)

JUDGMENT

STRASBOURG

6 October 2015

FINAL

06/01/2016

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

In the case of Turbylev v. Russia,

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

András Sajó, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 8 September 2015,

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

PROCEDURE

1. The case originated in an application (no. 4722/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Andrey Valeryevich Turbylev ("the applicant"), on 23 October 2008.

2. The applicant was represented by Ms I.A. Kondratyeva, a lawyer practising in Ukhta, the Komi Republic. 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 in police custody in order to obtain his confession to a crime. He further submitted that the use of his confession, made as a result of his ill-treatment and in the absence of a lawyer, in securing his conviction had rendered his trial unfair.

4. On 31 August 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Ukhta, the Komi Republic.

A. The applicant's arrest and ensuing events

6. In April 2005 a jewellery shop and other premises in a commercial centre in the Sosnogorsk district of the Komi Republic were robbed; in the course of those events, a woman guard was attacked and suffered injuries. Investigator A., from the investigation unit of the Sosnogorsk police department, opened a criminal case into the robbery. On 15 June 2005 the criminal proceedings were suspended for failure to establish the identity of a person to be charged.

7. On 25 August 2005 a certain R. reported to the police that her boyfriend B. had committed the robbery together with Zh. and the applicant. On the same day investigator A. reopened the criminal proceedings.

8. On 26 August 2005 the police arrested B., Zh. and the applicant. Investigator A. was present at the time of the arrest. The three men were taken to the Sosnogorsk police department of the Komi Republic (*отдел внутренних дел г. Сосногорска Республики Коми*).

9. Police officers, in particular Z., the head of the criminal police division of the Sosnogorsk police department, interviewed the applicant about his involvement in the robbery. According to the applicant, they demanded that he confess to the robbery and G., an operative officer in the criminal investigation unit of the police department, punched and kicked him on different parts of his body. Fearing new violence, the applicant confessed to having participated in the crime as requested, and signed a record of his "surrender and confession" (*явка с повинной*) that had been drawn up by operative officer G. at Z.'s request.

10. According to that record, on 26 August 2005 in office no. 12 of the Sosnogorsk police department police officer G. obtained from the applicant his confession to the crime, in accordance with Article 142 of the Code of Criminal Procedure of the Russian Federation ("CCrP"). In particular, the record stated that the applicant had assisted B. and Zh. by loading the property stolen from the shops into his car and transporting it; that he had confessed without any physical or psychological pressure being exerted on him; and that he had been informed of Article 51 of the Constitution. The record did not indicate the exact time when the confession was obtained and did not explain the meaning of Article 51 of the Constitution (concerning self-incrimination, see paragraphs 28, 47 and 49 below).

11. At Z.'s request, the applicant wrote in the police station visitors' registration log that he had struck his own head against a wall, and that he had no complaints against the police officers.

12. At 2.57 p.m. on the same day investigator A. drew up a record of the applicant's arrest as a suspect in the case.

13. On the same day the applicant was placed in a temporary detention facility (IVS) at the Ukhta police department. According to the IVS records, on arrival he had bruises under his eyes, his lips were burst, his lower jaw

was swollen on the left side, and he had bruises on his back and abrasions on his knees.

14. On 27 August 2005 the applicant was questioned as a suspect in the presence of a lawyer. He retracted the confession statement that he had given on the previous day, and explained that he had made the statement as a result of ill-treatment by the police officers.

15. On 30 August 2005 a judge of the Sosnogorsk Town Court ordered that the applicant be detained on remand. In reply to the judge's question about the origin of his facial injuries, the applicant stated that he had been beaten up by operative officers from the police department. On the same day the applicant's legal-aid counsel, who was representing the applicant at the court hearing, lodged an application with the Sosnogorsk prosecutor in which he requested that an inquiry be conducted into the applicant's complaint and that those responsible for his ill-treatment be prosecuted.

16. On 31 August 2005 the applicant was placed in pre-trial detention facility SIZO 11/2, where he was examined by a doctor and found to have bruising beneath his eyes, a swollen nasal bridge, two-centimetre abrasions on the right side of his forehead, hematoma on the left side of his lower jaw and abrasions on the small of his back and right knee (as recorded in a certificate of that detention facility dated 29 September 2005).

17. On 5 September 2005 the applicant's counsel requested investigator A., who was in charge of the robbery case, to order a forensic medical examination (*судебно-медицинская экспертиза*) of the applicant. The investigator rejected the request as irrelevant to the robbery case.

B. Criminal proceedings into the applicant's alleged ill-treatment

1. Refusal to institute criminal proceedings

18. Following the application by the applicant's counsel (see paragraph 15 above), investigator V. of the Sosnogorsk prosecutor's office carried out a pre-investigation inquiry into the alleged ill-treatment of the applicant.

19. On 5 September 2005 the investigator ordered a forensic medical examination of the applicant; this was carried out by the Ukhta Forensic Medical Bureau on 7 September 2005. The expert's report stated that the applicant had the following injuries: bruises measuring up to 1 to 3.5 centimetres on the lower eyelids of both eyes, two abrasions measuring 4 to 0.6 and 1.5 to 0.2 centimetres on his back; and an abrasion measuring 0.6 to 0.5 centimetres on his right knee. The injuries could have been caused by impacts from blunt hard objects with a limited contact surface, in the period 8-12 days before the examination. They could not have been caused by a single impact as a result of a fall against a flat surface.

20. The investigator received "explanations" (*объяснения*) from investigator A. (responsible for the robbery case) and from the police officers who had taken the applicant to the police station and interviewed him about his involvement in the robbery. In particular, police officer G. stated that in the course of a "conversation" (*беседа*) which he had had with the applicant, the latter had suddenly jumped to his feet and hit his head against the wall, as a result of which his nose had started bleeding. Police officer K. also stated that he had seen the applicant hitting his own head against the wall. Police officer Z. explained that in the course of his "conversation" with the applicant the latter had recounted the details of the robbery committed by him; that the applicant had explained that he had hit his own head against the wall and that he had no complaints against police officers; and that the applicant had entered this explanation in the police station visitors' registration log.

21. On 9 September 2005 investigator V. held that the applicant's allegations of ill-treatment, in particular the claims that he had been struck "in his kidneys" and pushed so that his face had hit the wall and he had fainted, had not been based on real facts and that no criminal case was to be opened against police officers G., Z., Ku., B. and M., pursuant to Article 24 § 1 (2) of the CCrP (lack of the elements of a crime in the impugned acts).

2. Institution of criminal proceedings

22. On 5 December 2005 the Sosnogorsk prosecutor set aside the investigator's decision of 9 September 2005 as unlawful and unfounded, on the ground that the circumstances in which the applicant had received his injuries had not been reliably established. He referred to the description of the applicant's injuries on his arrival in the IVS (see paragraph 13 above) and the SIZO (see paragraph 16 above) and his examination by the forensic medical expert (see paragraph 19 above). He stated that the expert's suggestions as to how the injuries had been sustained made it doubtful that the applicant could have received his injuries as a result of a one-off impact by his face against a wall. The prosecutor further noted that the applicant had explained that he would most likely be able to identify the police officer who had beaten him at the police station. However, it was not possible to carry out an identification parade and a confrontation in a pre-investigation inquiry. The prosecutor considered that it could not be ruled out that, after his arrest, the applicant had been subjected to acts of violence in order to make him confess to the crime. The applicant's version of his ill-treatment by the police officers could only be verified by way of a full investigation. In order to do so it was necessary to open a criminal case, given that there was sufficient information disclosing elements of a crime under Article 286 § 3 (a) of the Criminal Code (official misconduct with the use of violence). The prosecutor ordered that a criminal case be opened.

3. Termination of criminal proceedings

23. In the course of the ensuing investigation the police officers who had arrested the applicant were questioned as witnesses. The applicant was questioned as a victim. An additional forensic medical expert's report was obtained on 15 February 2006. It reiterated the conclusions in the previous report (see paragraph 19 above).

24. On 4 March 2006 an investigator from the Sosnogorsk prosecutor's office terminated the proceedings for lack of the elements of a crime in the acts of the police officers, pursuant to Article 24 § 1 (2) of the CCrP.

25. On 30 June 2006 a deputy prosecutor of the Komi Republic set aside the investigator's decision and reopened the criminal proceedings. Three further decisions to terminate the proceedings were subsequently taken and then set aside as unfounded and based on an incomplete investigation. In one of the decisions, dated 24 November 2006, the deputy prosecutor ordered that the inconsistencies between the statements of the police officers and that of the applicant be eliminated and that identification parades and confrontations be held, if necessary. When questioned again as a victim, the applicant stated, *inter alia*, that he remembered that police officer G. had hit his head against the wall and started punching him "in the kidneys" (as stated in a decision to terminate the proceedings of 4 January 2007).

26. The most recent decision to terminate the proceedings for lack of the elements of a crime under Article 286 § 3 (a) of the Criminal Code in the acts of police officers G., Ku. and B. was taken on 1 April 2007. The investigator concluded that the applicant's allegations had been refuted by police officers G. and K., who stated that the applicant had hit his own head against the wall; by the record of his surrender and confession and the forensic medical report of 15 February 2006, in that the applicant's injuries could have been sustained as a result of impacts from blunt hard objects with a limited contact surface. It does not appear from the decision that investigative acts such as identification parades and confrontations with the applicant's participation were carried out.

C. The applicant's trial

1. First instance

27. At a preliminary hearing held by the Sosnogorsk Town Court on 13 April 2006 the applicant's counsel requested that the record of the applicant's surrender and confession of 26 August 2005, on which the prosecution relied, be excluded from evidence pursuant to Article 75 § 2 (1) of the CCrP, as it had been obtained in the absence of a lawyer. The Town Court dismissed the request.

28. At his trial, the applicant pleaded his innocence and submitted that he had written his confession statement on the instructions of police officer

Z. as a result of physical and psychological coercion by the police officers; in particular, police officer G. had beaten him "in the kidneys and liver" and his head had been struck against the wall so that he had fainted. He had not been informed of his right under Article 51 of the Constitution not to give self-incriminating statements, as that part of the record had been added by police officers at a later stage. The applicant asserted, in particular, that on the night of the robbery he had arrived at the commercial centre, by car and at B.'s request, and had towed B.'s car until its engine started, without knowing anything about the robbery. Two months later B. had offered him gold jewellery, allegedly belonging to B.'s acquaintance, for sale. The applicant had returned some of the jewellery to B. and kept the rest for himself. He had understood from police officer Z. that the gold which he had received from B. had been stolen from the Sosnogorsk district commercial centre. He had therefore told Z. about the gold he had kept at his home.

29. The applicant's co-defendant Zh. pleaded his innocence, asserting that he had given self-incriminating statements as a result of his ill-treatment by police officers, in particular by G., who had allegedly beaten him up, kicked him and burned his fingers with a cigarette; he also stated that after his arrest on 26 August 2005 he had seen the applicant, on his knees and bleeding, at the police station.

30. The applicant's co-defendant B. admitted before the trial court that he had committed the robbery together with a certain Ch., and stated that the applicant and Zh. were innocent. In particular, B. stated that on the night of the robbery he had called the applicant, asking him for help because his car had broken down; the applicant had arrived by car as requested, towed B.'s car (with the stolen property inside) until the engine started and then left without knowing anything about the robbery. Two or three months later, since he was experiencing difficulties with storing and selling the stolen property, B. had asked the applicant to look after the gold jewellery and to buy some of it if he wished. The applicant had agreed. B. also stated that he had not given any self-incriminating statements during the preliminary investigation, in spite of the physical violence used against him by the police officers, in particular by G.

31. The applicant's wife stated, among other things, that on the day of his arrest the applicant had been taken back to their home by the police officers in order for their flat to be searched. He had had an abrasion on his head, his lip was burst and his nose was swollen.

32. Police officer Z., examined by the trial court as a witness, stated that he and other police officers had arrested the applicant and his two co-defendants after B.'s girlfriend had reported their involvement in the robbery. At the police station he had talked to the applicant about the robbery several times. The applicant had confessed, named his accomplices and expressed his readiness to surrender the stolen gold. Z. had suggested

that the applicant write a statement of his surrender and confession. The applicant had agreed and Z. had asked his subordinates to prepare the necessary document. No violence or threats had been used against the applicant.

33. Police officer G. stated that after the applicant's arrest he had taken the applicant to the police station. The applicant had been taken to Z.'s office and later Z. had requested G. to obtain from the applicant a statement of his surrender and confession. The applicant had written down his statement and signed it. G. had not used any violence against the applicant. G. had come out of his office to register the statement with an officer on duty, while the applicant had stayed with police officer K. On returning to his office, G. had seen the applicant suddenly jump to his feet and strike his head against the wall. The applicant had fallen to his knees and started bleeding, "probably from his nose". K. had given him a towel and asked whether he needed a doctor. The applicant had answered negatively. Z. had then taken the applicant to his office again.

34. Police officer K. stated that the applicant had jumped to his feet and struck his forehead against the wall once and then had fallen to his knees. K. had wanted to call a doctor but the applicant had refused. He had given the applicant a towel because the applicant was bleeding. K. denied any violent behaviour on the part of the police officers.

35. Investigator A. stated that she had investigated the robbery case and had given instructions (*отдельные поручения*) to the police officers in the criminal investigation unit of the Sosnogorsk police department. She had not instructed them to question the applicant or to collect a statement of his surrender and confession. Police officer G. had obtained the applicant's statement of his surrender and confession as a result of the applicant's free will. When questioning the applicant as a suspect (on 27 August 2005, see paragraph 14 above) she had noticed his injuries and asked if he had needed medical assistance, but he had refused.

36. The applicant's counsel maintained before the trial court that the applicant's statement of his surrender and confession, which he had retracted on the following day when questioned for the first time in the presence of a lawyer, should be declared inadmissible evidence. She noted that investigator A. had drawn up the record of the applicant's arrest as a suspect on 26 August 2005. However, for unknown reasons she had not questioned him as a suspect on the same day. Instead, the police officers had obtained the statement of his surrender and confession on their own initiative, without any such instruction from the investigator. They had done so using psychological and physical coercion, as confirmed, *inter alia*, by the statements of Zh. and the applicant's wife (see paragraphs 29 and 31 above), the certificate from detention facility IZ-11/2 (see paragraph 16 above) and the forensic medical expert report of 7 September 2005 (see paragraph 19 above). Furthermore, his confession statement had

been obtained in the absence of a lawyer. Under Article 142 § 1 of the CCrP, a statement of one's surrender and confession was meant to be voluntary. Therefore, if obtained from a person arrested on suspicion of having committed a crime, any such statement should be subjected to particular scrutiny. Its voluntary nature was ensured through procedural guarantees under Articles 46 ("The suspect") and 51 ("Compulsory participation of counsel for the defence") of the CCrP. Otherwise, such a confession statement should be declared inadmissible evidence in accordance with Article 75 § 2 (1) of the CCrP.

37. In its judgment of 6 December 2007 the Town Court held that the applicant's allegation that the statement of his surrender and confession had been given under duress was unsubstantiated. It relied on the statements by the police officers, denying any wrongdoing on their part (see paragraphs 32-34 above), the investigative authority's most recent decision to terminate the criminal proceedings against them which, as the Town Court noted, had been taken in accordance with the Code of Criminal Procedure and had not been revoked or quashed (see paragraph 26 above), and a report from an internal police inquiry which had dismissed the applicant's allegations of ill-treatment.

38. The Town Court held that it had critically assessed the applicant's statements at the trial and concluded that they represented the position of the defence, in that they were aimed at evading criminal responsibility. Those submissions had been refuted by his and Zh.'s statements of surrender and confession, as well as by the statements by the following witnesses: B.'s girlfriend, who had provided hearsay evidence about the applicant's involvement in the robbery; five police officers who had participated in the applicant's and his co-defendants' arrest or the operative follow-up, in particular Z., G., and K.; investigator A., in charge of the robbery case; Z.A., who had denied seeing the applicant in the porch of his building on the night of the robbery (where, according to her former boyfriend who had been heard by the court as a witness for the defence, she had spent time that evening), and her mother Z.E., who had stated that Z.A. had not gone out after 9 p.m.; and Kh., who had been an attesting witness during the search at the applicant's home during which certain items were seized.

39. The Town Court held that it had based its judgment on the statements of surrender and confession given by the applicant and Zh., along with statements by the victims, the prosecution witnesses and other evidence. It found that on 12 April 2005 B., Zh. and the applicant had entered into a conspiracy to commit theft from the shops in the commercial centre. According to the roles agreed on between them, the applicant had remained on guard in his car outside the commercial centre, while B. and Zh. had entered while the centre was still open and had hidden there. During the night they had attacked a woman guard and tied her up. Then they had forced locks and stolen property, in particular jewellery and mobile phones.

The applicant had helped them to carry the stolen property out and load it into his car, in which they all had left.

40. The Town Court convicted the applicant of high-value theft with unlawful entry, committed in conspiracy by a group of persons, and sentenced him to six years' imprisonment. In sentencing the applicant the Town Court took into account information about his personality, in particular that he had received positive character references from his places of residence and employment, and that he had no criminal or administrative offences record. It considered his statement of surrender and confession, the fact that he had two minor children and that he had voluntarily surrendered the stolen gold jewellery, as well as his health condition, as mitigating circumstances. B. and Zh. were convicted of robbery with the use of violence and sentenced to nine years' and eight and a half years' imprisonment respectively. The Town Court granted the victims' civil actions and ordered the applicant and his co-defendants to pay 396,800 Russian roubles (RUB) jointly in respect of pecuniary damage. The victims' remaining claims were to be examined in separate civil proceedings.

2. Appeal

41. The applicant and his counsel appealed against the judgment. His counsel argued, *inter alia*, that the trial court had based its judgment on inadmissible evidence, in particular the statement of the applicant's surrender and confession of 26 August 2005, which had been given by him as a result of ill-treatment by the police officers and in the absence of a lawyer. She reiterated the arguments put forward before the trial court (see paragraph 36 above).

42. On 6 June 2008 the Supreme Court of the Komi Republic examined the case on appeal. It endorsed in full the trial court's decision concerning the admissibility of the statement of the applicant's surrender and confession. It held, in particular, that the statement had been obtained in accordance with the Code of Criminal Procedure. Under Article 142 § 1 of that Code, a statement of surrender and confession was a voluntary statement by a person about a crime committed by him. It had not therefore been necessary to have an instruction from an investigator in order to obtain it. The law did not provide for any additional requirements to such a statement, save that the individual concerned was to be warned of his or her criminal responsibility for deliberately giving false information. Therefore, the absence of a lawyer had not rendered the statement unlawful and had not violated the applicant's right to defend himself. He had been informed of his right under Article 51 of the Constitution, as confirmed by his signature on the record of his surrender and confession.

43. The Supreme Court of the Komi Republic further noted that the trial court had examined as witnesses all of the police officers who had seen the

applicant at the police station with a view to verifying their implication in the alleged crime. They had all denied any wrongdoing. It had been established that, having written his confession, the applicant had suddenly jumped to his feet and hit his head against a wall. The Supreme Court also referred to the most recent decision by the investigative authority, dated 1 April 2007, by which the criminal proceedings against the police officers had been terminated (see paragraph 26 above), and to the results of the internal police inquiry dismissing the applicant's allegations of ill-treatment (see paragraph 37 above). It upheld the judgment.

3. Supervisory review

44. The applicant's counsel unsuccessfully raised the issue of the admissibility of the record of the applicant's surrender and confession in her requests for supervisory review of the case before the Supreme Court of the Komi Republic and the Supreme Court of the Russian Federation. The former court rejected it for the same reasons as before (decision of a judge of the Supreme Court of the Komi Republic of 5 September 2008 dismissing the request, as endorsed by the President of that court on 27 October 2008).

45. The Supreme Court of the Russian Federation similarly stated that the applicant's argument – that the statement of his surrender and confession had been obtained in the absence of a lawyer – lacked a basis in domestic law, and that the allegation of the applicant's ill-treatment at the hands of the police was unsubstantiated, as shown through its examination by the trial court which had heard the police officers, particularly Z., G. and B. (decision of a judge of the Supreme Court of the Russian Federation of 22 December 2008 dismissing the request for supervisory review, as endorsed by a Deputy President of the Supreme Court on 10 March 2009).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Rights of suspects in police custody

46. The Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "CCrP") provides that suspects have the right of access to a lawyer from the moment of their *de facto* arrest and that statements given by them without a lawyer and not confirmed in court are inadmissible evidence. It states, in particular, as follows:

Article 46. The Suspect

"4. The suspect shall have the right:

...

(3) to avail himself or herself of the advice of defence counsel from the moment stipulated by ... and Article 49 § 3 (3) of the present Code, and to have a private and confidential visit from him or her before the suspect's first interrogation ..."

Article 49. Counsel for the Defence

"3. Counsel for the defence shall take part in the criminal case:

...

(3) as from the moment of the actual arrest of the person suspected of having committed a crime ..."

Article 51. Compulsory participation of counsel for the defence

"1. The participation of counsel for the defence in criminal proceedings shall be compulsory if:

(1) the suspect or accused has not waived his right to legal assistance pursuant to the procedure established by Article 52 of the present Code ..."

Article 75.

"2. The following constitutes inadmissible evidence:

(1) Statements by the suspect or accused given in the absence of the counsel for the defence in the course of pre-trial proceedings in the criminal case, ... which have not been confirmed in court ..."

47. Article 51 of the Constitution of the Russian Federation provides that no one may be required to incriminate himself or herself, his or her spouse or close relatives.

48. Article 48 § 2 of the Constitution states that everyone arrested, detained or accused of a crime shall enjoy the right to have the assistance of a defence counsel from the moment of arrest, detention or bringing charges, respectively.

49. In its ruling no. 11-P of 27 June 2000 the Constitutional Court of the Russian Federation held as follows:

"2. ...

Under the Constitution of the Russian Federation, the right in question [under Article 48 § 2 of the Constitution] is directly applicable and the assistance of (defence) counsel does not depend on the formal recognition of the individual as a suspect or an accused person. Nor does it depend on the moment when any procedural act by an investigation authority, inquiry authority or a prosecutor's office is carried out; furthermore, the Constitution of the Russian Federation does not empower the federal legislature to impose restrictive conditions on the exercise of this right.

Article 48 § 2 of the Constitution of the Russian Federation clearly specifies the essential characteristics of an individual who actually needs legal assistance because his constitutional rights, primarily the right to liberty and security of the person, are restricted, including in the case of criminal prosecution seeking to establish his guilt. Thus, the constitutional right to have the assistance of (defence) counsel extends to the individual from the moment of actual restriction of his rights.

Within the literal meaning of the provisions enshrined in Articles 2, 45 and 48 of the Constitution of the Russian Federation, the right to qualified legal assistance is guaranteed to any person, irrespective of his or her formal status in the proceedings and whether or not he or she is officially declared to be detained or under suspicion, if duly authorised authorities have subjected the person to measures that actually restrict the individual's liberty and security of person, including freedom of movement. These measures involve keeping a person in custody by officials, forcibly bringing or delivering him or her to the inquiry or investigation office, holding *incommunicado*, and any other actions that significantly restrict the liberty and security of the person.

...

3. ...

Insofar as the constitutional right to have the assistance of (defence) counsel may not be restricted by federal law, terms such as 'detained', 'accused' and 'bringing charges' are to be construed within their constitutional meaning rather than within the more narrow meaning ascribed to them in the Code of Criminal Procedure of the RSFSR. Ensuring the exercise of this constitutional right necessitates consideration of both the status in proceedings and the actual situation of the person facing public criminal prosecution. Moreover, the very fact of criminal prosecution and, accordingly, accusatory activity undertaken against a particular person may be proven by a decision to institute criminal proceedings against the person, investigative actions in his or her regard (search, identification, interrogation, etc.), and other measures aiming at his exposure or indicating the existence of suspicions against him or her (*inter alia*, by informing the individual, under Article 51 § 1 of the Constitution of the Russian Federation, of the right not to incriminate himself or herself). In so far as these actions are intended to establish facts and circumstances proving the guilt of the prosecuted person, he or she should be given an immediate opportunity to seek assistance of (defence) counsel. This creates the conditions enabling him or her to properly understand his or her rights and responsibilities, any charges brought against him or her, and, consequently, to defend himself or herself effectively. These conditions also ensure that the evidence obtained during the investigation will not later be found inadmissible (Article 50 § 2 of the Constitution of the Russian Federation).

...

Pursuant to Article 14 of the International Covenant on Civil and Political Rights and Articles 5 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, access to legal assistance is seen as an indispensable guarantee of the right to defence in case of criminal prosecution. These international instruments establish that everyone who is arrested or detained is to be informed promptly of the reasons for his arrest and any charge against him, is entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court, and is entitled to a fair and public hearing and to defend himself in person or through legal assistance of his own choosing."

By the above ruling the Constitutional Court declared Article 47 § 1 of the RSFSR Code of Criminal Procedure of 27 October 1960 (in force until 1 July 2002) unconstitutional. It found that by providing for the right to legal assistance from the moment that the arrest record or the detention order was read out to the suspect, rather than from the moment of arrest as guaranteed by Article 48 of the Constitution, Article 47 § 1 made the

exercise of the right to legal assistance dependent on the discretion of the prosecuting authorities.

The Constitutional Court later referred to the above ruling and stressed the validity of its findings in that ruling for other situations where operative-search measures, aimed at the establishment of facts and circumstances incriminating the relevant person, such as an interview, had been conducted (decisions no. 327-O of 9 June 2005, no. 473-O of 20 December 2005 and no. 924-O-O of 15 November 2007).

B. Surrender and confession in criminal proceedings

50. The CCrP provides as follows:

Article 74. Evidence

"2. The following shall be admitted as evidence:

(1) statements by the suspect and accused;

(2) statements by the victim and witness;

(3) findings and statements by the expert;

(4) real evidence;

(5) records of investigative and judicial acts;

(6) other documents."

Article 140. Events giving rise to and grounds for opening a criminal case

"1. A criminal case may be opened in the event of:

(a) a complaint of a crime;

(b) surrender and confession;

...

2. Sufficient information disclosing the elements of a crime shall serve as a ground for opening a criminal case."

Article 141. Complaint of a crime

"1. A complaint of a crime can be made in a verbal or written form.

...

3. A verbal complaint of a crime shall be entered into a record, which is to be signed by the complainant and by the person taking the complaint. The record must contain data about the complainant and his or her identification documents.

...

6. The complainant shall be warned about his or her criminal liability for perjure pursuant to Article 306 of the Criminal Code of the Russian Federation, which is noted in the record and signed by the applicant."

Article 142. Surrender and confession

"1. A statement of surrender and confession (*заявление о явке с повинной*) is a voluntary statement by a person about a crime which he or she has committed.

2. A statement of surrender and confession can be made in a written, as well as a verbal form. A verbal statement shall be taken and entered into a record under the procedure provided for by paragraph 3 of Article 141 of the present Code."

51. The Supreme Court of the Russian Federation regards a statement of surrender and confession, provided for by Article 142 of the CCrP, as evidence, in the form of "other documents" provided for by Article 74 § 2 (6) of the CCrP (see, for example, the Supreme Court's judgments on appeal no. 89-o04-29sp of 16 July 2004, no. 50-o05-15 of 23 June 2005, no. 46-O09-3 of 5 March 2009, no. 48-O09-39 of 25 May 2009 and no. 209-O10-3SP of 20 May 2010).

52. The Supreme Court has stated that the law does not require access to a lawyer for a statement of surrender and confession to be made and that, therefore, the objection on that ground to the admissibility of such a statement as evidence should fail (see the Supreme Court's judgments on appeal no. 56-o04-77 of 23 March 2005, no. 67-O06-5 of 29 June 2006, no. 29-O08-18SP of 15 December 2008 and no. 201-FGE13-2SP of 25 July 2013).

53. The Supreme Court has therefore ruled that the provisions of Article 75 § 2 (1) of the CCrP (see paragraph 46 above) did not apply to a statement of surrender and confession (see the Supreme Court's judgment on appeal no. 50-o04-82sp of 23 March 2005).

54. In respect of the allegation that Article 142 and/or other provisions of the CCrP provided a basis for the admission in evidence of statements of surrender and confession obtained at pre-trial proceedings in the absence of a lawyer, the Constitutional Court of the Russian Federation reiterated the findings in its ruling no. 11-P of 27 June 2000 (see paragraph 49 above) and stated that Article 49 § 3 of the CCrP defined the moment from which counsel for the defence took part in the criminal proceedings (see paragraph 46 above). The constitutional right to legal assistance arose from the moment when the relevant person's rights were actually restricted, for example when measures which effectively restricted his or her rights to liberty and security, including his or her freedom of movement, were undertaken by competent authorities (decisions on inadmissibility no. 1280-O of 17 July 2012, no. 638-O of 20 March 2014, no. 1338-O of 24 June 2014, no. 2380-O of 23 October 2014 and no. 2787-O of 23 December 2014 with a reference to earlier decision no. 1522-O-O of 17 November 2009). Therefore, the provisions of Articles 91 and 92 of the CCrP, which regulated the grounds for and the procedure of the suspect's arrest, did not deprive the arrested person of the right to legal assistance from the moment of his or her actual arrest or other restrictions of his or her rights (decisions on inadmissibility no. 234-O of 20 June 2006, no. 245-O-O

of 20 March 2008, no. 1579-O-O of 17 November 2011 and no. 1280-O of 17 July 2012).

55. The Constitutional Court noted that Article 142 of the CCrP did not contain provisions which would authorise the restriction of the rights to liberty and security, including the freedom of movement, of a person making a statement of surrender and confession. For this reason Article 142 of the CCrP did not provide for the presence of a lawyer. However, it did not exclude the right of a person to make such statement in the presence of a lawyer, either (see decisions on inadmissibility no. 326-O of 14 October 2004, no. 1280-O of 17 July 2012, no. 638-O of 20 March 2014, no. 1338-O of 24 June 2014, no. 2380-O of 23 October 2014 and no. 2787-O of 23 December 2014). Article 142 did not contain norms which would be inconsistent with the general provisions of the criminal procedural law concerning, in particular, the requirements for and the procedure to examine the admissibility of evidence. Those general provisions were to apply if a statement of surrender and confession was read out at the trial (decisions on inadmissibility no. 326-O of 14 October 2004, no. 391-O of 20 October 2005, no. 285-O-O of 22 March 2011, no. 1448-O-O of 20 October 2011, no. 1901-O of 18 October 2012 and no. 2173-O of 25 September 2014).

56. Under the Criminal Code of the Russian Federation, the act of surrender and confession is considered a mitigating circumstance in sentencing (Article 61). The Plenary Supreme Court of the Russian Federation indicated in its Ruling no. 2 of 11 January 2007 that if a statement by an individual concerning a crime committed by him or her was used, together with other evidence, in securing his or her conviction, that statement might be considered as a statement of surrender and confession – a mitigating circumstance for the purpose of sentencing – even if the person altered his statements in the course of the investigation or trial. The fact that a person made a statement about a crime following his or her arrest on suspicion of having committed that crime did not exclude considering such a statement as a mitigating circumstance in sentencing.

C. Procedure for re-opening of criminal proceedings

57. Article 413 of the Code, setting out the procedure for re-opening of criminal cases, reads, in so far as relevant, as follows:

> "1. Court judgments and decisions which became final should be quashed and proceedings in a criminal case should be re-opened due to new or newly discovered circumstances.
>
> ...
>
> 4. New circumstances are:
>
> ...

(2) a violation of a provision of the European Convention for the Protection of Human Rights and Fundamental Freedoms committed by a court of the Russian Federation during examination of a criminal case and established by the European Court of Human Rights, pertaining to:

(a) application of a federal law which runs contrary to provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(b) other violations of provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms;

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

58. The applicant complained that he had been subjected to inhuman and degrading treatment in police custody in order to make him confess to the crime. He relied on Article 3 of the Convention, which reads as follows:

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

59. The Government acknowledged that the applicant’s rights guaranteed by Article 3 of the Convention had been violated and that the domestic remedies had been ineffective in his case.

60. The Government further stressed that the domestic legal system did, in principle, provide for effective remedies for victims of police ill-treatment. Firstly, there was an effective criminal-law remedy, notably a criminal investigation into the allegations of ill-treatment by police officers which could lead to the conviction of police officers. The Government referred to and submitted a series of judgments delivered by courts in 2008-2010 in different regions (the Astrakhan, Kemerovo, Lipetsk, Moscow, Rostov and Ryazan regions and the Republics of Tatarstan and Khakasiya), in which police officers from criminal investigation units and other police staff had been convicted under Article 286 of the Criminal Code of crimes which could qualify as violations of Article 3. The Government submitted further that investigative authorities’ acts and decisions, in particular refusals to open a criminal case, were open to judicial review under Article 125 of the Code of Criminal Procedure. Lastly, civil judicial remedies existed in order to complain about decisions and acts of State organs and their officials and to request compensation for the damage caused.

A. Admissibility

61. 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 the Government do not plead non-exhaustion of domestic remedies and that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicant's ill-treatment in police custody

62. The Court notes that the Government have acknowledged a violation of Article 3 in the present case. It has no reason to hold otherwise.

63. After the time spent in police custody the applicant was found to be injured (see paragraphs 13, 16 and 19 above). No plausible explanation was provided for his injuries. The investigative authority's finding that the applicant had committed an act of self-harm was based on the account of events put forward by the police officers, notably G., who, in the applicant's submissions, was the officer who had used physical violence against him, and K., who had allegedly been in the room with G. when the applicant's injuries were sustained. The investigative authority's failure to verify the two versions of the origin of the applicant's injuries by using such investigative means as confrontations and identification parades, as pointed out repeatedly by the supervising authorities (see paragraphs 22 and 25-26 above), casts doubt on the unconditional preference it gave to the police officers' version. Furthermore, the finding of self-harm does not accord with the forensic medical expert's conclusion as to the origin of the injuries, which excluded the possibility that the injuries could have been caused as a result of a fall, that is by a single impact from a flat surface, as was also noted by the supervising authority (see paragraph 22 above), and suggested that they could have been caused by blows from blunt hard objects with a limited contact surface. Lastly, no explanation was provided by the investigative authority for the injuries to the applicant's back.

64. Having regard to the detention facilities' medical records and the forensic medical expert's conclusions, the injuries to the applicant's face, back and knees are consistent with his allegations that he was punched and kicked and that his head was struck against the wall with such force that he lost consciousness. These injuries, unaccounted for within the domestic proceedings and acknowledged by the Government, must therefore be considered attributable to a form of ill-treatment for which the authorities were responsible.

65. Strong inferences can be drawn from the evidence to the effect that the ill-treatment occurred during the applicant's questioning by the police officers about the circumstances of the crime of which he was suspected and

that, as a result, the applicant signed the statement of his surrender and confession, which he retracted on the following day as soon as he was given access to a lawyer. The ill-treatment can be regarded as having caused the applicant, who was in a state of particular vulnerability, considerable fear, anguish and mental suffering and driven him to act against his will. Having regard to the nature and circumstances of the ill-treatment, the Court finds that it amounted to inhuman and degrading treatment (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000−VII; *Gäfgen v. Germany* [GC], no. 22978/05, §§ 87-93, ECHR 2010; *Nasakin v. Russia*, no. 22735/05, §§ 51-55, 18 July 2013; and *Mostipan v. Russia*, no. 12042/09, §§ 58-61, 16 October 2014).

66. There has therefore been a violation of Article 3 under its substantive head.

2. The State's obligation to conduct an effective investigation

67. The applicant, who was found to be injured after the time spent in police custody, stated during his first questioning as a suspect on the following day, in the presence of a lawyer, that he had been subjected to ill-treatment by police officers in order to obtain his confession to the crime (see paragraph 14 above). Three days later he reiterated his complaint before the judge who was examining the investigator's application for his detention on remand (see paragraph 15 above). On the same day his counsel lodged an application with the investigative authority requesting prosecution of those responsible for the applicant's ill-treatment (ibid.). On the following day the applicant's injuries were again recorded on his arrival at the pre-trial detention facility (see paragraph 16 above).

68. The authorities were thus made promptly and sufficiently aware of the applicant's allegation that he had been subjected to ill-treatment in police custody. The allegation was supported by the detention facilities' records of his injuries and confirmed by forensic medical evidence, obtained as a result of the very first steps undertaken by the investigative authority charged with the pre-investigation inquiry into his alleged ill-treatment (see paragraph 19 above). The allegation was therefore credible and gave rise to an obligation on the State to carry out an effective investigation.

69. The Government have acknowledged that no such investigation took place. The Court, as with regard to the violation of Article 3 in its substantive aspect (see paragraphs 62 and 66 above), has no reason to hold otherwise.

70. Indeed, the authorities did not open a criminal case until 5 December 2005, that is, more than three months after they had been made sufficiently aware of the applicant's alleged ill-treatment. The prosecutor instituted criminal proceedings on the grounds that the applicant's version of his ill-treatment by the police officers, which was not excluded on the facts, could only be verified by way of a full investigation for which it was

necessary to open a criminal case, given that there was sufficient information disclosing elements of a crime under Article 286 § 3 (a) of the Criminal Code (see paragraph 22 above). According to the prosecutor, the pre-investigation inquiry had not reliably established the circumstances in which the applicant had sustained his injuries. In particular, it was not possible in the course of the pre-investigation inquiry to carry out an identification parade, which would have enabled the applicant to identify the police officer who had assaulted him – even though the applicant "would most likely [have been] able to identify [him]" – or a confrontation between them (ibid.).

71. The Court has previously found in *Lyapin v. Russia* that in the context of the Russian legal system, if credible allegations of treatment proscribed under Article 3 of the Convention are made, then it is incumbent on the authorities to open a criminal case and conduct a proper criminal investigation in which the whole range of investigative measures are carried out and which – according to the Government (see paragraph 60 above) – constitutes an effective remedy for victims of police ill-treatment under domestic law. It is not possible to establish within the framework of a "pre-investigation inquiry" the facts of a case, particularly the identity of persons who could have been responsible for the ill-treatment. A "pre-investigation inquiry" alone is not capable of leading to the punishment of those responsible, since the opening of a criminal case and a criminal investigation are prerequisites for bringing charges against the alleged perpetrators, which may then be examined by a court. Confronted with numerous cases of this kind against Russia, the Court has held that it was bound to draw stronger inferences from the mere fact of the investigative authority's refusal to open a criminal investigation into credible allegations of serious ill-treatment in police custody. This was indicative of the State's failure to comply with its obligation under Article 3 to carry out an effective investigation (see *Lyapin v. Russia*, no. 46956/09, §§ 129 and 132-36, 24 July 2014).

72. The above findings are fully applicable to the present case. On the facts, the Court notes that the information which the prosecutor assessed as sufficient for bringing criminal proceedings on 5 December 2005 was in the investigative authority's hands shortly after the applicant's ill-treatment. Hence, nothing can explain the three-month delay in commencing the criminal investigation into the applicant's complaint. The Court considers that such a delay could not but have had an adverse impact on the investigation, undermining the investigative authority's ability to secure the evidence concerning the alleged ill-treatment (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001; *Kopylov v. Russia*, no. 3933/04, § 137, 29 July 2010; *Eldar Imanov and Azhdar Imanov v. Russia*, no. 6887/02, § 99, 16 December 2010; and *Shishkin v. Russia*, no. 18280/04, § 100, 7 July 2011).

73. The ensuing proceedings were marred by the investigative authority's failure to carry out a complete investigation, as was repeatedly pointed out by its own hierarchy (see paragraph 25 above). They ended with the decision to terminate them on the same ground – lack of elements of a crime in the acts of the police officers – and for the same reason – the statements by police officers' G. and K. submitting that the applicant had hit his own face against the wall – as in its initial refusal to open a criminal case and the previous decisions to terminate the proceedings, each of which was set aside as unlawful and unfounded. There is no indication in the materials before the Court that even such obvious investigative measures as identification parades and confrontations, the importance of which was twice noted by the investigators' superiors, were conducted in the course of the investigation (see paragraphs 22 and 25 above). Equally, the forensic medical expert's conclusion that the applicant's injuries could not have been caused by a single impact from a flat surface, to which the investigative authority's attention was drawn in the decision to open a criminal case (see paragraph 22 above), was ignored (see paragraph 26 above).

74. The Court finds that the significant delay in opening the criminal case and commencing a full criminal investigation into the applicant's credible assertion of ill-treatment at the hands of the police, as well as the lack of any meaningful process during the flawed investigation conducted thereafter, show that the authorities did not take all reasonable steps available to them to secure the evidence and did not make a serious attempt to find out what had happened (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV, and *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports of Judgments and Decisions* 1998-VIII). They thus failed in their obligation to conduct an effective investigation into the applicant's ill-treatment in police custody.

75. By failing in its duty to carry out an effective investigation, the State fostered the police officers' sense of impunity. The Court stresses that a proper response by the authorities in investigating serious allegations of ill-treatment at the hands of the police or other similar agents of the State in compliance with the Article 3 standards is essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion or tolerance of unlawful acts (see, among other authorities, *Gasanov v. the Republic of Moldova*, no. 39441/09, § 50, 18 December 2012; *Amine Güzel v. Turkey*, no. 41844/09, § 39, 17 September 2013; and *Mesut Deniz v. Turkey*, no. 36716/07, § 52, 5 November 2013).

76. In view of the foregoing, the Court concludes that there has been a violation of Article 3 of the Convention under its procedural head also.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

77. The applicant complained that his right to a fair trial, guaranteed by Article 6 of the Convention, had been infringed by the use of the confession extracted from him as a result of ill-treatment in police custody, when he had no access to a lawyer. The Court will examine his complaint under Article 6 §§ 1 and 3 (c), which, in so far as relevant, provides:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> ..."

78. The Government contested that argument. They pointed out that the statement of the applicant's surrender and confession was not the sole evidence on which his conviction was based. His guilt had been sufficiently proved by other evidence in the case.

79. In reply to the Court's questions concerning the relevant domestic law, the Government submitted that while police officers carrying out operative-search activities had no right to question an arrested person (*проводить допрос задержанного*), they could obtain from a suspect a statement of his surrender and confession (*получить явку с повинной*). The surrender and confession was regulated by Articles 141 and 142 of the Code of Criminal Procedure, which did not provide for the relevant person's access to counsel for the defence. According to the Code of Criminal Procedure, Article 75 § 2 (1) of the Code was not applicable to the statement of surrender and confession. However, self-incriminating statements given in the absence of a lawyer by a person who later became a suspect or accused were to be declared inadmissible evidence, if subsequently retracted, pursuant to that provision. The Government did not submit information in support of their observations about the domestic courts' practice in respect of Article 75 § 2 (1) of the Code, despite being invited to do so by the Court.

A. Admissibility

80. 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 the Government do not plead non-exhaustion of domestic remedies and

that the complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. General principles

81. The Court reiterates that its duty, under Article 19 of the Convention, is to ensure the observance of the engagements undertaken by the Contracting States in the Convention. In particular, it is not its function to deal with errors of fact or 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, this being primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140).

82. 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 the violation of another Convention right is concerned, the nature of the violation found (see, *inter alia*, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V; *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 76, ECHR 2001-IX; *Allan v. the United Kingdom*, no. 48539/99, § 42, ECHR 2002-IX; and *Gäfgen*, cited above, § 163).

83. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence have been respected, in particular whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use (see *Panovits v. Cyprus*, no. 4268/04, § 82, 11 December 2008). In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (ibid.). Indeed, where the reliability of evidence is in dispute the existence of fair procedures to examine the admissibility of the evidence takes on an even greater importance (see *Allan*, cited above, § 47).

84. The right to silence and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6. Their rationale lies, *inter alia*, in the protection of the accused against improper compulsion by the authorities, thereby contributing to the avoidance of miscarriages of justice and to the fulfilment of the aims of Article 6. The right not to incriminate

oneself, in particular, presupposes that the prosecution in a criminal case seek to prove their case against the accused without resort to evidence obtained through methods of coercion or oppression in defiance of the will of the accused (see *Jalloh v. Germany* [GC], no. 54810/00, § 100, ECHR 2006-IX).

85. Lastly, the Court reiterates that a waiver of a right guaranteed by the Convention – in so far as it is permissible – must not run counter to any important public interest, must be established in an unequivocal manner and must be attended by minimum safeguards commensurate to the waiver's importance (see *Sejdovic v. Italy* [GC], no. 56581/00, § 86, ECHR 2006-II).

2. Application of the above principles in the present case

86. The Court observes that the police reopened criminal proceedings into the unsolved robbery of commercial premises on the basis of information reported by Ms R. about, *inter alia*, the applicant's alleged involvement in the robbery. The applicant was taken to the police station and interviewed by police officers about the circumstances of the crime. He was subjected to ill-treatment (see paragraph 66 above) and confessed to having participated in the crime. His confession was documented by police officer G. in the statement recording his surrender and confession. That record states that the applicant had been informed of Article 51 of the Constitution of the Russian Federation (see paragraph 10 above). Once given access to a lawyer on the following day during his first questioning as a suspect by the investigator, the applicant retracted his confession statement, asserting that it had been given as a result of his ill-treatment by the police officers. He consistently repudiated his confession throughout the ensuing proceedings, in which he was represented by a lawyer. He was able to challenge the admissibility of the statement as evidence at his trial on two grounds, which he has now raised before this Court. Firstly, he asserted that the confession statement had been extracted from him as a result of his ill-treatment by the police officers, and, secondly, that it had been obtained without him having access to a lawyer. The trial court regarded his confession as admissible evidence, considering that the allegations of his ill-treatment were unsubstantiated, that access to a lawyer had not been required by domestic law and that the applicant had been informed of the right not to incriminate himself. In convicting the applicant the trial court relied to a significant extent on his confession (see paragraphs 38-39 above). In the appeal and the supervisory review proceedings the Supreme Court of the Komi Republic and the Supreme Court of the Russian Federation endorsed the trial court's findings in full.

87. The Court notes, firstly, that no assessment was made by the trial court of the medical and witness evidence submitted by the applicant to support his objection on the ground of duress (see paragraph 36 above). In relying on the police officers' statements denying any wrongdoing on their

part and on the internal police inquiry dismissing the applicant's allegations, the court attached no significance to the police officers' obvious interest in the applicant's allegations of ill-treatment being rejected. Overall, the trial court's reasoning for its dismissal of the applicant's objection displays a failure to conduct its own independent assessment of all the relevant factors with a view to ascertaining whether there were reasons to exclude from evidence the applicant's confession statement, allegedly "tainted" by a violation of Article 3 of the Convention, so as to ensure the fairness of the trial, and instead indicates its reliance on the decision of the investigative authority (see paragraphs 37-38 above), which the Court has found to have been based on an investigation which did not meet the Article 3 requirements (see paragraph 74 above). This lack of a careful assessment of the quality of the impugned evidence (the applicant's confession statement) and the circumstances in which it was obtained, which cast doubts on its reliability and accuracy, was not remedied by the higher courts. In consequence, the applicant's confession obtained as a result of his inhuman and degrading treatment (see paragraph 65 above) was used by the domestic courts as evidence of the applicant's guilt. In so doing, the domestic courts legalised the police officers' efforts to use a "statement of surrender and confession" to document the applicant's confession, obtained under duress, after his apprehension on suspicion of having committed a crime, contrary to the meaning envisaged for such a statement in Article 142 of the Code of Criminal Procedure (voluntary statement by a person about a crime he or she has committed, see paragraph 50 above).

88. The Government, which acknowledged that the applicant had been subjected to ill-treatment in breach of Article 3, did not dispute that the applicant's confession statement had been obtained as a result of such treatment. Rather, they argued that the confession was not the sole evidence on which the applicant's conviction was based and that other evidence adduced by the prosecution would in any event have secured the applicant's conviction.

89. The Court reiterates that within the Convention system it has long been recognised that the right under Article 3 not to be subjected to torture or to inhuman or degrading treatment or punishment enshrines one of the fundamental values of democratic society. It is an absolute right, permitting of no exception in any circumstances (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 59, ECHR 2001-XI). Therefore, the use in criminal proceedings of evidence obtained in breach of Article 3 always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction (see *Jalloh*, cited above, § 99).

90. Confession statements obtained in violation of Article 3 are inherently unreliable. Furthermore, their use in criminal proceedings is often the reason for which the acts of ill-treatment are committed in the first

place. Taking such statements into consideration in finding a person guilty is incompatible with the guarantees of Article 6 (see *Söylemez v. Turkey*, no. 46661/99, § 122, 21 September 2006). The admission of confession statements obtained in violation of Article 3 renders the proceedings as a whole automatically unfair, irrespective of the probative value of the confession statements and irrespective of whether their use was decisive in securing the defendant's conviction (see *Gäfgen*, cited above, §§ 166 and 173, and *El Haski v. Belgium*, no. 649/08, § 85, 25 September 2012).

91. The Court has already found in paragraph 65 above that the applicant's confession was obtained as a result of the inhuman and degrading treatment to which he was subjected in police custody. The Government's objection that the applicant's confession was not the sole or decisive evidence should therefore be dismissed.

92. The Court notes further that before giving the "statement of surrender and confession" the applicant was not informed of the right to legal assistance. No justification – other than compliance with the domestic law – was offered by the domestic courts for the applicant's initial lack of access to a lawyer in police custody. According to the domestic courts in the applicant's case, no prior access to a lawyer was required in order to make a statement of surrender and confession. The subsequent use of such a statement in evidence at the trial could not therefore be contested on the ground of the lack of legal advice (see paragraphs 42 and 44-45 above). Such a position complied with the Supreme Court's case-law on the issue (see paragraphs 51-53 and 56 above).

93. The Court reiterates that although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial. Early access to a lawyer at the investigation stage of the proceedings serves as a procedural guarantee of the privilege against self-incrimination and a fundamental safeguard against ill-treatment, given the particular vulnerability of the accused at that stage of the proceedings (see *Salduz v. Turkey* [GC], no. 36391/02, § 54, ECHR 2008; *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 263, 21 April 2011; and *Martin v. Estonia*, no. 35985/09, § 79, 30 May 2013). In order for the right to a fair trial to remain sufficiently "practical and effective", Article 6 § 1 requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6. The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction (see *Salduz*, cited above, § 55). A systematic

restriction of the right of access to legal assistance, on the basis of statutory provisions, is sufficient in itself for a violation of Article 6 to be found (see *Salduz*, cited above, § 56; and *Dayanan v. Turkey*, no. 7377/03, § 33, 13 October 2009).

94. The Court observes that irrespective of whether the applicant confessed before or after his arrest was formally recorded (see paragraphs 10 and 12 above), it follows from the facts of the case, which are not disputed by the Government, and in particular from the police officers' statements, that at the time of his confession the applicant was being held in police custody for the sole reason that he was suspected of having participated in the robbery, that suspicion being based on information reported to the police by Ms R. (see paragraphs 6-8 and 32-33 above). The police officers were therefore obliged to provide him with the rights of a suspect, access to a lawyer being one such right (see, *mutatis mutandis*, *Brusco v. France*, no. 1466/07, §§ 46-55, 14 October 2010). This would also correspond to the domestic criminal procedural-law requirement that the right of access to a lawyer arises from the moment of actual arrest (see paragraph 46 above), which accords with the Constitutional Court's interpretation of the right to legal assistance as arising from the moment of actual restriction of one's constitutional rights, in particular the right to liberty and security, and not from the moment of the formal recognition of one's status as a suspect or one's detention (see paragraphs 48-49 and 54-55 above).

95. The absence of a domestic-law requirement of access to a lawyer for a statement of surrender and confession was used as leeway to circumvent the applicant's right as a *de facto* suspect to legal assistance and to admit his statement of surrender and confession, obtained without legal assistance, in evidence to establish his guilt. This has irretrievably prejudiced the rights of the defence. Neither the assistance provided subsequently by a lawyer nor the adversarial nature of the ensuing proceedings and the possibility of challenging the admissibility of the evidence at issue at the trial and on appeal could remedy the defects which had occurred during police custody.

96. Even assuming that the applicant had been informed of the constitutional right not to incriminate himself before making his confession statement, as was found by the domestic courts, he cannot be said to have validly waived his privilege against self-incrimination in view of the Court's finding that he had given his confession statement as a result of his inhuman and degrading treatment by the police. In any event, no reliance can be placed on the mere fact that the applicant had been reminded of his right to remain silent and signed the relevant record (see *Salduz*, cited above, § 59; and *Płonka v. Poland*, no. 20310/02, § 37, 31 March 2009), especially because the record cited Article 51 of the Constitution without explaining its meaning. Furthermore, since the lack of access to a lawyer in the present case resulted from the systemic application of legal provisions,

as interpreted by the domestic courts, and the applicant was not informed of the right to legal assistance before signing the statement of his surrender and confession, the question of the waiver of the right to legal assistance is not pertinent.

97. The Court concludes that the domestic courts' use in evidence of the statement of the applicant's surrender and confession obtained as a result of his ill-treatment in violation of Article 3 and in the absence of access to a lawyer has rendered the applicant's trial unfair.

98. There has therefore been a violation of Article 6 §§ 1 and 3 (c) of the Convention in the present case.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

99. Lastly, the applicant complained, relying on Article 13 of the Convention, about other alleged violations of his rights in the criminal proceedings against him, such as delays in delivering the judgment and in scheduling the appeal hearing, changes in the composition of the bench and the dismissal of his applications for supervisory review of the case. Having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, it 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 manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

102. The Government considered the above sum excessive.

103. Making its assessment on an equitable basis and having regard to the nature of the violations found, the Court awards the applicant EUR 20,000, plus any tax that may be chargeable.

B. Costs and expenses

104. The applicant also claimed RUB 150,000 for the legal costs incurred at the preliminary investigation and before the domestic courts in the criminal proceedings against him and EUR 3,000 for those incurred before the Court.

105. The Government contested the claims on the ground that there was no proof that they had actually been incurred.

106. 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. The Court is satisfied that the legal-services contract concerning the domestic proceedings and the legal-services contract concerning the proceedings before the Court, concluded between the applicant and his lawyer, created legally enforceable obligations to pay the amounts indicated therein. It notes, however, that although remedying the violations of Article 6 found by the Court in the present case was the largest part of the legal work in the domestic proceedings, the amount indicated in the former contract also covered other legal work, not relevant to the violations of the Convention found. It also notes that not all of the complaints submitted by the applicant were declared admissible by the Court. Regard being had to the above considerations, the documents in its possession and the criteria in its case-law, the Court considers it reasonable to award the sum of EUR 2,500 for legal costs in the domestic proceedings and the sum of EUR 2,800 for the proceedings before the Court, plus any tax that may be chargeable on the total amount, to be paid directly into the bank account of the applicant's representative.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the alleged ill-treatment in police custody, the ineffectiveness of the ensuing investigation and the use at the trial of the coerced confession obtained in the absence of a lawyer 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 limb;

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

4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the use in evidence of the applicant's confession obtained as a result of his inhuman and degrading treatment and in the absence of access to a lawyer;

5. *Holds*

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

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

(ii) EUR 5,300 (five thousand three hundred 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;

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

Done in English, and notified in writing on 6 October 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

András Sajó
President