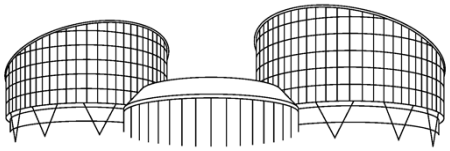

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ABDULKHANOV v. RUSSIA

(Application no. 35012/10)

JUDGMENT

Art 2 (procedural and substantive) • Ineffective investigation into the serious wounding of the applicant by police during special operation against him • Domestic authorities' failure to demonstrate a proper response to applicant's serious allegations • Use of force by State agents not absolutely necessary • Authorities' actions in respect of planning, control and execution of operation not sufficient to safeguard applicant's life

Art 3 (procedural and substantive) • Ineffective investigation into applicant's allegations of police obstruction to his access to specialised medical treatment • Absence of inhuman and degrading treatment

STRASBOURG

6 July 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Abdulkhanov v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
Georges Ravarani,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application 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 Rizvan Abdulkhanov ("the applicant"), on 9 June 2010;

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

the parties' observations;

Having deliberated in private on 15 June 2021,

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

INTRODUCTION

1. The case concerns the serious wounding of the applicant by the police and their allegedly obstructing him from receiving medical treatment for the injuries sustained.

THE FACTS

2. The applicant was born in 1974 and lives in Grozny. He was represented by lawyers from the Committee Against Torture, an NGO based in Nizhniy Novgorod.

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

4. The parties disputed the facts of the case, which may be summarised as follows.

I. EVENTS OF DECEMBER 2006

The special operation against the applicant

1. The applicant's submission

5. From the documents submitted it transpires that at the material time the applicant was suspected by the police of membership of an illegal armed group. However, officially he was not being sought by the authorities, and no criminal proceedings were pending against him. In the weeks preceding the incident the local police searched the applicant's house without a court order on several occasions. They did not find anything to indicate that he was a member of any armed group (see also paragraph 26 below).

6. On the night of 4-5 December 2006 the applicant was sleeping at home, in Stepnaya Street in the village of Pobedinskoye, Grozny District, with his wife, children and other relatives. His father, brothers and sisters lived in the house next door, whose courtyard was adjacent to that of the applicant.

7. At about 2.30 a.m. the applicant heard a noise coming from outside. As he went out of the gates at the back of the house, he heard someone saying: "That's him!" and then the sound of machine-gun fire. He fell to the ground and was approached by several armed men. He heard one of them asking: "Who was firing? Why? Go and pick him up; we'll take him to hospital." Then the applicant lost consciousness.

8. According to the statements of the applicant's relatives and neighbours that were submitted to the Court and the domestic investigating authorities, and not contested by the Government, on the night of the incident, they heard only the burst of the machine gun, but they heard no pistol shots.

2. The Government's submission

9. The Government provided the following statement concerning the circumstances in which the applicant had been shot:

> "... at about 2.30 a.m. on 5 December 2006 officers from Grozny police station carried out operational search measures aimed at detaining Rizvan Abdulkhanov, who was born in 1974. Having found out that he was hiding at 28 Stepnaya Street in Pobedinskoye, Grozny District, officers K., G. and Kh. took steps to seal off the household. He tried to abscond from the officers, but was discovered.
>
> The officers announced themselves and told him to stop. However, Abdulkhanov ignored their request and having realised that those individuals represented the authorities, fired at least three shots from his gun – a Makarov pistol of 9 mm calibre – in their direction. Abdulkhanov was wounded by return fire and stopped offering resistance. After that he was detained and taken to hospital ..."

According to the Government's submission to the Court, none of the police officers who participated in the special operation against the applicant were wounded. The Government's submission provides information neither on the identity of the officer who shot the applicant, nor regarding whose firearm was used to open fire and how many of the shots were fired.

II. THE APPLICANT'S HOSPITALISATION

A. The applicant's submission

10. After arriving at the Ninth Clinical Hospital in Grozny, the applicant stayed in its intensive care unit for twelve days. It was established that he had received six gunshot wounds.

11. Between 5 December 2006 and 2 February 2007 the applicant was hospitalised in Grozny with a diagnosis of a perforating gunshot wound to the abdomen with injuries to the large and small intestines, mesocolon, the third-fifth lumbar vertebrae, hemoperitoneum; a vast retroperitoneal hematoma; perforating gunshot wounds to the right thigh, with injury to femoral vein and spermatic cord; a perforating non-penetrating back wound; and fourth-degree shock.

12. While at the hospital, between 5 and 24 December 2006, the applicant underwent three surgical operations. During the hospitalisation the doctors recommended to him and his relatives that a final diagnosis of his condition be secured (and treatment be continued) at a specialised neurosurgical hospital – a type of facility unavailable in the Chechen Republic. According to the applicant, despite the medical recommendations that he had received and his requests to the investigators, he was not allowed by the police to leave Chechnya to seek specialised treatment until 2 February 2007 (see paragraphs 56 and 58 below).

13. According to the statements that the applicant gave at his trial, while in the hospital, he had been under round-the-clock surveillance by police officers who had guarded his room and had not allowed him to leave it even though he had not been under arrest (see paragraph 51 below). The first preventive measure against him – an undertaking not to leave his place of residence – was imposed on him by the investigators on 4 March 2009 (see paragraph 43 below).

14. From 2 February to 23 February 2007 the applicant was hospitalised at the neurosurgical unit of the Regional Clinical Centre in the Stavropol Region, from where he was directed for further treatment at the Moscow Institute of Surgery.

15. As a result of the gunshot wounds, on 8 October 2007 the applicant was officially registered as Category 2 disabled.

16. From 17 March to 25 April 2008 the applicant was treated at the Moscow Institute of Surgery, where on 3 April 2008 he underwent further surgery.

17. On 11 January 2009 the applicant asked the investigators to allow him to leave Chechnya for necessary specialised medical treatment in another region. On the same day the investigators requested an expert medical examination of the applicant, having asked the expert whether the applicant really needed the treatment. The expert concluded that the applicant did indeed need the treatment, which was available only in specialised hospitals in Moscow and St Petersbourg. The outcome of the request is unknown.

18. On 25 July 2009 the applicant was diagnosed with chronic post-traumatic stress disorder.

B. The Government's submission

19. The Government did not dispute the circumstances of the applicant's medical treatment after the shooting. However, they contested his allegation that he had been under police surveillance at the hospital and that he had been prevented from leaving the hospital to seek medical assistance outside Chechnya. They stated that:

> "... he [the applicant] did not lodge complaints concerning [his] alleged forced hospitalisation or the use of unlawful methods against him ...
>
> The law-enforcement authorities did not take any decisions concerning Abdulkhanov's enforced stay at hospital no. 9 in Grozny. There was no information [to indicate] that between 5 December 2006 and 4 March 2009 the applicant was restricted in his travel.
>
> As soon as a realistic opportunity presented itself, on [1]2 February 2007, Abdulkhanov was directed for hospital treatment at the neurosurgical department of the Stavropol Region Clinical Centre ...
>
> The criminal case file contains a statement from the Central Institute of Trauma and Orthopedics [in Moscow] showing that he was hospitalised there from 17 March until 25 April 2008 ...
>
> When questioned by the investigators, Abdulkhanov's wife, brother and sister stated that since 2007 he had been undergoing treatment in various medical establishments and that on 31 March 2008 he had been in Moscow for yet another course of treatment ...
>
> There were no obstacles placed by the law enforcement agencies to Abdulkhanov [receiving] treatment in medical establishments. Even though criminal case no. 14006 had been opened on 18 January 2007, no preventive measures against [the suspect] were taken until 4 March 2009 – that is to say until he could fully participate in the investigation on his own.
>
> The fact that Abdulkhanov had medical treatment outside the region was also confirmed by his statement of 13 March 2009, in which he mentioned that he

> regularly, at certain intervals, had to leave the Chechen Republic owing to the state of his health ..."

According to the Government's submission, given that at the time no measure of restraint was imposed of the applicant, he did not need any permission to leave the region.

III. OFFICIAL INVESTIGATION INTO THE SHOOTING

20. In reply to a request from the Court for a copy of the investigation files opened in connection with the events of 5 December 2006, the Government submitted a partial copy of the findings of the inquiry carried out in connection with the shooting and partial details of the criminal case opened against the applicant. The copies submitted ran to 106 pages; some of the pages had double numbering (that is to say that in addition to their original numbers, other numbers had been added – indicating that in their original form the documents counted a far greater number of pages than those that were submitted). From the documents submitted the investigation can be summarised as follows.

A. Inquiry into the incident

21. The inquiry carried out by the Grozny District Department of the Interior ("the police station") established that on 4 December 2006 the head of the police station, officer B., had issued a mission order for officers Ka., Kh., Ay. and G. and "other officers" to carry out a check of the premises at the applicant's address *(адресная проверка)* on the night of 4-5 December 2006.

22. On 5 December 2006 the investigators from the police station examined the crime scene in the presence of attesting witnesses, who were colleagues of theirs from the police station. According to a copy of the record of the crime-scene examination, the investigators collected from the site of the shooting and other locations at the applicant's house and courtyard a number of items: a Makarov pistol with nine cartridges, a charger, ten shells of two different calibres, a bullet, four hand-made grenades, a radio transmitter, an electric contactor and a pistol holster. The record did not specify where exactly the shells and the bullet had been found and whether their location when found correlated to the location of the applicant after the shooting.

23. The documents submitted and uncontested by the Government show that the actual circumstances of the crime-scene examination did not match those indicated in the above record; according to the statements given later to the investigators and then to the court by the head of the police station, officer B., the Makarov pistol had not in fact been retrieved by the investigators at the crime scene. According to the officer, he had picked it

up right after the shooting and had handed it over to the investigators sometime later that day in his office (see paragraphs 27 and 49 below). In addition, according to the documents submitted, when cleaning up the applicant's blood at the crime scene after its examination by the police, the applicant's wife, Ms Kh. A., had found and collected seven machine-gun casings and handed them over to the investigators.

24. On various dates between December 2006 and March 2007 the pistol, cartridges and bullets collected from the crime scene were subjected to expert examinations, which concluded that the items were in working condition. The investigators did not request the experts to examine whether any of those items had fingerprints or other biological traces on them.

25. On 8 December 2006 the investigators interviewed officers Ka., Kh. and G., all of whom submitted that on 5 December 2006 at about 2.30 a.m. they had participated in the search of the applicant's house. They all had been armed as they had been warned that the applicant could offer armed resistance. Having arrived at the address, they had blocked the back entrance of the courtyard. Then they had seen a man running in their direction, who in the moonlight they had recognised as the applicant. Officer Kh. had shouted: "Police, stop – [I'm] going to fire!" In reply, the applicant, while running, had fired several pistol shots in the direction of the officers. He had been about five to six metres from the officers when officer Kh. had returned fire with several shots from his machine gun in the applicant's direction. The applicant had immediately fallen to the ground. When the officers had run up to the applicant, there had been a pistol near him. Then the head of the police station, officer B., and another officer had approached them, and the three officers had explained to them what had happened. After providing the applicant with first aid, they had taken him to the hospital.

26. On the same day the investigators requested the Chechnya Federal Security Service ("the FSB") to provide information on the applicant. In its reply, the FSB informed them that, according to their sources, the applicant was a member of an illegal armed group.

27. The investigators interviewed the head of the police station, officer B., on 13 December 2006. His submissions were similar to those made by his subordinates Ka., Kh. and G. (see paragraph 25 above). In addition, he stated that he had seen the applicant on the ground with a pistol, which had had several cartridges in its chamber. Shortly after the shooting, he had picked the pistol up, as it could not have been left at the crime scene owing to the fact that the applicant's relatives and neighbours had gathered around the scene. Besides, it had been necessary to take the applicant to hospital. Later that day he had handed the pistol over to the investigative unit at the police station.

28. According to the documents submitted, the applicant was neither interviewed nor questioned about the circumstances of the incident until

June 2008 – that is to say a year and half after the events in question (see paragraphs 37 and 59 below).

29. On 15 December 2006 the Grozny police station sent the inquiry file to the Grozny district prosecutor's office for further examination.

B. Criminal case against the applicant

30. On 18 January 2007 the Grozny district prosecutor's office opened criminal case no. 14006 against the applicant under Articles 222 § 1 and 317 of the Criminal Code (unlawful trafficking of firearms and attempt on the life of a law-enforcement officer). Five of the police officers who had participated in the special operation at the applicant's house were granted victim status in the case.

31. On 24 January 2007 the investigators questioned the head of the police station, officer B., who submitted, *inter alia,* that all the officers who had participated in the operation had been armed with machine guns and Makarov pistols. On the same day the investigators questioned officers Ay. and Kh., whose statements were similar to those of their superior, officer B.

32. In January 2007 the investigators examined the grenades and explosives collected at the crime scene and ordered that they be submitted for a forensic examination; according to the results of that examination, which concluded in February 2007, they were in working condition. The investigators did not request that those items be examined for fingerprints or other biological traces. Neither did they order the forensic examination of the applicant or his clothing for gun-shot residue.

33. At the beginning of March 2007 the investigators questioned police officers Ka. and G., who affirmed the statements that they had given to the investigators (see paragraph 25 above).

34. Then on 18 March 2007 the investigation was suspended. Almost a year later, on 28 February 2008, the deputy district prosecutor issued an order for the rectification of the violations of the procedural regulations committed by the investigators. He pointed out that not all the witnesses to the incident had been questioned, and not all of the necessary expert examinations of evidence had been ordered. Accordingly, on 14 March 2008 the investigation was resumed.

35. On 31 March 2008 the investigators questioned the applicant's brother, Mr Sh.A., who submitted that at the time of the incident the applicant had not been armed; therefore, he could not have opened fire. When he had been ordered to stop, he had done so, saying "[I've] stopped", but then the police had opened fire on him anyway.

36. Then on 14 April 2008 the investigation was suspended again. A month later, the Chechnya deputy prosecutor again ordered that procedural irregularities on the part of the investigators be rectified. He

pointed out that not only had the investigators not complied with previously given instructions (see paragraph 34 above), they had failed to question the applicant's relatives living in his household and next door. Therefore, on 19 May 2008 the investigation was resumed.

37. When questioned on 11 June 2008, both the applicant and his brother, Mr Sh.A., gave statements concerning the circumstances of the shooting; those statements were similar to the applicant's submission to the Court. The applicant was questioned by the investigators for the first time since the beginning of the criminal proceedings.

38. Between 17 June 2008 and 5 February 2009 the investigation was suspended and resumed on several occasions. Each of the suspensions was overruled by the investigators' superiors as premature and unlawful.

39. When questioned at the end of December 2008, the applicant's neighbours, Mr A. Yu. and Mr Ad. Y., submitted that on the night of 4-5 December 2006 they had heard a burst of machine-gun fire, but no pistol shots.

40. On 4 January 2009 the investigators again questioned the applicant's brother, Mr Sh.A., who reaffirmed his previous statements (see paragraphs 35 and 37 above) and added that on the night of the incident there had been at least ten men in military uniforms in his courtyard and that eight of them had gone into the adjacent courtyard (belonging to his brother, the applicant), and that he had then heard a burst of machine-gun fire. He had then run there and seen his brother being dragged into a car by the police officers.

41. On 17 February 2009 the investigators conducted a face-to-face confrontation between officers G. and Ka., whose statements regarding the operation differed. Both submitted that they had forgotten the details of that operation, as the incident had taken place in 2006.

42. When questioned on 23 February 2009 the applicant's father stated that on the night of 4-5 December 2006 a group of fifty to sixty servicemen had broken into his household; several of them had then gone to the neighbouring house (that of the applicant). After a few minutes he had heard a burst of machine-gun fire and gone to his son's house. In the courtyard he had seen several servicemen putting his son into a car. He had never, at any time, seen any weapons or guns in his son's possession.

43. On 4 March 2009 the investigators again questioned the applicant; the statement that he gave concerning the circumstances of the shooting was similar to the one he submitted in his application to the Court. On the same date a preventive measure against him was imposed: an undertaking not to leave his place of residence (see also paragraph 13 above).

44. On 10 March 2009 the applicant's lawyer requested that the investigators verify on the site of the events in question the statements given by the police officers concerning the circumstances of the gunfire exchange, bearing in mind the distance between the shooters, their respective physical

locations and positions during the exchange of fire and the entry and exit wounds sustained by the applicant. In reply, on 11 March 2009 the investigators declined to open a criminal case against the police officers (see paragraph 70 below) and then on 12 March 2009 they officially refused the applicant's lawyer's request.

45. On 11 March 2009 the investigators discontinued the applicant's prosecution under Article 317 of the Criminal Code (for an "attempt on the life of a law-enforcement officer"), having categorised his actions under Article 318 § 2 of the Criminal Code (as "violence against a representative of authority") providing for a lesser punishment, and then questioned him again. The document did not provide the reasons for the change in the indictment. It stated as follows:

> "... it has been established by the investigation that the actions of Abdulkhanov had been aimed at use of violence against life and health of the police officers in order to obstruct his arrest by them.
>
> Therefore, the actions of Abdulkhanov fall within part 2 of Article 318 of the Criminal Code. In connection with this, his prosecution under Article 317 should be terminated ..."

When questioned on the same date about the incident, the applicant stated that on 5 December 2006 at approximately 2 a.m. he had been woken up by a noise coming from the metal gates in the courtyard; then he had heard voices in the rear courtyard and the dog barking. He had gone outside and headed towards the rear courtyard. After he had opened the gate and taken several steps he had heard someone shouting in Chechen: "That's him!" and then the sound of machine-gun fire. He had fallen and lost consciousness. He had not been carrying any firearms. The Makarov pistol and cartridges, homemade grenades and other objects allegedly found in his courtyard had not belonged to him, and he was unaware how they had appeared at the scene. He had regained consciousness in hospital about two weeks later.

46. On 16 March 2009 the investigators charged the applicant with the commission of crimes under Articles 222 § 1, 208 § 2 and 318 § 2 of the Criminal Code (unlawful firearms trafficking, membership in an illegal armed group and violence against a representative of authority). Shortly thereafter the criminal case was sent to the Grozny District Court for trial.

IV. THE APPLICANT'S TRIAL

A. Testimony given at the trial

47. Between 15 April and 18 November 2009 the applicant was tried at the Grozny District Court on charges of unlawful firearms trafficking, membership in an illegal armed group and violence against a representative of authority.

48. The court questioned, among other witnesses, the applicant's sister, Ms M.A., who stated that early in the morning on 5 December 2006, when she had been at the crime scene, there had been at least fifteen police officers present but that she had not seen her former classmate, the head of the police station, officer B., among them. According to her, officer B. had neither participated in the special operation, nor had he been aware of who exactly had been shot as a result of it, as on 6 December 2006 (when he had visited their house), he had thought that another of her brothers had been shot by his colleagues. She furthermore stated that on the night in question she had neither heard any warnings being given by the police, nor any pistol shots – just a burst of machine-gun fire.

49. When testifying before the court, officer B., stated in general terms that he had participated in the special operation at the applicant's house. He had not been able to distinguish whether it had been pistol fire or machine-gun fire that had been opened first. He denied knowing the applicant's sister, Ms M.A., but did not specify whether they had studied at school together, as stated by her. He testified that at the crime scene "someone picked up the pistol; most probably, it was me" and then conceded that "I picked up the Makarov pistol as I was afraid that [the applicant] could shoot at one of us again". Later that day he had handed the pistol over to the crime scene examiners in his office.

50. The applicant's wife, Ms Kh.A., testified before the court that on the night of the incident she had not heard any pistol shots, but only a burst of machine-gun fire. According to her, police officer B. had not been present at the crime scene; he had arrived at their house only on the following day to ask whether the person who had been shot had been the applicant or his brother.

51. The applicant testified at the trial that he had not been armed and that the police had opened fire on him with machine guns without any warning. Furthermore, only after his return from medical treatment in Moscow had he learned from the investigators that a Makarov pistol had been found next to him at the crime scene. After being wounded he had needed urgent specialised medical treatment available only outside of the region, but had not been able to leave the area owing to the police, who had guarded him around the clock at the hospital. Because he had not promptly received the medical assistance that he had needed, half of his body had lost its proper functioning.

52. The applicant's neighbour, Ms Z.Yu., testified that on the night of the incident she had heard a burst of machine-gun fire, but no pistol shots. When she had gone outside, she had seen a group of about ten armed men in black uniforms standing around something on the ground.

53. The court also questioned Mr E.A., one of the two attesting witnesses, who, according to the record of the crime-scene examination, had been present during the search of the applicant's house by the police (see

paragraphs 22 above). He stated that at the material time he had been employed at the police station on an informal basis (although his employment there had been "regularised" sometime later). According to him, on several occasions he had been asked to sign documents brought by police officers, without paying any attention to their contents. He confirmed that it was his signature as the attesting witness on the record of the crime-scene examination of 5 December 2006 (see paragraphs 22-24 above). However, he stated that he had not been in the applicant's courtyard, and that he had not been present at all during the crime-scene examination and that he had signed the document without knowing its contents. The officer, who had asked him to put his signature to the document, had reassured him that doing so would not lead to any problems. Mr E.A. stated that he had not been present at the crime-scene examination.

54. Officer N.P. testified that she had been in charge of the crime-scene examination, but could not recall details, such as who had been present at the scene after the shooting or during its examination or what had been collected from it.

55. On 9 November 2009 the applicant's neighbours, Ms K.A. and Ms S. A. testified that on the night of the incident they had heard only a burst of machine-gun fire but no pistol shots.

B. Procedural decisions taken during the trial

56. During the trial before the Grozny District Court, between September and October 2009, the applicant's lawyer lodged several requests with the trial judge. In particular, he requested the court to order an expert evaluation of the pistol collected from the crime scene for fingerprints and other biological traces. He also requested that the physical position of the applicant during the shooting be established and whether he could have opened fire from that position. He then requested that a medical examination be ordered to clarify whether the applicant had indeed needed urgent medical treatment in another region of Russia and that owing to his *de facto* arrest by the police he had not been able to have recourse to it, and that that had led to his becoming permanently disabled.

57. The court refused the above requests, having upheld the prosecution's objections thereto and stating in general terms that granting it would "drag out the trial".

58. On 9 October 2009 the applicant's lawyer requested that the judge render a separate ruling quashing the refusal to open a criminal case against the officers who had shot the applicant and who had then prevented him from seeking specialised medical care outside Chechnya; the lawyer also requested that a criminal case be opened against those officers (see paragraphs 66 and 70 below). The lawyer pointed out that the impugned refusal had been based solely on the statements of the police officers who

had participated in the special operation against the applicant and that at least five witnesses, who had been present either at the crime scene or around it, had never been questioned. Moreover, given that there was no evidence connecting the pistol collected at the crime scene to the applicant, and given the fact that the applicant's wife had found at the crime scene only machine-gun casings, but no Makarov pistol (see paragraph 23 above), the officers must have opened fire on the applicant without any provocation. Furthermore, after he had been wounded, they had taken the applicant to hospital, where he had been held under *de facto* arrest. The lawyer's request was left unexamined.

59. On 18 November 2009, at the end of the applicant's trial, the court delivered a separate ruling, which criticised various defects of the pre-trial investigation of the criminal case against the applicant:

> "... During the investigation of the case [against the applicant], particularly at the initial stage, the investigators violated requirements of criminal procedural law – namely the time-limits set out in Article 162 of the Criminal Procedure Code, the rules regarding the suspension of an investigation (Article 208 of the Criminal Procedure Code) and the rules regarding the collection of evidence (Article 86 of the Criminal Procedure Code).
>
> Specifically, the investigation was repeatedly suspended (on 18 March 2007, 14 April 2008, 17 June 2008, 19 July 2008, 7 September 2008, 13 November 2008 and 12 January 2009) on far-fetched grounds, in violation of Article 208 of the Criminal Procedure Code. The case was transferred from one investigator to another, and between January 2007 and February 2009 investigative measures were undertaken only occasionally. [The applicant] was questioned [for the first time] only on 23 June 2008 – that is to say one-and-a-half years after the institution of the criminal proceedings.
>
> The investigators did not take steps to secure the evidence collected and to obtain new evidence.
>
> Specifically, in the course of the investigation [the investigators failed to question] [one of the investigators], K., of Grozny police station, [the expert], G., who had examined the crime scene, and the attesting witnesses E.A. and El., who had participated in the examination of the crime scene ... This work had to be done by the court almost three years after [the events in question], at the request of the parties, which affected the length of the examination of the case.
>
> The investigators also [several times] failed [after being instructed on a number of occasions] to order an expert forensic examination in order to identify any gunshot traces on [the applicant's] body or fingerprints [left by him] on the firearms collected [at the crime scene]. These shortcomings, which were impossible to remedy during the trial ... resulted in multiple complaints and requests from the applicant and his representative, who made attempts to cast doubt on the evidence at the core of the [applicant's] conviction.
>
> The above-mentioned violations indicate a careless attitude on the part of the investigators in the fulfilment of their duties during the investigation ... and a lack of sufficient supervision over the course of the investigation on the part of the head of the criminal investigations department ..."

C. The applicant's sentence and his appeals against it

60. On the same day, 18 November 2009, the court convicted the applicant of crimes under Articles 222 § 1, 208 § 2 and 318 § 2 of the Criminal Code (unlawful firearms trafficking, membership in an illegal armed group and violence against a representative of authority). The court stated that according to the police sources, the applicant was a member of an illegal armed group, and that the special operation against him had been necessitated by that fact. The court referred to the statements given by the five implicated police officers concerning the circumstances of the incident, a summary of the statements of two members of medical staff at the hospital concerning the applicant's wounds, a transcript of the crime scene examination, as well as statements of two crime scene examiners. The court noted that it "perceived with criticism" statements of the two lay witnesses concerning their absence during the crime scene examination and found that those statements must have been "motivated by pity to Abdulkhanov who [as a result of the incident] suffers from the second degree of disability". It also noted that seven statements of the applicant's relatives and neighbours contradicting the statements of the implicated police officers must have been given to "enable Abdulkhanov to avoid prosecution". The court disregarded those statements and found the applicant guilty as charged (also see paragraph 45 above). It sentenced him to five and half years' imprisonment, to be followed by a probationary period of three years. The applicant was placed in detention on the same date.

61. On 26 November 2009 the applicant's lawyer appealed against the sentence, stating, in particular, that it was unlawful and based on the statements of the implicated police officers, whereas statements given by a number of witnesses had been ignored by the court; moreover, the record of the crime-scene examination and the evidence allegedly collected during it did not reflect the true circumstances surrounding the incident.

62. On 23 December 2009 the Chechnya Supreme Court upheld the sentence on appeal. It stated in general terms that the factual circumstances of the case had been correctly established by the first-instance court.

63. On 26 March 2010 the Presidium of the Chechnya Supreme Court re-examined the sentence and suspended it, owing to the state of the applicant's health. The applicant was released on the same date.

D. The applicant's complaints regarding the lack of medical treatment

64. On 1 September 2009 a doctor from the Ninth Clinical Hospital in Grozny, Mr S., stated to the applicant's representatives that after the shooting the applicant had arrived at their hospital in a very serious condition and under police guard. For a proper diagnosis of his injuries a

computed tomography (MRI) scanner had been necessary; such technology had not been available in the region. Accordingly, it had been suggested to the applicant that he seek specialised medical treatment outside Chechnya; the police had been informed of the necessity of that measure. The applicant's representatives had informed the investigators of that recommendation when lodging their complaint of 11 September 2009 (see paragraph 66 below).

65. On the same date the applicant's representatives also obtained a statement from a senior nurse at the orthopedics and contaminated surgery department of the Ninth Clinical Hospital, Ms B., who confirmed that the applicant had arrived at the hospital in a very serious condition and guarded by the police. She had been told by the applicant's relatives that the police had not allowed him to leave Chechnya to seek recommended medical assistance outside the region. That statement was provided to the investigators along with the complaint of 11 September 2009 (see the following paragraph).

66. On 11 September 2009 the applicant's representatives lodged a complaint with the investigators' superiors, stating that between 5 December 2006 and 2 February 2007 the police had prevented the applicant from seeking urgent specialised medical treatment outside Chechnya; their refusal to allow him to leave Chechnya had resulted in serious damage to his health and to permanent disability. On 14 September 2009 the investigators' superiors replied, stating that the circumstances complained of would be examined during the applicant's criminal trial. From the documents submitted it can be seen that the issue was not examined at the trial, despite requests lodged by the applicant's representatives to that end (see paragraphs 56 and 58 above).

67. On 13 and on 15 October 2009 the applicant's lawyer lodged requests with the investigators and their superiors, respectively, for part of the case-file material to be severed from the criminal case against the applicant in order that a criminal investigation could be initiated in respect of the actions of the police officers who had allegedly employed unlawful lethal force against the applicant and then impeded him from seeking urgent medical treatment outside Chechnya, which had led to his disability.

68. On 16 October 2009 the investigators replied that the requested severance could not be accomplished as the criminal case file against the applicant had already been transferred to the court for the trial. The applicant's lawyer brought an action challenging the above reply in the Staropromyslovskiy District Court in Grozny (the Staropromyslovskiy District Court) (see paragraphs 75 and 76 below).

69. On 30 January 2010 the applicant's lawyer again requested the investigators' superiors that a separate inquiry be carried out in respect of the police officers who had guarded the applicant in the Ninth Clinical Hospital and had prevented him from receiving specialised medical

assistance. He also requested that the refusal of 11 March 2009 be overruled (see paragraph 70 below) as unlawful. No reply was given to these requests.

V. REFUSAL TO OPEN A CRIMINAL CASE AGAINST THE POLICE OFFICERS AND THE APPLICANT'S APPEALS AGAINST IT

70. On 11 March 2009 the investigators refused, for lack of *corpus delicti*, to institute criminal proceedings against the police officers who had opened fire on the applicant in their actions, having found that their use of firearms had been justified, given the applicant's attack on them. Their conclusion was based on the statements given by the implicated police officers.

71. On 6 May 2009 the applicant's lawyer lodged an appeal against the investigators' refusal with the Grozny District Court, requesting that it be overruled and that a new inquiry be carried out into the actions of the police officers. Referring to Articles 2 and 3 of the Convention, he stated, in particular, that when refusing to open a criminal case, the investigators had based their conclusions only on the statements of the implicated police officers. The investigators had neither examined the applicant's statements nor the statements of his relatives and of his neighbours, Mr Kh.A., Mr P.A., Mr S.I., Mr A.Yu. and Mr Z.S., according to whom only machine guns had been fired, but no pistol. The lawyer stressed that the police officers had used lethal force against the applicant without any justification (as the applicant had not been sought by the authorities and no criminal proceedings had been pending against him) and that the area of the special operation had not been secured or cordoned off.

72. On 8 June 2009 the Grozny District Court refused to allow the above request, stating that the applicant's lawyer would be able to question the witnesses during the applicant's criminal trial.

73. On 1 July 2009 the applicant's lawyer lodged a complaint with the Chechnya Prosecutor, challenging the lawfulness of the refusal of 11 March 2009. In reply, on 31 July 2009 he was informed that the refusal of 11 March 2009 had been unlawful and that it was to be overruled. Then, on 28 September 2009, in reply to his request for information, he was informed that the refusal had not been overruled and that the complaint had been sent to the head of the investigators for further examination.

74. As mentioned above, on 9 October 2009 the applicant's lawyer requested the Staropromyslovskiy District Court to order an inquiry into the actions of the police officers who had opened fire on the applicant without any provocation and then prevented him from receiving the specialised medical assistance (see paragraph 58 above).

75. On 13 October 2009 the applicant's lawyer again requested the head of the investigators that the refusal to open a criminal case be overruled and a new separate inquiry be carried out into the actions of the police officers

(see also paragraph 67 above). In reply, on 16 October 2009 the investigators refused to examine the complaint as the applicant's case had been transferred to the court for the trial.

76. As indicated above, on 19 November 2009 the applicant's lawyer appealed the above refusal to the Staropromyslovskiy District Court, which on 30 November 2009 refused to examine the matter, having indicated that the issues raised in the refusal could be examined by the court dealing with the criminal case against the applicant (see paragraphs 47 and 67 above).

77. On 22 December 2009 the applicant's lawyer appealed against the above decision to the Chechnya Supreme Court, which on 10 February 2010 upheld the District Court's decision. It stated that the investigators had correctly refused to examine the matter as the criminal case against the applicant was on trial and that the applicant should have raised it either at the trial or in the appeal against the sentence.

RELEVANT LEGAL FRAMEWORK

78. For the relevant domestic regulations concerning attesting witnesses see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 71, 18 December 2018 and for a summary of other applicable regulations see *Dalakov v. Russia,* no. 35152/09, §§ 51-53, 16 February 2016, and *Tagayeva and Others v. Russia* , nos. 26562/07 and 6 others, §§ 465-66, 13 April 2017.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

79. The applicant complained that he had been seriously wounded as the result of the unjustified use of lethal force by the State agents against him and that the authorities had failed to investigate the matter effectively, in violation of Article 2 of the Convention.

80. The Court notes that even though the applicant did not lose his life in the incident, it has held before that the requirements of Article 2 apply to an attack where the victim survives but which, because of the lethal force used, by its very nature put his or her life at risk (see *Tërshana v. Albania*, no. 48756/14, § 132, 4 August 2020). Therefore, Article 2 of the Convention applies. It reads as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) during an action lawfully taken for the purpose of quelling a riot or insurrection."

A. Admissibility

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

B. Merits

1. The parties' submissions

82. The applicant submitted that the use of lethal force against him had been unjustified and disproportionate and that the special operation against him had not been duly planned and executed. In particular, the officers who had been in plain clothes and had not shown their identity documents had carried out the operation against him under the pretext of a "premises check".

83. According to the applicant's submission, the investigation into the incident had been ineffective as it had failed to establish its true circumstances. In particular, the applicant submitted that there was no explanation for the lack of any evidence connecting him to the Makarov pistol with which he had allegedly fired several shots at the police officers. The crime scene had not been properly examined: his wife had found the machine-gun casings after the crime-scene examination by the investigators; the attesting witnesses, who had allegedly been present at the collection of evidence, had not in fact been there at all. The investigators and the courts had failed to take into account the witness statements concerning the lack of the pistol shots before the machine-gun fire opened by the police officers.

84. The Government submitted that the use of lethal force against the applicant had been absolutely necessary. He had been known to the police as a member of an illegal armed group capable of offering armed resistance. The police officers had been prompted to open fire on him by his shooting at them, and he had done so "with the intention of absconding".

85. As for the investigation, the Government stated in general terms that it had been carried out and that as result of its findings the domestic courts had found the applicant guilty of an attempt on the lives of the law-enforcement officers.

2. The Court's assessment

86. It is common ground between the parties that the applicant's serious injuries resulted from the use of lethal force by State agents. The Court will firstly assess the adequacy of the investigation into the surrounding circumstances and it will then turn to an assessment of the actions of the State agents.

(a) Alleged violation of the procedural limb of Article 2

87. For a summary of the applicable general principles see *Mustafa Tunç and Fecire Tunç v. Turkey* ([GC], no. 24014/05, §§ 172-73 and 182, 14 April 2015; *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 233, 30 March 2016; and *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 182, ECHR 2011 (extracts)).

88. The Court observes that the investigation into the use of lethal force by State agents was carried out within a preliminary (pre-investigation) inquiry which resulted in the refusal to open a criminal case against the police officers (see paragraph 70 above) and in the opening of the criminal case against the applicant in connection with his alleged attack on the officers on the night of the incident (see paragraphs 30 and 60 above). As for the inquiry, the Court has found that in the context of the Russian legal system, such 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 alleged perpetrators which may then be examined by a court (see *Lyapin v. Russia*, no. 46956/09, §§ 132-33, 24 July 2014). Keeping that in mind, the Court will now assess whether the investigation carried out by the domestic authorities met the Convention requirements.

89. The Court observes from the outset that the investigation failed to establish the basic circumstances of the incident, such as the exact number of officers who had participated in the operation against the applicant, their physical location at the time of the shooting, the roles they had played in its development and whether they had heard the pistol shots allegedly fired by the applicant (see paragraphs 21, 40, 42 and 48 above).

90. The investigation failed to clarify the circumstances in which the applicant had allegedly attacked the police officers. According to the documents submitted, officer Kh. was prompted to open fire on the applicant because he had fired several pistol shots at the officers, which he had done while running in the moonlight. However, according to the statements of the applicant's relatives and neighbours, no pistol shots had been heard prior to the burst of machine-gun fire discharged by the police (see paragraphs 35, 37, 39, 40, 42, 52 and 55 above). Furthermore, the key issue of whether the Makarov pistol had belonged to the applicant and whether he had indeed used it to open fire remained unclear. To this end, the

domestic court's findings that the applicant had opened the gunfire had been based solely on the statements of the implicated police officers and the admission of officer B. that he had picked up the pistol from the crime scene and then handed it over sometime later to the crime scene examination experts not at the scene, but in his office (see paragraphs 27 and 49 above). Given that the officer in charge of the special operation violated the chain of custody for the key evidence in the case, it is noteworthy that none of the other implicated police officers were questioned to verify the circumstances of the collection of the pistol by officer B., no expert evaluation of the applicant's hands and clothing for gunshot residue had been commissioned (see paragraph 32 above); and the pistol allegedly used by the applicant had not been tested for fingerprints or other biological traces (see paragraphs 24, 32, 56 and 59 above). Moreover, officer B.'s actual presence at the crime scene and therefore, the possibility of his having picked up the pistol there were contested by the witness statements given by the applicant's relatives (see paragraphs 48 and 50 above). The manner in which the investigators examined the crime scene and collected the evidence puts their findings into question and raises doubts as to the reliability of the evidence collected, given that the attesting witnesses had in fact been absent during that examination, contrary to the official record thereof (see paragraph 53 above), and given that such important evidence as machine-gun casings was found by the applicant's wife at the scene only after the examination had already been officially completed (see paragraph 23 above).

91. The Court furthermore observes that the investigators took a number of essential steps only after inexplicable delays. For instance, they only questioned the applicant, his relatives and neighbours (who had arrived at the crime scene shortly after the shooting) between one and half to two years after the incident (see paragraphs 35, 37, 39 and 42 above). Those significant omissions on the part of the investigators, as well a number of others, were explicitly criticised by the trial court in its separate ruling (see paragraph 59 above).

92. As a result of those numerous shortcomings, the investigators failed to reconstruct the chain of the events leading to the application of the lethal force and to establish the key elements of the incident. The justification submitted by the investigators for the use of lethal force was based solely on the statements of the implicated police officers (see paragraph 70 above). Moreover, there was no material evidence that the applicant had opened fire.

93. The documents submitted indicate that despite the contradictory information collected by the investigation and the consistent statements of the applicant, his relatives and neighbours, the domestic authorities failed to demonstrate a proper response to the serious allegations of an inappropriate use of lethal force by agents of the State. The Court stresses that a proper response by the authorities in investigating serious allegations of the use of

lethal force by agents of the State, in compliance with the Article 2 of the Convention, 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, *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 167, ECHR 2011).

94. In view of the foregoing, the Court concludes that there has been a violation of the procedural aspect of Article 2 of the Convention.

(b) Alleged violation of the substantive limb of Article 2

95. A summary of the applicable general principles can be found in *Cangöz and Others v. Turkey*, no. 7469/06, §§ 105-06, 26 April 2016, and *Jabłońska v. Poland*, no. 24913/15, §§ 60-62, 14 May 2020.

96. The Court notes that it is common ground between the parties that the applicant was shot and seriously wounded on 5 December 2006 as a result of the use of lethal force by State agents. However, the parties disagreed on whether the applicant's behaviour and actions had necessitated the use of lethal force against him.

97. The Court observes that according to the applicant, he had not been armed on the night of 4-5 December 2006, whereas, according to the Government, the domestic investigation established that he had attacked the police officers by opening fire on them with a pistol, and that the officers had had to protect themselves by shooting back.

98. The Court cannot subscribe to the latter finding, as it has already concluded that the investigation undertaken by the authorities (including the way in which the facts in question were established) failed to comply with the Convention standards (see paragraph 94 above). Taking into account the fact that – other than the contested statements of the implicated officers – the authorities failed to provide a reasonable explanation as to the absence of evidence showing that the Makarov pistol had been in the applicant's hands on the night of the incident and had been used by him to open fire on the police officers, the Court does not find it established that the applicant fired at the officers, as alleged.

99. The Court will now turn to the determination of whether the way in which the special operation was conducted showed that the police officers took appropriate care to ensure that any risk to the applicant's life was kept to a minimum. In carrying out its assessment of the planning and supervision phase of the operation from the standpoint of Article 2 of the Convention the Court must have particular regard to the context in which the incident occurred, as well as to the way in which the situation developed (see *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 182, *Reports of Judgments and Decisions* 1997-VI).

100. The Court observes that from the documents submitted it remains unclear what were the reasons and the purpose of the police officers' visit to the applicant's home on the night of the incident: there was no outstanding

warrant for his arrest, he was not officially wanted as a suspect and no criminal proceedings were pending against him (see paragraphs 9, 21, 25 and 27 above). However, the police officers who arrived at his address were armed with machine guns and had been warned about the possibility of armed resistance (see paragraphs 21, 25, 31 and 33 above). Therefore, it appears that despite the lack of an official confirmation to this end, the police officers had prepared a special operation against the applicant (see paragraph 9 above). That operation was not spontaneous, as the officers arrived at the applicant's house in advance (see paragraph 25 and 27 above).

101. By the time the applicant went outside, the officers had already been in his courtyard and were monitoring the house. They ought to have been ready for the developments that followed, as they had been warned of the possibility of armed resistance on the part of the applicant. However, no precautions were taken by the State agents with a view to safeguarding his life. The Court reiterates that the statements of the implicated police officers concerning the fire allegedly opened on them by the applicant are put into question by other evidence contained in the documents submitted, such as taking the Makarov pistol away from the crime scene by the police officer B. and his return of the gun to the crime scene examination team later, the lay witnesses' statements showing that the circumstances of the collection of the evidence which served as the basis for the applicant's conviction had in fact differed from the official version of the events, as well as the consistent statements of the applicant's relatives and neighbours to the effect that they had not heard pistol gunfire prior to the machine gun fire opened by the officers.

102. In the light of the foregoing, the Court finds that the Government have failed to demonstrate that resorting to lethal force against the applicant was absolutely necessary and that the actions of the authorities in respect of the planning, control and execution of the operation were sufficient to safeguard the life of the applicant (see *Dalakov,* cited above, § 87).

103. There has accordingly been a violation of the substantive aspect of Article 2 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

104. The applicant complained that he had been subjected to ill-treatment by State agents who had impeded his departure from Chechnya for necessary medical treatment, and that no investigation into the matter had been carried out, in violation of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' submissions

105. The Government contested that submission, stating that the police officers had not prevented the applicant from seeking medical treatment outside Chechnya and that there was no proof to the contrary. As for the investigation into his allegations, the Government submitted that the applicant had failed to exhaust domestic remedies by not bringing his complaints to the attention of domestic authorities.

106. The applicant stated that between 5 December 2006 and 2 February 2007 he had been guarded by police officers in the hospital, who had prevented him from having recourse to specialised medical care outside Chechnya. That delay in obtaining the necessary medical diagnosis and treatment had negatively affected his health. The authorities had failed to investigate the matter, despite his consistent complaints thereof.

2. The Court's assessment

107. According to the Government, the applicant did not lodge with the domestic authorities any complaints concerning his being obstructed by the police from leaving for medical treatment between 5 December 2006 and 2 February 2007 (see paragraph 19 above). However, from the documents submitted it can be seen, contrary to the Government's submission, that the applicant did raise that complaint with the investigating authorities (see paragraphs 64-69 and 75 above), with the court during his trial (see paragraphs 51, 56 and 58 above), and with other local courts in an attempt to initiate an investigation into his allegations (see paragraphs 75-77 above). Thus, the authorities were made aware of the applicant's complaints, within the framework of the criminal case against him, in respect of which the relevant proceedings were pending at the time. Therefore, the Court dismisses the Government's objection concerning the applicant's failure to exhaust domestic remedies.

108. Given the above, the Court finds that this complaint is linked to the one already examined under the procedural aspect of Article 2 of the Convention (see paragraph 94 above) and must therefore likewise be declared admissible.

B. Merits

1. Alleged violation of the procedural limb of Article 3

109. The Court considers that the applicant's allegations – as set out in the complaints lodged with the domestic authorities (see paragraph 107 above) were arguable under Article 3 of the Convention and therefore required the authorities to conduct an effective investigation. For a summary

of the relevant principles, see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 115-19, ECHR 2010, and *Bouyid v. Belgium* [GC], no. 23380/09, §§ 114-23, ECHR 2015.

110. The Court observes that the applicant lodged a number of complaints alleging the obstruction by the police of his departure from Chechnya for specialised medical treatment. He lodged those complaints with the investigators (see paragraphs 64-69 above) and with the Staropromyslovskiy District Court (see paragraphs 74 and 76 above), asking that a separate inquiry be conducted into their actions. He enclosed with his complaints statements by the medical staff of the hospital where he had undergone medical treatment after the shooting (see paragraphs 64 and 65 above). He either received no reply to his complaints or was informed that they would be examined during his trial. However, the documents submitted show that no steps to verify his allegations of ill-treatment were taken during the examination of the criminal case against him by the Grozny District Court either (see paragraphs 51, 56 and 58 above).

111. In view of the above, the Court concludes that the domestic authorities failed to investigate the applicant's allegations that the police obstructed his access to specialised medical treatment between 5 December 2006 and 2 February 2007.

112. In the light of the foregoing, the Court considers that the applicant did not have the benefit of an effective investigation into his allegations of ill-treatment. It consequently finds a violation of the procedural head of Article 3 of the Convention.

2. Alleged violation of the substantive limb of Article 3

113. For a summary of the relevant general principles, see *Bouyid*, cited above, §§ 81-82 and §§ 86-87.

(a) Establishment of the facts

114. A summary of the general principles relating to the establishment of matters in dispute, in particular when faced with allegations of violations of fundamental rights, including those under Article 3 of the Convention, can be found in *El Masri v. "the former Yugoslav Republic of Macedonia"* ([GC], no. 39630/09, §§ 151-52 and 155, 13 December 2012). In examining such allegations the Court may take account of the quality of the domestic proceedings in question and any possible flaws in the decision-making process (see *Denisenko and Bogdanchikov v. Russia*, no. 3811/02, § 83, 12 February 2009).

115. The parties in the present case disagreed as to whether the alleged ill-treatment had indeed taken place. The documents submitted show that no assessment of evidence and establishment of the relevant facts had been

carried out by domestic courts (see paragraph 111 above). It is therefore for the Court to assess the facts of the case, as presented by the parties.

116. The documents submitted show that between 5 December 2006 and 2 February 2007 the applicant was hospitalised in Grozny, Chechnya, and then, between 12 and 15 February 2007, in the neighbouring Stavropol Region. According to the applicant, he was guarded at the hospital in Grozny by police, who had prevented him from leaving to seek medical procedures unavailable in Chechnya. According to the applicant's statement, the fact that he had been able to attain the necessary assistance only at a later date had led to a deterioration in the state of his health in the long-term. However, the applicant did not enclose an expert medical evaluation demonstrating the impact on his general state of health of the fact that the medical assistance was allegedly only rendered belatedly (see, *mutatis mutandis*, *Krivolapov v. Ukraine*, no. 5406/07, § 76, 2 October 2018).

117. Furthermore, the documents submitted show that in his complaints regarding the police allegedly obstructing his access to medical assistance (see paragraphs 51 and 76 above) the applicant referred to the statements of the medical doctor and the nurse at the hospital (see paragraphs 64 and 65 above). However, those statements, even though confirming the presence of the police officers during the applicant's arrival at the hospital, did not specify for how long the police had been present in the applicant's room and what concrete steps they had taken (and when) to prevent his departure from the hospital to seek medical treatment in another region.

118. Lastly, the Court notes that the measure of restraint (that is to say the undertaking not to leave his place of residence) was imposed on the applicant only in March 2009 and that prior to that the applicant had had recourse to medical treatment in other regions (see paragraphs 14, 16, 19 and 43 above).

119. In the light of the above, the Court does not find it established that the applicant was subjected to ill-treatment through lack to access to specialised medical assistance between 5 December 2006 and 2 February 2007.

(b) Conclusion

120. Bearing in mind the principles referred to and its findings in paragraph 119 above, the Court finds that there has been no violation of Article 3 of the Convention under its substantive limb.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

121. The applicant complained that there had been no effective remedies in respect of the alleged violations of Articles 2 and 3 of the Convention. Article 13 reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

122. The Court observes that the applicant's complaints under Article 13 in conjunction with Articles 2 and 3 of the Convention concern the same issues as those examined above under the procedural limbs of those provisions and therefore should be declared admissible. However, having regard to its conclusions under the procedural limb of Articles 2 and 3 of the Convention (see paragraphs 94 and 111 above), the Court considers it unnecessary to examine those issues separately under Article 13 (see *Gaysanova v. Russia*, no. 62235/09, § 142, 12 May 2016, and *Orlov and Others v. Russia*, no. 5632/10, § 122, 14 March 2017).

IV. 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 50,200 euros (EUR) in respect of pecuniary damage – EUR 200 for his medical expenses and EUR 50,000 for loss of earnings. The claim in respect of medical expenses was supported by copies of medical bills. No documents substantiating the claim in respect of the loss of earnings were enclosed. The applicant also claimed EUR 200,000 in respect of non-pecuniary damage.

125. The Government submitted that the claim for pecuniary damage was unreasonable and unsubstantiated. As for non-pecuniary damage, they stated that the amount claimed was excessive and that the finding of a violation would constitute sufficient compensation.

126. Taking into account the nature of the violations found and the parties' submissions, and ruling on an equitable basis, the Court awards the applicant EUR 200 in respect of pecuniary damage and EUR 40,000 in respect of non-pecuniary damage, plus any tax chargeable on those amounts.

B. Costs and expenses

127. The applicant also claimed EUR 4,000 for the costs and expenses incurred before the Court.

128. The Government submitted that that claim was unsubstantiated.

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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the lack of documents substantiating the claim, such as a contract for legal representation between the applicant and his representatives, as well the lack of itemised bills or invoices (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 370-72; 28 November 2017, and *Altay v. Turkey (no. 2)*, no. 11236/09, § 87, 9 April 2019), the Court rejects the applicant's claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of the substantive aspect of Article 2 of the Convention;

3. *Holds* that there has been a violation of the procedural aspect of Article 2 of the Convention;

4. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;

5. *Holds* that there has been no violation of the substantive aspect of Article 3 of the Convention;

6. *Holds* that there is no need to examine separately the complaint under Article 13 in conjunction with Articles 2 and 3 of the Convention;

7. *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 200 (two hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 40,000 (forty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above 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 6 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško
Registrar

Paul Lemmens
President