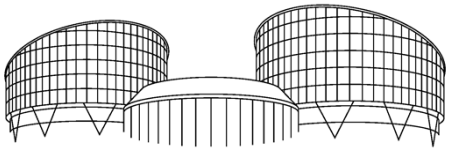

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KUTAYEV v. RUSSIA

(Application no. 17912/15)

JUDGMENT

Art 3 (substantive and procedural) • Ill-treatment of Chechen human rights activist aiming to extract confession in relation to drug-related charges amounting to torture • Lack of effective investigation
Art 6 § 1 (criminal) • Trial rendered unfair by virtue of domestic courts' use of applicant's confessions for his conviction • Failure to carry out independent and comprehensive review of credible allegation that confessions resulted from police violence
Art 5 § 1 • Arbitrary arrest and detention lacking legitimate purpose
Art 18 (+ Art 5) • Restriction for unauthorised purposes • Deprivation of applicant's liberty with ulterior purpose of punishing him for arranging a conference and refusing to attend a meeting with the Chechen President

STRASBOURG

24 January 2023

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 Kutayev v. Russia,

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

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Yonko Grozev,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,

and Olga Chernishova, *Deputy Section Registrar,*

Having deliberated in private on 6 December 2022,

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

INTRODUCTION

1. The case concerns the alleged arrest, unlawful detention and ill-treatment of a well-known Chechen human rights activist in connection with a drug-related offence, and his subsequent conviction on the basis of confessions allegedly obtained under duress. The applicant alleged that the actual reason for his arrest and prosecution was the holding of a conference which caused dissatisfaction among the Chechen authorities.

PROCEDURE

2. The case originated in an application (no. 17912/15) 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 Ruslan Makhamdiyevich Kutayev ("the applicant"), on 10 April 2015.

3. The applicant was represented before the Court by Mr I.A. Kalyapin, Ms O.A. Sadovskaya and Mr A.G. Ryzhov, lawyers of the non-governmental organisation Committee against Torture, based in Nizhniy Novgorod. The Government were initially represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and later by Mr M. Vinogradov, his successor in that office.

4. On 17 September 2020 the Russian Government ("the Government") were given notice of the complaints concerning alleged ill-treatment, unlawful detention, conviction based on confessions obtained under duress, and the alleged ulterior purpose of the applicant's arrest. On 6 April 2021 the Government submitted their observations on the admissibility and merits of the application. The applicant's observations were received on 25 July 2021.

5. On 16 March 2022 the Committee of Ministers of the Council of Europe, in the context of a procedure launched under Article 8 of the Statute

of the Council of Europe, adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022.

6. On 22 March 2022 the Court, sitting in plenary session in accordance with Rule 20 § 1, adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights". It stated that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022.

7. On 5 September 2022 the Plenary Court took formal notice of the fact that the office of judge with respect of the Russian Federation would cease to exist after 16 September 2022. This, as a consequence, entailed that there was no longer a valid list of *ad hoc* judges who would be eligible to take part in the consideration of cases where the Russian Federation was the respondent State.

8. By a letter of 8 November 2022, the parties were informed that the President of the Section intended to appoint one of the sitting judges of the Court to act as an *ad hoc* judge for the examination of the present case (applying by analogy Rule 29 § 2 of the Rules of Court). The respondent Government were informed that it was also envisaged to apply the same approach in respect of other applications against that State that the Court remained competent to deal with. They were invited to comment on that arrangement by 22 November 2022, but they did not submit any comments.

9. Accordingly, the President of the Chamber decided to appoint an *ad hoc* judge from among the members of the composition, applying by analogy Rule 29 § 2 (b).

THE FACTS

10. The facts of the case may be summarised as follows.

I. BACKGROUND INFORMATION

A. Deportation of the Chechen people under the Stalin regime

11. The Chechen-Ingush massive deportation, also known as "Operation Lentil" or Aardakh, occurred during the Second World War immediately after the Soviet Army had reconquered the territories occupied by the German Army. By Decree no. 5073 of 31 January 1944, the USSR State Defence Committee ordered the abolition of the Autonomous Chechen-Ingush Soviet Socialist Republic and the deportation of its population to Central Asia and Kazakhstan for "collaboration with German invaders". On 23 February 1944 "Operation Lentil" started, under the supervision of the head of the NKVD

(People's Commissariat for Internal Affairs), Lavrentiy Beria; it lasted until 9 March 1944. About half a million Chechen and Ingush people were sent into exile, which lasted a total of thirteen years. In 1957 the Chechens were rehabilitated and allowed to return to Chechnya.

12. On 26 February 2004 the European Parliament adopted a recommendation to the Council of the European Union on EU-Russia relations (2003/2230(INI)), stating that "the deportation of the entire Chechen people to Central Asia on 23 February 1944 on the orders of Stalin constitutes an act of genocide within the meaning of the Fourth Hague Convention of 1907 and the Convention for the Prevention and Repression of the Crime of Genocide adopted by the UN General Assembly on 9 December 1948".

13. 23 February is remembered as a day of tragedy by many in Chechnya and Ingushetia. On this date Russia celebrates its Defender of the Fatherland Day (*День защитника Отечества*), decreed as a State holiday. In 2011 the Chechen President Mr Ramzan Kadyrov decreed that 10 May would commemorate the Day of Remembrance and Sorrow of the Chechen People in memory of all tragic events in their history.

B. The applicant's political activity

14. The applicant was born in 1957 and lives in Chechnya. He is a politician and human rights activist. In the 1990s he set up his own political party advocating for the independence of Chechnya. He served as a deputy prime minister in the government headed by Mr Aslan Maskhadov, the President of the self-proclaimed independent Chechen State. The applicant consistently criticised the military operation in Chechnya and reported human rights violations allegedly committed by Russian servicemen. In 2012 the applicant became the head of the non-governmental organisation "Assembly of Peoples of the Caucasus".

15. On 18 February 2014 the applicant organised a conference in Grozny commemorating the seventieth anniversary of the deportation of the Chechen population (hereinafter "the conference"). According to the applicant, about 100 historians, politicians and other participants from Russia, the United States, Austria and Germany took part in the conference. They discussed, *inter alia*, the possibility of creating an international committee which could sue the Russian Government as a successor of the USSR.

16. According to the applicant, on 19 February 2014 the then head of the Chechen President's administration, Mr M.D., summoned the applicant and several other conference participants to meet the President of Chechnya, Mr Ramzan Kadyrov. On the same day the meeting took place, but the applicant refused to come. At the meeting the President admonished the participants, telling them that the activities commemorating the victims of the deportation should have been held on 10 May, the official Day of Remembrance and Sorrow of the Chechen People.

II. THE APPLICANT'S ARREST AND ALLEGED ILL-TREATMENT

A. The applicant's version of the events of 20 February 2014

17. On 19 February 2014 the applicant left Grozny, fearing for his safety. He stayed at the house of his relative, Mr B., in the town of Gekhi, in the Urus-Martan District.

18. At about 12 noon on 20 February 2014 the applicant made several telephone calls to friends and acquaintances, including Mr Kalyapin, his representative. The applicant expressed his concerns about the conference and his refusal to meet Mr Ramzan Kadyrov leading to pressure being exerted on him and his possible persecution by the Chechen authorities (see paragraphs 49-52 below).

19. At about 2 p.m. a group of armed men in black camouflage uniform arrived at Mr B.'s house. They arrived in six black vehicles with registration plates "EE ... E", as used by the Chechen President's security service. Without introducing themselves, the men put a jacket over the applicant's head and put him in a vehicle. The men took the applicant to an undisclosed location. When they arrived, the applicant found himself in a small yard surrounded by two two-storey buildings. The applicant saw Mr A.A., the Deputy Minister of the Interior of Chechnya, and Mr M.D. from the President's administration. According to the applicant, the two men beat him for about thirty minutes, during which he fainted several times. The applicant was then taken to a basement.

20. Several hours later one of the officers who had arrested the applicant came to the basement with a device resembling a remote controller. The officer held a knife to the applicant's throat and subjected him to electric shocks using the device. According to the applicant, the ill-treatment lasted for about thirty or forty minutes. The officer demanded that the applicant sign some documents. When the applicant refused, the officer called other officers. Out of fear of being killed, the applicant then agreed to sign the documents. He was taken to the premises of criminal police department no. 2 in Grozny (*Оперативно-розыскная часть №2 Министерства внутренних дел по Чеченской республике*), where he signed the documents, without reading them. The officers who had abducted him and subjected him to ill-treatment stayed in the office next door, except for Mr A.A. and Mr M.D.

B. The Government's version of the events of 20 February 2014

21. On 20 February 2014 at about 2 p.m., police officers stopped the applicant for an identity check on the street in Gekhi because of his allegedly "suspicious behaviour".

22. According to a personal search record (*протокол личного досмотра*), between 2 p.m. and 2.15 p.m. Officer I.Kh. in the presence of two attesting witnesses inspected the applicant and seized a black plastic bag containing a beige-coloured substance from the right-hand pocket of his jeans.

23. According to a site investigation report (*протокол осмотра места происшествия*), Officer R.Yu., who drafted and signed the report, arrived in Gekhi following "receipt of information as part of the operational-search activity". According to the report, between 2.30 p.m. and 2.50 p.m. the officer stopped the applicant near house no. 32 for an identity check. In the presence of the attesting witnesses, he searched the applicant and seized a powder-like substance. Two photographs depicting the applicant were attached to the report.

III. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

A. Investigation into the alleged drug storage

24. On 20 February 2014 Mr A.A. issued an order for the examination of the substance found on the applicant. The order contained an enclosure, envelope no. 1. It did not contain a description of the evidence allegedly found on the applicant or a description of its packaging.

25. According to drug expert report no. 094/*ФХИ* of 20 February 2014, the object to be analysed was received in a standard white postal envelope sealed with the stamp of the Chechen Ministry of the Interior. The envelope contained a black plastic bundle with a powder-like substance inside of a grey-beige colour, weighing 3.257 grams. The substance was established as being heroin.

26. On 21 February 2014 at 1.30 a.m., Investigator Ts. recorded the applicant's arrest. At 9.30 a.m. the applicant was interviewed as a suspect in the presence of a State-appointed lawyer, Mr M. The applicant confirmed the version of events as submitted by the Government. On the same day Investigator Ts. ordered a chemical analysis of the seized substance.

27. On 22 February 2014 the applicant was charged with possession of a large amount of drugs without intent to sell them. According to the indictment, the applicant had been stopped by Urus-Martan police officers "as part of an operational-search activity". On the same day the applicant was interviewed as an accused and, in the presence of Mr M., he reiterated his statements. On the same day a reconstruction of the events was carried out near Mr B.'s house. The applicant showed where he had been allegedly stopped by police officers and searched.

28. On 24 February 2014 the applicant met Mr Kalyapin in the presence of. Mr A.A.. The applicant explained that the injuries he had sustained had been caused during a fight with a friend several days before the arrest.

29. On the same day the applicant met his lawyer, Mr Ye.M. Owing to the risk of surveillance, the lawyer questioned the applicant in writing. The applicant submitted the interview records, the relevant parts of which read as follows:

"...

Lawyer: Has physiological or physical pressure been put [on you]?

Applicant: Yes.

[L]: Who was beating [you]?

[A]: [Mr] A.A. and [Mr] M.D. beat [me] there. [At the IVS], the head of the criminal police and someone else [have beaten me].

...

[L]: Are you afraid to give statements and tell the truth?

[A]: Yes.

[L]: Were you telling the truth about the injuries being caused during the fight with a friend?

[A]: No.

[L]: Did you tell the employees of the non-governmental organisations the truth about the injuries?

[A]: No. I was tortured, beaten, every minute there are threats from the head of the Urus-Martan criminal police and other people connected to him. They tortured me with electric shocks in Grozny. Every minute I am under threat of reprisal. Help me! They are threatening my family and relatives with reprisals.

[L]: Have there been threats of sexual violence?

[A]: Yes!!!

[L]: Do you confess to the crimes you are charged with ...?

[A]: No, I do not confess, but I am being subjected to torture and threats.

[L]: Do you need medical aid?

[A]: Yes.

[L]: Are you ready to lodge a complaint with the investigative committee ... regarding the events?

[A]: I ask that these replies to the questions be treated as an official complaint to the law-enforcement bodies under Articles 144-45 of the Code of Criminal Procedure."

30. The applicant added his signature under each reply.

B. Proceedings concerning the applicant's detention

31. On 22 February 2014 the Urus-Martan District Court ordered the applicant's detention on remand.

32. The applicant appealed against the District Court decision, arguing that there were no grounds for his arrest and placing him in detention on remand.

33. On 27 February 2014 the Supreme Court of Chechnya dismissed his appeal against the court decision.

34. The applicant's detention on remand was extended until his conviction on 7 July 2014.

IV. OFFICIAL INQUIRY INTO THE ALLEGED ILL-TREATMENT

35. On 1 March 2014 the Russian newspaper *Novaya Gazeta* published an article entitled "Memory therapy. By electric shocks" about the applicant's arrest and alleged ill-treatment. It described in detail the circumstances of the applicant's arrest as submitted by him and his alleged ill-treatment by law-enforcement officers, and was accompanied by photographs of him with his alleged injuries, and a copy of the text of his interview with his lawyer.

36. Following publication of the article, on 3 March 2014 the Investigative Committee of Russia in Chechnya opened an inquiry into abuse of power by officials of the Chechen government. The inquiry was delegated to Mr Z., an investigator for particularly serious cases from the Investigation Department of the Investigative Committee of Russia in Chechnya.

37. On 7 and 8 March 2014 the applicant's brothers, Mr A.K. and Mr G.K., submitted to the investigator that they had learned of the applicant's arrest from their relative, Mr B., at whose house he had been arrested on 20 February 2014. They had then learned from the applicant that he had been beaten by police officers. He was a law-abiding person and had never used drugs. In their view, his arrest and prosecution were the result of dissatisfaction among the Chechen authorities about the holding of the conference and his refusal to meet Mr Ramzan Kadyrov.

A. The applicant's medical records

38. According to the record of the medical examination drawn up at the temporary detention facility ("the IVS") on 21 February 2014, the applicant had bruises on his right leg in the buttock area and his left hand. The applicant explained that he had fallen down the stairs.

39. In photographs of the applicant taken on 24 and 28 February 2014 and submitted to the Court, it can be observed that he had numerous dark dots on the skin of his left arm, various dark purple marks on his left arm and a large dark purple mark on his right buttock.

40. On 11 March 2014 the investigator ordered a forensic medical examination of the applicant and put forward a question as to whether the applicant's injuries could have been caused by electric shocks. The applicant was examined on 14 March 2014. According to forensic medical report

no. 68, the applicant had an abrasion on the middle third of his left lower leg caused by a hard blunt object. It was deemed not to have caused any harm to his health. The report did not contain an explanation in reply to the investigator's question as to the injuries possibly caused by electric shocks.

B. Refusal to open a criminal investigation

41. On 2 April 2014 the investigator refused to open a criminal case into alleged abuse of power, finding the applicant's complaints unfounded. The investigator relied on the statements of the head of the police and the head of criminal police of the Urus-Martan district, who had denied any use of force against the applicant. Mr M.D. and Mr A.A. stated that they did not know the applicant, and that they had not beaten him. The decision cited the expert's conclusions as set out in forensic medical report no. 68 (see paragraph 40 above). The investigator referred to Mr A.K.'s and Mr G.K.'s submissions given on 7 and 8 March 2014 (see paragraph 37 above), and the applicant's explanations contained in the IVS records that the bruises on his left arm and leg resulted from his having fallen down the stairs (see paragraph 38 above). The investigator also noted that upon his admission to the IVS, the applicant had not submitted any complaints. As to the applicant's arrest, his allegations were found to be unsubstantiated. The investigator concluded that the applicant was a suspect in a criminal case, that he was represented by a lawyer, that he had not complained of ill-treatment at the time of the events and that by subsequently alleging ill-treatment, the applicant was attempting to evade criminal responsibility.

C. Judicial review of the decision of 2 April 2014

42. On 11 July 2014 the applicant's lawyer challenged before the Staropromyslovskiy District Court the refusal to open a criminal investigation, arguing that the inquiry had been incomplete because the investigator had ignored the applicant's relatives' statements about the circumstances of his arrest while mainly relying on the explanations of the police officers and Mr M.D.

43. On 15 July 2014 the Staropromyslovskiy District Court dismissed the appeal as unfounded. The court cited the investigator's references to the statements of State officials and the applicant's medical records, and the investigator's finding that the applicant was attempting to evade criminal responsibility.

44. On 26 August 2014 the Supreme Court of Chechnya rejected the applicant's appeal, referring to his conviction of 7 July 2014. It concluded that the applicant's allegations had been examined during his trial.

V. THE APPLICANT'S TRIAL

45. On 10 April 2014 the Urus-Martan District Court started the examination of the applicant's criminal case.

46. At the trial the applicant retracted his confession given on 21 and 22 February 2014. He submitted that he had been arrested on 20 February 2014 in Mr B.'s house, that police officers had beaten him and subjected him to electric shocks, and that they had forced him to confess to the crime of which he was accused. The applicant explained that he had not retracted the statements earlier out of fear for his life and family.

A. Witness statements regarding the applicant's arrest

47. The court heard several witnesses, who had been warned that they could incur criminal liability for giving false statements.

48. Mr B., the applicant's relative, submitted at the trial that the applicant had been in his house when on 20 February 2014, at around lunchtime, police officers had come and asked for the applicant. They had put him in a vehicle and driven in an unknown direction. On 22 February 2014 police officers had arrived with the applicant. He saw that the applicant was handcuffed.

49. Mr A.K., the applicant's brother, submitted that on 19 February 2014 police officers had come to the applicant's house and asked for his whereabouts.

50. Mr Kalyapin stated that on 20 February 2014, at around 12 noon, the applicant had called him and mentioned that "he had problems and was being pursued" in connection with the conference that he had held. At around 7 p.m. Mr Kalyapin had learned that the applicant had been arrested with drugs on him. Mr Kalyapin did not believe the accusations and had travelled to Chechnya to meet the applicant. On visiting him in the IVS on 24 February 2014, Mr Kalyapin had found that the applicant had large haematomas on his left forearm and his leg, as well as dotted marks indicative of electric shocks. Mr A.A. had been present during the entire meeting and the applicant had been reluctant to talk in his presence. Mr Kalyapin stated that he had later learned from the applicant himself that he had been beaten by Mr M.D. and Mr A.A.

51. Mr V.I., a friend of the applicant, stated that the applicant had called him on 20 February 2014 at around 12.10 p.m. and told him that Mr M.D. had threatened him over the telephone. The applicant had not known what to do and Mr V.I. had recommended that he leave Chechnya immediately. Later that day Mr V.I. had been unable to reach the applicant by telephone. In the evening he had learned from the applicant's brother that the applicant had been arrested on drug-related charges, which he did not believe as the applicant had never had issues with drugs.

52. Mr G.G. and Mr S.N., Russian politicians, submitted that on 20 February 2014 the applicant had called them and asked for help in view of his possible prosecution because of the conference. On the same day they had learned that the applicant had been arrested on suspicion of a drug-related crime. In their view, the applicant's prosecution was politically motivated.

53. The attesting witnesses submitted that on 20 February 2014, at about 2 p.m., they had been invited by police officers to attest to the applicant's search. By the time they had approached the scene, other police officers and the applicant had already been waiting for them.

54. Police officers B.Z., I.Kh., S.M., Kh.B., S.A. and R.Yu. stated that they had stopped the applicant at around 2 p.m. on 20 February 2014 for an identity check because he had "been acting strangely". They had decided to search him and for that reason they had invited attesting witnesses. As a result of the search, they had discovered drugs on the applicant.

55. Mr M.D. submitted in court that he had not known the applicant before he had called him in February 2014. The purpose of the telephone call had been to arrange a meeting with the applicant but the latter had been out of town. Mr M.D. refused to provide any details about the date of the telephone conversation with the applicant and its content. He also denied any involvement in the events in question.

56. It appears from the documents available to the Court that Mr A.A. was never summoned to the trial and questioned as a witness.

B. The applicant's conviction

57. On 7 July 2014 the Urus-Martan District Court convicted the applicant as charged and sentenced him to four years' imprisonment. The court relied, among other evidence, on the following:

– the applicant's statements of 21 and 22 February 2014;
– witness statements of police officers and attesting witnesses;
– the site investigation report of 20 February 2014;
– chemical expert report no. 094/*ФХИ* of 20 February 2014;
– the reconstruction record of 22 February 2014.

58. The court dismissed the applicant's arguments that his arrest had been motivated by his involvement in the conference, which had caused discontent among the Chechen authorities. It found the statements of defence witnesses in support of his arguments unreliable because they were based on the assumption that the applicant could not have been involved in a drug-related offence.

59. The court dismissed the applicant's arguments that the confession had been obtained under duress, noting that he had not complained during the investigation that he had been ill-treated, and that he had given his statements in the presence of a lawyer.

C. Appeal proceedings

60. On 7 August 2014 the applicant lodged an appeal with the Supreme Court of Chechnya. He argued that the officers had arrested him in the house of his relative and not on the street with drugs on him, that he had been ill-treated by the police, and that he had been forced to confess to the possession of heroin. His arrest and prosecution had been triggered by the conference that he had arranged. The applicant challenged the witness statements of the police officers about the circumstances of his arrest and the statements of the attesting witnesses.

61. On 31 October 2014 the Supreme Court of Chechnya dismissed the applicant's arguments as unfounded and endorsed the findings of the Urus-Martan District Court. Regarding the alleged ill-treatment and confessions allegedly obtained under duress, the court referred to the refusal of 2 April 2014 to open a criminal case.

VI. OTHER MATERIAL SUBMITTED BY THE APPLICANT

62. On 25 February 2014 a local Chechen television channel broadcast the meeting between the Chechen President Ramzan Kadyrov and the Public Chamber of Chechnya. The President gave a statement, the relevant parts of which read as follows:

> "Now that [the applicant] is arrested, everyone is talking about it ... I will tell you the whole story. ... [A]llegedly [the applicant] was tortured. [The applicant] was asked: Were you tortured? He replied: No. Was there any misconduct towards you? He replied: There was not. They all met, they had a dialogue, lawyers were present, but yet the article was issued.
>
> And what were they doing? [The applicant] conducted a conference timed for 23 February – that is why he was arrested. There were [the applicant's] uncle ..., all our professors, our people. I invited them all and told [Mr M.D.] to call them and ask them to come.
>
> ...
>
> What was the reason for choosing the date of 10 May? ... We, by coordinating all tragic dates and events of our people on one day, have decided that for one day we will pray and implore Almighty God for our killed, dead and infirm ... At the academic conference one has to tell the truth so that we will not have any more such instances. Now human rights activists are worried ..."

63. On 11 March 2014 *Novaya Gazeta* published an article entitled "Is this the first political prisoner in Chechnya?", citing the Chechen President's speech of 25 February 2014.

64. On an unspecified date after the conviction, Amnesty International declared the applicant a "prisoner of conscience".

65. On 30 December 2014 *Novaya Gazeta* reported that Mr A.A. and Mr M.D. had been included in the United States Magnitsky Act on sanctions

in relation to their involvement in the alleged falsification of the criminal case against the applicant.

66. Between March and October 2014 *Novaya Gazeta* published several articles highlighting the court proceedings against the applicant. On 11 August 2014 the newspaper reported that the Memorial Human Rights Centre had declared the applicant to be a "political prisoner".

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW AND PRACTICE

67. For the relevant domestic law on the prohibition of torture and other forms of ill-treatment and the rights of suspects, see *Ryabtsev v. Russia* (no. 13642/06, §§ 48-52, 14 November 2013); *Lyapin v. Russia* (no. 46956/09, §§ 96-102, 24 July 2014); and *Turbylev v. Russia* (no. 4722/09, §§ 46-49, 6 October 2015).

68. Article 125 of the Code of Criminal Procedure of the Russian Federation provides for judicial review of decisions, acts or inaction on the part of an inquirer, investigator or prosecutor which affect constitutional rights or freedoms. The judge is empowered to verify the lawfulness and reasonableness of the decision, act or inaction and to do the following: (i) to declare the impugned decision, act or inaction unlawful or unreasonable and to order the authority concerned to remedy the violation; or (ii) to dismiss the complaint.

69. In its Resolution of 10 February 2009, the Plenary Supreme Court of Russia stated that it was incumbent on judges – before processing an Article 125 complaint – to establish whether the preliminary investigation had been completed in the main case. If the main case has already been sent for trial or the investigation completed, the complaint should not be examined unless it has been brought either by a person who is not a party to the main case or if such a complaint is not amenable to judicial review under Article 125 at the pre-trial stage of the proceedings. In all other situations the complaint under Article 125 should be left unexamined and the complainant should be informed that he or she can raise the matter before the trial or appeal courts in the main case.

II. RELEVANT COUNCIL OF EUROPE MATERIAL

70. The relevant parts of the public statement of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning the Chechen Republic and other republics of the North Caucasian region of 11 March 2019 read as follows (with original emphasis):

> "Since it issued the 2007 public statement, the CPT has carried out a further three visits to the Chechen Republic (in April 2009, April/May 2011 and November/December 2017) ... Regrettably, it is clear from the information gathered by the Committee in the course of those visits that **resort to torture and other forms of ill-treatment by members of law enforcement agencies in the Chechen Republic remains widespread**, as does the related practice of unlawful detentions which inevitably heightens significantly the risk of resort to ill-treatment, in particular due to the denial of fundamental safeguards. ...
>
> [T]he visiting delegations received a considerable number of credible allegations of physical ill-treatment of detained persons whilst in the custody of law enforcement agencies. The ill-treatment alleged was often of such a severity that it could amount to torture; the methods involved included the infliction of electric shocks to various parts of the body (e.g. toes, fingers, ears and genitals), extensive beating and asphyxiation using a plastic bag or gas mask. In a number of such cases, allegations of ill-treatment were supported by medical evidence, in the form of both traumatic lesions directly observed by the delegations' forensic medical experts and entries in medical documentation examined in detention facilities. ..."

71. On 8 June 2016 the rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe published a report entitled "Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?". The relevant part of the report reads as follows:

> "[P]olice officers still routinely apply torture in order to obtain confessions, which remain the principle basis of guilty verdicts by courts. In some cases, the accused had explicitly complained in court that their confession had been extracted by torture, for example in the case[s] of [the applicant] ... Regarding [the applicant's case], the Assembly's President received an appeal signed by numerous representatives of Russian civil society. According to the signatories, [the applicant] had been 'punished' by trumped-up drug possession charges for having protested against the change, decided by [Mr Ramzan Kadyrov], of the date of the official remembrance day for the deportation of the Chechen people by Stalin during the Second World War ..."

72. On 25 April 2017 the Parliamentary Assembly of the Council of Europe adopted Resolution 2157 (2017), which stated, in particular, the following:

> "...
>
> 3.7 [I]n the Chechen Republic, the authorities continue to nurture a climate of pervading fear in an atmosphere of personalisation of power. The head of the republic has made public threats against political opponents, human rights activists and their families ..."

73. On 7 February 2020 the Council of Europe Commissioner for Human Rights issued a statement on physical assaults against a journalist and a lawyer in Chechnya which, in so far as relevant, reads as follows:

> "...
>
> The climate of hostility against independent civil society activists, human rights defenders, lawyers and journalists in Chechnya is often fomented by virulent and threatening speech of political leaders, including at the highest levels of the Republic,

which in turn leads to impunity for those who committed these serious human rights violations. ...”

III. RELEVANT EUROPEAN UNION DOCUMENTS

74. On 14 February 2019 the European Parliament adopted a Resolution on the situation in Chechnya and the case of Oyub Titiev (2019/2562(RSP)). The relevant parts of the Resolution read as follows:

> “... Chechnya has experienced a dramatic deterioration in the human rights situation over the past few years, which effectively prevents independent journalists and human rights activists from continuing their work without putting their own lives and the lives of their family members, friends and colleagues at risk; whereas the numerous reports of systematic and serious human rights abuses in Chechnya demonstrate the failure of the Chechen and Russian authorities to uphold the rule of law;
>
> ...
>
> Chechen officials have repeatedly threatened human rights defenders or denounced their work and have failed to publicly condemn threats of violence against them, thereby creating and perpetuating a climate of impunity for the perpetrators of acts of violence against human rights defenders;
>
> ...
>
> [The European Parliament] [e]xpresses its deep concerns over the worrying trend of arrests, attacks and intimidation of independent journalists, human rights defenders and their supporters ... which appear to be part of coordinated campaigns; considers the case of Oyub Titiev to be illustrative of numerous other prosecution cases built on fabricated evidence that underpins the flawed justice system in the Chechen Republic and the Russian Federation; recalls that similar charges related to drug possession have also been brought against Caucasus Knot journalist Zhalaudi Geriev and human rights activist Ruslan Kutaev, and calls for them also to be released ...”

THE LAW

I. PRELIMINARY ISSUES

75. The Court observes that the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022 (see paragraph 5 above) and that it also ceased to be a Party to the Convention on 16 September 2022 (see paragraph 6 above).

76. In those circumstances, the Court is called upon to determine whether it has jurisdiction to deal with the present application, although its jurisdiction has not been disputed in the context of the present proceedings by the respondent State. Since the scope of the Court’s jurisdiction is determined by the Convention itself, in particular by Article 32, and not by the parties’ submissions in a particular case, the mere absence of a plea cannot extend that jurisdiction (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006 III). The Court must satisfy itself that it has jurisdiction in any case brought before it, and is therefore obliged to examine the question of its

jurisdiction at every stage of the proceedings, of its own motion where necessary (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 201, ECHR 2014 (extracts)).

77. The legal basis for the Court's jurisdiction in the event that one of the Council of Europe member States ceases to be a Contracting Party to the Convention can be found in Article 58 of the Convention. That provision, in so far as relevant, provides:

> "1. A High Contracting Party may denounce the ... Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
>
> 2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under [the] Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
>
> 3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to [the] Convention under the same conditions.
>
> ..."

78. It appears from the wording of Article 58, and more specifically the second and third paragraphs, that a State which ceases to be a Party to the Convention by virtue of the fact that it has ceased to be a member of the Council of Europe is not released from its obligations under the Convention in respect of any act performed by that State before the date on which it ceases to be a Party to the Convention.

79. This reading of Article 58 of the Convention was confirmed by the Court, sitting in plenary session (in accordance with Rule 20 § 1 of the Rules of Court), in its Resolution of 22 March 2022. The Court stated that it "remain[ed] competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022" (see paragraph 2 of the Resolution).

80. In the present case, the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022. The Court therefore decides that it has jurisdiction to examine the present application.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

81. The applicant complained that he had been subjected to ill-treatment by Chechen law-enforcement officers and that no effective investigation into his complaint had been carried out, in breach of Article 3 of the Convention, the relevant part of which reads as follows:

Article 3

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

A. Admissibility

1. The parties' submissions

82. The Government submitted that the applicant had failed to comply with the six-month time-limit, arguing that the final decision regarding his complaint was the decision of 26 August 2014 of the Supreme Court of Chechnya, which had dismissed his appeal against the refusal of 2 April 2014 to open a criminal case.

83. The applicant argued that he had been unable to seek judicial review of the refusal of 2 April 2014, because his criminal case had been sent for trial on 10 April 2014. He had raised the issue during the trial and for that reason the six-month time-limit should be counted from the decision of the Supreme Court of Chechnya upholding his conviction on appeal.

2. The Court's assessment

84. The Court observes that on 2 April 2014 the investigator refused to open a criminal case into the applicant's alleged ill-treatment, and that the Urus-Martan District Court started the examination of the applicant's criminal case on 10 April 2014 (see paragraphs 41 and 45 above). It considers that the applicant had no practical opportunity to pursue a separate complaint under Article 125 of the Code of Criminal Procedure against the refusal of 2 April 2014, given the provisions of the relevant domestic law (see paragraphs 68-69 above). The only option left for the applicant to challenge the decision in question was within the framework of the criminal proceedings against him (see *Zakharin and Others v. Russia*, no. 22458/04, § 55, 12 November 2015), which the applicant did, as he raised the issue of ill-treatment before the trial court.

85. However, the trial court, and subsequently the Supreme Court of Chechnya, acting on appeal and having examined, among other things, the applicant's allegations of ill-treatment, dismissed them (see paragraphs 59 and 61 above).

86. Lastly, the Court notes that even after his conviction on 7 July 2014, the applicant made a last attempt to challenge the refusal within the Article 125 procedure, but both the District Court and subsequently the appellate court dismissed his complaints, simply referring to the criminal proceedings against the applicant and to his conviction (see paragraphs 42-44 above).

87. In view of the above, and the fact that the trial court examined the substance of the applicant's allegations of ill-treatment and its decision was subject to a regular appeal, including to the Supreme Court of Chechnya, the Court considers that the final decision for the purpose of calculating the six-month period was the appeal decision of 31 October 2014. The Court

therefore dismisses the Government's objection and finds that the applicant complied with the six-month requirement of Article 35 § 1 of the Convention.

88. The Court notes that this 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

89. The applicant maintained his complaint.

90. The Government referred to the conclusions of the inquiry conducted by the domestic authorities and submitted that the applicant's complaint was inadmissible due to the failure to comply with the six-month time-limit. The Court has already addressed this objection in paragraphs 84-88 above.

2. The Court's assessment

91. The Court refers to the general principles summarised in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-90 and 114-23, ECHR 2015).

(a) Alleged ill-treatment

92. The Court observes that although the place and circumstances of the applicant's arrest are disputed by the parties, they nevertheless agreed that the applicant was apprehended by State officers on 20 February 2014 (see paragraph 21 above). Following his apprehension, numerous injuries were discovered on the applicant and recorded by the IVS staff on 21 February and subsequently by a forensic expert on 17 March 2014. The applicant also provided photographs dated 24 February 2014 depicting his injuries (see paragraphs 38-40 above). The Government did not dispute the applicant's injuries as described by him. The Court finds that the applicant provided a detailed and consistent account of the circumstances of the alleged ill-treatment, which involved beatings and the administration of electric shocks with a view to extracting a confession from him (see paragraphs 19-20 above). The fact that the applicant had injuries following his detention by the authorities was also confirmed by the statements of Mr Kalyapin (see paragraph 50 above), who testified during the applicant's trial that he had seen the applicant's injuries when he had visited him in the IVS.

93. In view of the above, the Court has sufficient grounds to consider that the applicant's allegations of ill-treatment by State officers were credible.

(b) Alleged lack of an effective investigation

94. The Court observes that the applicant's credible allegations of police ill-treatment were dismissed by the investigator as unfounded in his refusal of 2 April 2014 to open a criminal investigation. The investigator relied

mainly on the statements of police officers, as well as the statements of Mr M.D. and Mr A.A., State officials accused by the applicant of ill-treating him. Explaining the injuries, the investigator relied solely on the applicant's statement given only on one occasion, upon his admission to the IVS, that he had fallen down the stairs, without verifying other versions (see paragraph 41 above).

95. The Court reiterates that proper medical examinations are essential safeguards against ill-treatment (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000-X). It notes that the investigator ordered the applicant's forensic examination ten days after he had opened a pre-investigation inquiry and put only one question to the expert, namely whether the injuries could have been caused by electric shocks (see paragraph 40 above). The forensic medical report contains an explanation with respect to the abrasion on the left leg only, concluding that it was caused by a hard blunt object. The expert did not address the possible scenarios in which those injuries could have been received and did not answer at all the investigator's question whether they could have been caused by electric shocks. The Court considers that this expert report was manifestly deficient, as it failed to address and respond to key questions that were relevant for establishing the circumstances in which the injuries were received (see, for example, *Volkan Özdemir v. Turkey*, no. 29105/03, § 39, 20 October 2009).

96. Furthermore, the investigator failed to verify the only version of events that he had relied on. The forensic medical expert was not asked to assess whether it was even possible that the applicant's injuries were the result of a single fall, as the applicant submitted on one occasion, apparently out of fear of further ill-treatment.

97. Neither the investigator nor the domestic courts, upon examining the applicant's credible allegations, made a thorough assessment of the evidence before them. They disregarded the fact that the applicant had retracted his confession as having been given under coercion, and gave decisive weight to the statements of the police officers and State officials who had allegedly ill-treated the applicant (see paragraphs 41, 57 and 58 above).

98. The Court has previously found that in the context of the Russian legal system, in cases of credible allegations of treatment proscribed under Article 3 of the Convention, it is incumbent on the authorities to open a criminal case and conduct a proper criminal investigation. The Court has no reason to hold otherwise in the present case, which involves credible allegations of particularly serious ill-treatment (see *Lyapin v. Russia*, no. 46956/09, §§ 129 and 132-36, 24 July 2014). The Court holds that the Government have failed to discharge their burden of proof and produce evidence capable of casting doubt on the applicants' account of events, which it therefore finds established (see *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, §§ 102-04, 12 December 2017).

(c) Legal classification of the treatment

99. The applicant alleged that he had been subjected to torture.

100. The Court notes the CPT's observations (see paragraph 70 above) concerning the serious human rights violations committed by law-enforcement officers, particularly in Chechnya. It is notable that the applicant's description of his ill-treatment corresponds to the CPT's observations made between 2008 and 2019 in various detention facilities in the region. Moreover, the rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe commented on the applicant's confession having been extracted by torture in his report (see paragraph 71 above).

101. The Court has already found that the applicant's forensic examination, which did not address the question whether his injuries could have been caused by electric shocks, was deficient (see paragraph 95 above). The Government merely referred to the findings of the domestic authorities, failing to refute the applicant's allegations of torture by electric shocks and to provide a plausible explanation for the large haematomas recorded on photographs of him and supported by the witness statements (see paragraphs 40 and 50 above).

102. Considering that the ill-treatment inflicted on the applicant, supported by medical evidence which was not contested by the Government, clearly caused severe physical and mental suffering, and that the sequence of events also demonstrates that the pain and suffering was inflicted on him intentionally, namely with the aim of extracting confessions, the Court concludes that the ill-treatment in issue amounted to torture (see *Samoylov v. Russia*, no. 64398/01, § 53, 2 October 2008; *Lolayev v. Russia*, no. 58040/08, § 79, 15 January 2015; and *Abdulkadyrov and Dakhtayev v. Russia*, no. 35061/04, § 70, 10 July 2018).

(d) Conclusion

103. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

104. The applicant complained that his conviction had been based on a confession obtained from him under duress, which had rendered his trial unfair. He relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

A. Admissibility

105. 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

106. The applicant maintained his complaint.

107. The Government contended that the criminal proceedings against the applicant complied with the guarantees of Article 6 of the Convention.

2. The Court's assessment

108. The Court reiterates that the admission of confession obtained in violation of Article 3 of the Convention renders the associated criminal proceedings as a whole automatically unfair, irrespective of the probative value of those statements and irrespective of whether their use was decisive in securing the defendant's conviction (see *Gäfgen v. Germany* [GC], no. 22978/05, § 166, ECHR 2010; *Turbylev v. Russia*, no. 4722/09, § 90, 6 October 2015; and *Belugin v. Russia*, no. 2991/06, §§ 69-71, 26 November 2019).

109. In the present case, the Court has already found that the applicant was subjected to torture at the hands of State officers, as a result of which he gave statements, which were subsequently used for his conviction. The domestic courts did not exclude his confession as inadmissible evidence, relying on, among other things, the investigator's refusal to open a criminal case into the alleged ill-treatment and referring to that refusal when convicting the applicant of crimes to which he had confessed in the statements in issue (see paragraph 59 above). The Court concludes that the domestic courts failed to carry out an independent and comprehensive review of the applicant's credible allegation that his self-incriminating statements had been the result of police violence (see *Belugin*, cited above, § 81).

110. In such circumstances, the Court concludes that the domestic court's use of the applicant's confessions obtained in violation of Article 3 of the Convention, regardless of their impact on the outcome of the criminal proceedings, rendered the applicant's trial unfair. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION AND ARTICLE 18 TAKEN IN CONJUNCTION WITH ARTICLE 5

111. The applicant complained that his arrest had been unlawful and devoid of any legitimate purpose and that his right to liberty had been

restricted for purposes other than those prescribed by the Convention. He relied on Article 5 § 1 and Article 18 of the Convention, the relevant parts of which read as follows:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

Article 18

"The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

A. Admissibility

112. The Government argued in general terms that the complaint under Article 5 of the Convention should be rejected for non-exhaustion of domestic remedies, and also that the complaint under Article 18 did "not comply with the requirements of Article 35 of the Convention". The applicant disagreed.

113. The Court observes at the outset that the Government did not identify a specific remedy of which the applicant should have made use. On the facts, it notes that the issue of the lawfulness and reasonableness of his arrest and detention was raised in the court proceedings concerning his detention on remand and during the criminal proceedings against him (see paragraphs 32, 58 and 60 above). The circumstances of his arrest constituted a central issue at the trial, as he disputed that it had taken place in the circumstances alleged by the prosecution and argued that both his arrest and prosecution had been triggered in order to punish him for arranging the conference. In the Court's view, the applicant made the domestic authorities sufficiently aware of his complaint, and it therefore cannot be said that he failed to exhaust domestic remedies.

114. In the light of the foregoing, the Court dismisses the Government's non-exhaustion objection.

115. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

116. The applicant submitted that he had not been arrested with drugs on him as alleged by the Government. He submitted that he had been abducted from the house of Mr B. on 20 February 2014, and held in unrecorded and unlawful detention until the following day. He argued that he had been arrested because of the conference criticised by the Chechen President, Mr Ramzan Kadyrov, and his refusal to attend the meeting with the President.

117. The Government submitted the facts as established by the domestic authorities and did not comment on the merits of the complaint.

2. The Court's assessment

(a) General principles

118. In addition to being in conformity with domestic law, Article 5 § 1 requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see, among recent authorities, *Rooman v. Belgium* [GC], no. 18052/11, § 190, 31 January 2019, and *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, § 129, 1 June 2021).

119. No detention which is arbitrary can be compatible with Article 5 § 1, the notion of "arbitrariness" in this context extending beyond the lack of conformity with national law. As a consequence, a deprivation of liberty which is lawful under domestic law can still be arbitrary and thus contrary to the Convention (see *Mooren v. Germany* [GC], no. 11364/03, § 77, 9 July 2009, and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008).

120. While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis. It is, moreover, clear from the case-law that the notion of arbitrariness in the context of Article 5 varies to a certain extent depending on the type of detention involved (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 75, 22 October 2018).

121. One general principle established in the case-law is that detention will be "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities or where the authorities neglected to apply the relevant legislation correctly (ibid., § 76, with further references).

122. For arbitrariness to be excluded, conformity with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 is required in respect of both the ordering and the execution of the measures involving deprivation of liberty. In addition, there must be some relationship

between the ground relied on for the permitted deprivation of liberty and the place and conditions of detention (see *Rooman*, § 190, and *Saadi*, § 69, both cited above).

123. As to the applicants' complaint under Article 18 taken in conjunction with Article 5 of the Convention, the Court will examine it in the light of the relevant general principles set out by the Grand Chamber in its judgments in *Merabishvili v. Georgia* ([GC], no. 72508/13, §§ 287-317, 28 November 2017), and *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 Others, §§ 164-65, 15 November 2018).

(b) Application of the above principles in the present case

(i) Whether the applicant's detention on 20 February 2014 complied with Article 5 § 1 of the Convention

124. At the outset the Court notes that while the parties disagreed about the circumstances of the arrest and its reasons, the very fact of the applicant's apprehension on 20 February 2014 by State officers, and the applicant's arrest being recorded on the following day, are not in dispute.

125. The parties gave significantly different accounts of the events between 2 p.m. on 20 February and 1.30 a.m. on 21 February 2014. The applicant submitted that on that day he had been abducted from the house of his relative, Mr B., by unidentified law-enforcement officers and taken to an undisclosed location, where he had been held until 1 p.m. on 21 February 2014 (see paragraph 19 above). The Government argued that the applicant had been stopped randomly in the street by police officers because of his suspicious behaviour and that drugs had been found on him (see paragraphs 21-23 above).

126. The Court finds it established that the applicant was under the exclusive control of the authorities as of 2 p.m. on 20 February 2014. Having regard to the seriousness of the allegations made by the applicant and the level of persuasion required in this context, the Court will closely scrutinise the investigative measures carried out prior to and after the applicant's arrest and the evidence collected by the authorities (see, for a similar context, *Ibrahimov and Mammadov v. Azerbaijan*, nos. 63571/16 and 5 others, § 117, 13 February 2020).

127. At the outset the Court notes that the Government did not dispute that the applicant was a human rights activist and that prior to his arrest he had actively participated in organising and holding the conference on 18 February 2014 in Grozny (see paragraphs 14 and 15 above). Neither did they challenge the fact that the President of the Chechen Republic, Mr Ramzan Kadyrov, had summoned the applicant to a meeting on 19 February 2014 with the participants in the conference, which the applicant had refused to attend, where the President had expressed his strong dissatisfaction with the conference (see paragraph 16 above).

128. The Court notes that subsequently the applicant made several telephone calls on the day of his arrest to his friends and acquaintances, whom he had asked for help out of fear of possible persecution by the Chechen authorities for having organised the conference (see paragraph 18 above). One of the witnesses submitted that the applicant had complained that Mr M.D. had threatened him on 18 and 19 February 2014 (see paragraphs 16 and 51 above). In his testimony before the trial court Mr M.D. refused to provide any details about the content of his conversation with the applicant (see paragraph 55 above). Moreover, police officers had already searched for the applicant on 19 February 2014, one day before his arrest (see paragraph 49 above).

129. Furthermore, the Government did not dispute the fact that five days after the applicant's arrest, on 25 February 2014, at an official meeting Mr Ramzan Kadyrov had explained the context of the events surrounding the applicant's arrest and stated that the applicant had "conducted a conference timed for 23 February – that is why he was arrested" (see paragraph 62 above).

130. Turning to the case file of the criminal investigation, and having regard to the parties' submissions, the Court is not convinced that the Government provided sufficient and credible evidence to support their version of the events.

131. Firstly, the Court notes the Government's submission that the applicant had been stopped randomly in the street because of his allegedly suspicious behaviour. However, the site investigation report and the indictment showed that the applicant had been stopped, as part of the operational-search activity following receipt of undisclosed information concerning him, by a significant number of police officers who had travelled to the village of Gekhi specifically for that purpose. The officers arrived at the scene technically equipped to record the scene (see paragraph 23 above). Taking all the evidence into account, the Court finds unconvincing the Government's claim that the applicant was arrested in the course of such a random identity check in a street near the applicant's relative's house. Moreover, it is unclear which of the two officers, I.Kh. or R.Yu., searched and seized the alleged drugs, as both of them were indicated in two separate reports as the officer who had carried out the search (see paragraphs 22 and 23 above). Neither was it clarified whether the officers arrived at the scene already with the attesting witnesses or whether they were invited to attest to the search after the applicant had been stopped on the street (see paragraphs 23 and 53 above).

132. Secondly, it is not disputed between the parties that the applicant had no history of being involved in drug-related offences or any other offences prior to the events in question. Even assuming that the official version was accurate, and the applicant had indeed been arrested "as part of the operational-search activity", it remains unclear what information was

received by the police, what was the source of that information and how it was received.

133. Thirdly, the Court observes that the substance allegedly found on the applicant was initially sent for analysis by Mr A.A., the Deputy Minister of the Interior of Chechnya (see paragraph 24 above). It also notes that Mr A.A. was present during the applicant's meeting with his lawyer Mr Kalyapin on 24 February 2014 (see paragraph 50 above). The involvement of such a high-ranking official as the Deputy Minister of the Interior in the investigation of an allegedly ordinary drug-related offence clearly calls for an explanation, particularly in the light of the applicant's allegations. However, no such explanation was provided by the Government and Mr A.A. was not even questioned in the course of the domestic proceedings (see paragraph 56 above).

134. In the light of all the circumstances described above, the Court finds that the applicant was not arrested as claimed by the respondent Government in the course of a random identity check during which illegal drugs were found on him. As these were given as the formal grounds to justify the applicant's deprivation of liberty, they clearly involved an element of bad faith on the part of the police officers and the investigators. There are insufficient grounds to conclude that the domestic courts which imposed the applicant's detention on remand also acted in bad faith. However, they failed to review both the factual and the legal basis for the applicant's detention (see, *a contrario*, *S., V. and A. v. Denmark*, cited above, § 155).

135. The Court finds that the applicant's deprivation of liberty on 20 February 2014 was arbitrary and did not have any legitimate purpose under Article 5 § 1 of the Convention. There has therefore been a violation of that Article.

(ii) Whether the applicant was deprived of his liberty for a purpose in breach of Articles 5 and 18 of the Convention

136. The Court notes that its finding that the applicant's arrest was arbitrary and had no legitimate purpose under Article 5 § 1 of the Convention is not in itself a sufficient basis to conduct a separate examination of a complaint under Article 18 unless the allegation that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case (compare *Rashad Hasanov and Others v. Azerbaijan*, nos. 48653/13 and 3 others, § 120, 7 June 2018, and *Ibrahimov and Mammadov*, cited above, § 150, with further references). Therefore, it remains to be seen whether there is proof that the authorities' actions were actually driven by an ulterior purpose (see *Khadija Ismayilova v. Azerbaijan (no. 2)*, no. 30778/15, § 112, 27 February 2020).

137. The Court considers that, in the present case, it can be established beyond reasonable doubt that such proof follows from a juxtaposition of the relevant circumstances of the case with contextual factors (see, for a similar

approach, *Democracy and Human Rights Resource Centre and Mustafayev v. Azerbaijan*, nos. 74288/14 and 64568/16, § 106, 14 October 2021).

138. Firstly, it is not disputed between the parties that the applicant is a human rights activist in Chechnya. In this connection, the Court observes that in 2019 the European Parliament noted "a dramatic deterioration in the human rights situation over the past few years, which effectively prevents ... human rights activists from continuing their work without putting their own lives ... at risk" (see paragraph 74 above). The Court notes in this connection its finding of the lack of effective investigation in the case of the abduction and murder of a well-known human rights activist, Ms Natalia Estemirova, who investigated cases of kidnapping, torture and extrajudicial killing in Chechnya (see *Estemirova v. Russia*, no. 42705/11, §§ 68-72, 31 August 2021). It further notes the references to public threats against human rights activists made by high-ranking officials, including the President of the Chechen Republic, and the overall climate of pervading fear in the region (see paragraphs 72 and 73 above). The applicant's case therefore cannot be viewed as a one-off occasion and should be examined in the context of a general crackdown on human rights activists in Chechnya.

139. Secondly, the Court notes that the applicant's arrest was arbitrary (see paragraph 135 above) and that his conviction was based on a confession obtained under torture in violation of Article 3 of the Convention (see paragraphs 109 and 110 above). In this connection, the Court takes particular note of the reaction of a number of non-governmental human rights organisations expressing support for the applicant and voicing their concerns regarding the real reasons for his arrest and subsequent prosecution (see paragraphs 63-66 above). These concerns were also reflected in the 2016 report by the Parliamentary Assembly of the Council of Europe (see paragraph 71 above) and in the Resolution of the European Parliament (see paragraph 74 above).

140. Thirdly, the Court notes that shortly after the applicant's arrest the Chechen President made a public statement that "[the applicant] conducted a conference timed for 23 February – that is why he was arrested" (see paragraph 59 above). It is clear from the statements of Mr Kadyrov that he was dissatisfied with the scheduling of the conference on 23 February, rather than on 10 May, the official Day of Remembrance and Sorrow of the Chechen People (see paragraphs 13 and 15 above). The Court also takes note of the involvement of high-ranking officials, such as the head of the Chechen President's administration and the Deputy Minister of the Interior of Chechnya, in the events in question (see paragraphs 16 and 19 above). Their involvement in the applicant's case cannot be explained by any reasons related to the criminal case itself and clearly attests to its importance for the highest levels of the Chechen government.

141. The Court considers that the above-mentioned circumstances taken as a whole – specifically, the applicant's status as a human rights activist in

Chechnya, the date and topic of the conference he had organised, the use of torture against him to obtain a confession, the arbitrary nature of his arrest, the direct involvement of officials of the highest level in the applicant's case and the public statement of the Chechen President, as well as the general situation of intimidation of human rights defenders in the North Caucasus – indicate that the authorities' actions were driven by improper reasons. The actual purpose of the measures taken against the applicant was to punish him for arranging the conference on a date other than 10 May and for his subsequent refusal to attend a meeting with Mr Ramzan Kadyrov. In the light of these considerations, the Court finds that the restriction of the applicant's liberty was imposed for purposes other than those prescribed by Article 5 § 1 of the Convention.

142. There has accordingly been a violation of Article 18 of the Convention taken in conjunction with Article 5.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143. 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

144. The applicant requested the Court to make an award in respect of non-pecuniary damage at its discretion. The applicant did not submit a claim in respect of pecuniary damage.

145. The Government submitted that the applicant's claims were unsubstantiated.

146. Regard being had to the seriousness of the violations of the Convention of which the applicant was the victim, and ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards him 52,000 euros in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

147. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

148. 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. *Holds* that it has jurisdiction to deal with the applicant's complaints in so far as they relate to facts that took place before 16 September 2022;

2. *Dismisses* the Government's objection of non-exhaustion of domestic remedies in respect of the complaints under Articles 5 and 18 of the Convention, and their objection of failure to comply with the six-month time-limit in respect of the complaint under Article 3 of the Convention;

3. *Declares* the application admissible;

4. *Holds* that there has been a violation of both substantive and procedural aspects of Article 3 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

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

7. *Holds* that there has been a violation of Article 18 of the Convention in conjunction with Article 5;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 52,000 (fifty-two thousand euros) in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 24 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Pere Pastor Vilanova President