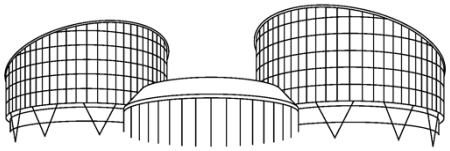

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

# CASE OF BAROVOV v. RUSSIA

*(Application no. 9183/09)*

JUDGMENT

Art 3 (procedural) • Ineffective investigation into applicant's ill-treatment by police officers • Exemption of police officers from criminal liability due to statutory time-limit expiration resulting from protracted investigation and imposition of suspended sentences • Manifest disproportionality between the gravity of the police officers' acts and punishment imposed • Lack of serious efforts to identify and punish third perpetrator

STRASBOURG

15 June 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 Barovov v. Russia,**

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
María Elósegui,
Anja Seibert-Fohr,
Peeter Roosma,
Andreas Zünd, *judges,*
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 9183/09) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Vadim Kurbanovich Barovov ("the applicant"), on 10 December 2008;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning the lack of an effective investigation into the applicant's ill-treatment in police custody and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 11 May 2021,

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

# INTRODUCTION

1. The case concerns the alleged lack of an effective investigation into the applicant's ill-treatment in police custody.

# THE FACTS

2. The applicant was born in 1968 and lives in Irkutsk. The applicant, who had been granted legal aid, was represented by Ms I.V. Sergeyeva, a lawyer with the human rights NGO Moscow Helsinki Group.

3. The Government were represented by Mr M. Galperin, Representative of the Russian Government to the European Court of Human Rights.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The Economic Crimes Unit of the Leninskiy district police department of Irkutsk carried out operational and search activities in order to establish who had allegedly handed over a false fifty-rouble banknote to a third person. On 22 April 1998 they took the applicant to the police station. P., a deputy head of the unit, T., an operational officer reporting to P., and

one more person, coerced the applicant into confessing to the crime by using violence. In particular, they punched and kicked him repeatedly and put handcuffs around his hands between his thumbs and forefingers thereby squeezing his hands and inflicting great pain. Following the applicant's confession, he was arrested and charged with uttering a counterfeit banknote. The criminal proceedings against him were subsequently discontinued for lack of the elements of a crime in his actions (decision of 14 March 2001).

6. From 22 to 24 April 1998 the applicant was held in a cell at the police station and in a temporary detention facility.

7. On 24 April 1998 the applicant was brought before a prosecutor for authorising his detention. He complained about his ill-treatment by the police officers and showed bruises on his body. The prosecutor ordered that the applicant be released and that a criminal case be opened. On the same day an investigator from the Leninskiy district prosecutor's office of Irkutsk brought criminal proceedings under Article 286 § 3 (a) of the Criminal Code (abuse of office with the use of violence) into the applicant's alleged ill-treatment by the police and the applicant was granted victim status and interviewed. During the examination of a room, in which his ill-treatment had taken place, the applicant saw T. and identified him as one of the perpetrators.

8. On the same day the applicant was examined by an expert from the Irkutsk regional forensic medical bureau who found that the applicant had a bruise measuring 20 by 13 centimetres on the back and left side of the thoracic cage, bruises on the front side of the thoracic cage, lumbar region, shoulder and knee, contusion of the soft tissues of the left cheek bone, an abrasion on the lip, as well as four striped abrasions on both hands. The expert noted pain in the parietal region and in the area of the thoracic cage. He stated that should a fracture of ribs be later confirmed, his report would be amended. All injuries could have been inflicted on 22 April 1998 as a result of the violence alleged by the applicant (see paragraph 5 above).

9. On 25 April 1998 the applicant was taken to a hospital, diagnosed with rupture of the spleen and operated. He was also diagnosed with fracture of ribs, closed craniocerebral injury, brain concussion and contusions to the head and face.

10. In a report of 9 June 1998 another expert from the Irkutsk regional forensic medical bureau examined the hospital medical records and established that the applicant had an abdomen injury with the rupture of the spleen entailing internal bleeding, classified as a grievous harm to health. According to the expert, that injury had been inflicted by a hard blunt object, such as a fist or a shod foot, between 24 and 25 April 1998. The applicant also had bruising to the thoracic cage and injuries to the soft tissues of the head and face, the time of infliction of which was (according to that expert) impossible to establish for lack of sufficient information in

the hospital records. No information was available in those records in respect of brain concussion. No assessment of the fracture of the ribs was made either because the X-rays had been destroyed.

11. The above expert's findings were relied on to discontinue (on 24 July 1998) the criminal proceedings into the applicant's alleged ill-treatment by the police for lack of the event of a crime. That decision was revoked and a new decision to discontinue the proceedings was taken on 14 September 1998 and revoked on the next day for failure to carry out necessary investigative measures.

12. In an additional report of 6 October 1998 forensic medical experts from the Irkutsk regional forensic medical bureau concluded, based on the examination of the applicant's hospital records and the previous forensic medical experts' reports, that the applicant's injuries, with the exception of the abrasions on the hands, had been inflicted before 22 April 1998. Those findings were relied on by an investigator to conclude that T. and the other police officers had not been involved in the infliction of the applicant's injuries, and that the investigation should be suspended for failure to identify the persons to be charged (decision of 16 November 1998).

13. On 3 November 1999 the latter decision was revoked and the case was assigned to the Kuybyshevskiy district prosecutor's office, which suspended and resumed the investigation several times before issuing an indictment on 19 May 2000 with charges against police officers T. and P. (whom the applicant had identified in May 1998 during a search in the applicant's flat). The case was transferred to the Leninskiy District Court of Irkutsk for trial.

14. Subsequently, the case was remitted to the investigating authority for additional investigation three times for various breaches of the Code of Criminal Procedure (Leninskiy District Court's decisions of 25 August 2000, 9 June 2001 and 13 May 2002).

15. During additional rounds of the investigation new reports of forensic medical experts from the Irkutsk regional forensic medical bureau were obtained. In particular, in a report of 28 October 2002 an expert confirmed the conclusion in the first report that the injuries recorded on 24 April 1998 could have been inflicted on 22 April 1998. In a report of 9 December 2002, however, a commission of experts found that the applicant's injuries had been inflicted either before 22 April 1998 (the bruises and abrasions) or after his release, on 25 April 1998 (the abdomen injury).

16. On 17 March 2003 an investigator from the Irkutsk regional prosecutor's office discontinued the proceedings against T. and P. for lack of their involvement in the violence against the applicant, and suspended the investigation for failure to identify the persons to be charged.

17. During the preliminary investigation the applicant's mother (who acted as the applicant's representative until 19 August 2008) lodged numerous complaints concerning the investigation and investigators'

decisions to the Irkutsk regional prosecutor's office and the Prosecutor General's Office of the Russian Federation. Disciplinary proceedings were brought against two investigators who received an admonition and a reprimand, for procedural breaches, including the excessive length of the investigation.

18. On 7 July 2005 the Prosecutor General's Office indicated to the Irkutsk regional prosecutor that the decision to suspend the investigation should be revoked (which was done on the same day) and that the applicant's mother's numerous requests to have a forensic medical examination carried out in another region had been wrongly ignored, given that the conclusions of the experts from the Irkutsk regional forensic medical examination bureau had contained multiple contradictions. The examination was to be carried out by the forensic medical examination centre at the Federal Agency for Healthcare and Social Development.

19. In a report of 10 May 2007, a commission of experts from the above centre concluded that the abdomen injury and the bruising to the chest, lumbar region, shoulder and knee had been inflicted two to four days before the applicant's forensic medical examination on 24 April 1998. The abrasions on the hands had been inflicted two to three days before that date. In the absence of X-rays and relevant information in the applicant's medical records his remaining injuries were not assessed.

20. On 13 August 2007 the decision of 17 March 2003 discounting the prosecution of T. and P. was revoked. On 13 March 2008 they were charged. On 18 March 2008 the case was transferred to the Leninskiy District Court for trial. Some evidence was lost during the investigation.

21. The applicant's mother's court appeal of 13 November 2002 under Article 125 of the Code of Criminal Procedure seeking to declare unlawful the inactivity of the Irkutsk regional prosecutor in respect of the investigation was dismissed on many occasions in decisions of the Kirovskiy District Court, which were then set aside by the Irkutsk Regional Court. On 27 March 2008 the District Court discontinued the proceedings on the grounds that the criminal case against the police officers had been transferred to court for trial. That decision was upheld by the Irkutsk Regional Court on 10 June 2008.

22. On 30 April 2010 the Leninskiy District Court convicted T. and P. under Article 286 § 3 (a), (b), (c) of the Criminal Code and sentenced them to five years' imprisonment and a three-year ban on occupying certain posts within the Ministry of the Internal Affairs. It further exempted them from the criminal liability due to expiration of the ten-year statutory time-limit pursuant to Article 78 of the Criminal Code (see paragraphs 27-28 below), with the consequence that they were exempted from serving their sentences. At the time of their conviction P. occupied the post of a head of the operative-search unit for economic crimes of the Irkutsk regional police department. T. was working in a private company. They were also convicted

under Article 111 § 3 (a) of the Criminal Code (premeditated infliction of severe damage to health, dangerous for life, with humiliation and sufferings for the victim, by a group of persons, see paragraph 26 below), classified as a very grave crime, and sentenced to six years' imprisonment. In sentencing T. and P. in respect of both crimes the court took account of their positive references from their places of work and residence and such extenuating circumstances as the lack of criminal records and the fact that they had minor children. The court considered that there was no need for the police officers' actual imprisonment in view of the long period of time (more than ten years) that had passed since the crime had been committed and the fact that no criminal or administrative proceedings had been brought against them in the meantime. It therefore suspended their sentences under Article 111 § 3 (a) of the Code and placed them on probation for four years. The applicant's civil claim against T. and P. in respect of non-pecuniary damages was not examined.

23. The trial court established that T. and P. had committed the crimes against the applicant together with a non-identified person. The criminal proceedings against that person had been discontinued (on 11 October 2000 and 14 November 2001), those decisions had been revoked (on 12 September 2001 and 1 February 2002, respectively) and the proceedings had been reopened again. The investigation was suspended (1 March 2002) and resumed (19 July 2002). The case against the third person was disjoined from the case against T. and P., the last time on 6 November 2007. The applicant's mother complained repeatedly to the Prosecutor General of the Russian Federation, the Irkutsk regional prosecutor and the head of the investigative committee at the Irkutsk regional prosecutor's office that nothing had been done to identify that person (despite the applicant's description of his appearance) and to assess his role in the crimes. The applicant himself identified the third person as K., head of the criminal police unit of the Leninskiy district police department of Irkutsk. However, no formal identification was conducted despite the applicant's requests. On 24 January 2018 the Irkutsk regional investigative committee discontinued the proceedings against the third person on the grounds that more than ten years had passed after the crime and the prosecution under Article 286 of the Criminal Code had become time barred.

24. The parties appealed against the judgment. In particular, the prosecutor and the applicant argued that the punishment was not adequate for the grave and very grave crimes committed by the police officers, who had not pleaded guilty and had lacked a critical attitude to their deeds. On 21 September 2010 the Irkutsk Regional Court dismissed the appeals and upheld the judgment, endorsing the trial court's findings. In reply to the argument (advanced by the prosecutor and the applicant) that it had not been examined whether the police officers should be deprived of their ranks,

titles and State awards, the Regional Court stated that the examination of those issues was a right and not an obligation of the trial court.

25. On 21 March 2011 the applicant brought civil proceedings against the State authorities, claiming compensation of 2,500,000 Russian roubles for the unreasonable length of the proceedings in the criminal case against the police officers. In a judgment of 23 May 2011 the Irkutsk Regional Court found that the criminal proceedings concerning the applicant's ill-treatment in police custody had lasted for more than twelve years, which was unreasonably long. The significant delay had occurred at the stage of the preliminary investigation which had lasted for more than nine years, due to the repeated unlawful decisions discontinuing or suspending the investigation, which had been revoked on appeals lodged by the applicant and his representative. The case had been remitted to the prosecutor's office for additional investigation three times in view of procedural violations. As regards the trial stage of the proceedings, there had been no procedural violations on the part of the court which would have adversely affected the length of the proceedings. It allowed the applicant's claim in part, based on the Federal Law No. 68-FZ of 30 April 2010 (which introduced a remedy to seek compensation for damage sustained as a result of unreasonably lengthy proceedings), and awarded him RUB 350,000. The applicant disagreed with the amount and appealed. On 26 July 2011 the Irkutsk Regional Court upheld the judgment and dismissed the applicant's appeal.

## RELEVANT LEGAL FRAMEWORK

26. Article 111 § 3 (a) of the Criminal Code of the Russian Federation stipulates that the premeditated infliction of severe damage to health, dangerous for life, with humiliation and sufferings for the victim, by a group of persons, is punishable by up to twelve years' imprisonment.

27. Article 286 § 3 (a), (b), (c) of the Criminal Code stipulates that actions undertaken by a public official (i) that clearly exceeded his or her authority and entailed a substantial violation of an individual's rights and lawful interests, (ii) were committed with violence or the threat of violence or with the use of a weapon or (iii) had grave consequences, were punishable by three to ten years' imprisonment, with a ban on occupying certain posts or engaging in certain activities for a period of up to three years.

28. Article 78 of the Criminal Code sets time-limits for criminal liability. A person cannot be held liable for a crime after ten years in the case of a grave crime (punishable by up to ten years' imprisonment) and after fifteen years in the case of a very grave crime (punishable by prison terms exceeding ten years' imprisonment). Time starts to run from the date of the crime and stops running on the judgment of the trial court. If the person escapes justice, the time does not start to run until the person is

found. The applicability of time-limits in cases of crimes punishable by a life sentence or the death penalty is decided individually by the trial court. No time-limits are applicable to crimes against peace and humanity.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant complained that the investigation into his ill-treatment in police custody had not been effective, and that his rights had not been protected. The police officers' punishment had not been commensurate to the sufferings he had endured as a result of his ill-treatment. He relied on Article 3 of the Convention, which reads as follows:

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

### A. Admissibility

30. The Government argued that the applicant was no longer a victim of the alleged violation since the national authorities had convicted two police officers, acknowledged the inactivity on the part of the investigating authority and the excessive length of the investigation, and had awarded the applicant compensation.

31. The applicant stated that the police officers' exemption from criminal liability and suspended sentences had been incompatible with the preventive role of criminal sanctions in what was a case of torture, that nothing had been done to prosecute the third participant of his ill-treatment and that the compensation had been inadequate.

32. The Court notes that the complaint concerns an investigation into the applicant's ill-treatment in police custody, which took place shortly before 5 May 1998, the date on which the Convention came into force in respect of Russia, and the major part of the investigation was carried out after that date. The complaint is therefore compatible *ratione temporis* in so far as it concerns the State's procedural obligation under Article 3 (see, with necessary changes made, *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 148, ECHR 2013).

33. The question of whether the applicant may still claim to be a victim of a violation of Article 3 of the Convention in respect of the alleged ineffective investigation is closely linked to the merits of his complaint under that provision. The Court therefore decides to join this matter to the merits.

34. 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

35. The applicant maintained his complaint.

36. The Government stated that there had been no violation of Article 3 in the instant case.

37. The Court reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention. In this regard, the question whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention. A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010).

38. Where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (ibid., § 117). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws prohibiting torture and inhuman or degrading treatment or punishment in cases involving State agents or bodies, and to ensure their accountability for ill-treatment occurring under their responsibility. In order to be effective the investigation must be capable of leading to the identification and punishment of those responsible. Although this is not an obligation of results to be achieved but of means to be employed, any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of the required standard of effectiveness. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 117 and 119-21, ECHR 2015). Furthermore, the outcome of the investigations and of the ensuing criminal proceedings, including the sanction imposed as well as disciplinary measures taken, have been considered decisive. It is vital in ensuring that the deterrent effect of the judicial system in place and the significance of the role it is required to play in preventing violations of the prohibition of ill-treatment are not undermined (see *Gäfgen* [GC], cited above, § 121). While the Court should grant substantial deference to the national courts in the choice of appropriate sanctions for ill-treatment and homicide by State agents, it must exercise a certain power of review and

intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 62, 20 December 2007, and *Atalay v. Turkey*, no. 1249/03, § 40, 18 September 2008).

39. The Court observes that it took the authorities almost twelve years – an unreasonably long period of time – to conduct the preliminary investigation and trial in the criminal proceedings which ended with the conviction of two police officers who had subjected the applicant to ill-treatment. For the major part of that time the investigation was stalled, as a result of the repeated unlawful discontinuation and suspension of the proceedings, as was acknowledged by the civil courts (see paragraph 25 above). It was only after obtaining the forensic medical examination report from experts who were not from the regional forensic medical examination centre (which over the years issued conflicting opinions about the time of the infliction of the applicant's injuries and excluded the possibility of the infliction of the serious abdomen injury on the day of the applicant's ill-treatment), nine years after the crime, that any meaningful process followed (see paragraphs 18-20 and 22 above). However, one of the three perpetrators of the applicant's ill-treatment was never formally identified and charged, despite requests from the applicant who had himself identified him (see paragraph 23 above). No reasons were given by the authorities, which discontinued the proceedings against him on the grounds that the prosecution under Article 286 of the Criminal Code had become time barred, as to why his prosecution under Article 111 § 3 (a) of the Criminal Code (like the other two police officers with whom he had committed the crime) was not possible (see paragraphs 22-23 above). Furthermore, important medical and other evidence was lost (see paragraphs 10, 19 and 20 above).

40. It is true that it is not necessary for the Court to consider whether the officers' acts were properly characterised under the Russian Criminal Code. However, it is competent to examine whether the way in which Russian law was applied in this case gave rise to results at odds with the requirements of Article 3 of the Convention (see *Myumyun v. Bulgaria*, no. 67258/13, § 75, 3 November 2015).

41. As regards the police officers' conviction under Article 111 § 3 (a) of the Criminal Code (premeditated infliction of severe damage to health, dangerous for life, with humiliation and sufferings for the victim, by a group of persons) which carried a punishment of up to twelve years' imprisonment, the domestic courts chose to suspend the imposed six-year term of imprisonment in view of, in particular, the long time passed after the crime, positive references from the officers' places of work and residence, their lack of previous convictions and their law-abiding behaviour after committing the crime. The Court, however, cannot accept those arguments as justifying the imposition of suspended sentences on the police officers,

who had been found guilty of acts proscribed under Article 3 of the Convention (see *Nikolova and Velichkova*, cited above, § 63, and *Kopylov v. Russia*, no. 3933/04, § 141, 29 July 2010) and characterised under domestic law as a very grave crime (see paragraph 22 above).

42. As regards the officers' conviction under Article 286 § 3 (a) of the Criminal Code which provided for a punishment of up to ten years' imprisonment, the officers were sentenced to five years' imprisonment and further exempted from the criminal liability due to expiration of the statutory time-limit with the consequence that they were exempted from serving their sentences (see paragraphs 22, 27 and 28 above). The police officers' criminal liability for abuse of office became time-barred as a direct result of the flawed investigation which had lasted for more than nine years, due to the numerous unlawful decisions discontinuing and suspending it (see paragraph 39 above). In the Court's view, this manifest lack of diligence on the part of the authorities, contrary to such important factors of an effective investigation as its thoroughness, promptness and expedition, led to an outcome of the criminal proceedings which lacked the deterrent effect capable of ensuring the effective prevention of police ill-treatment (see *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 55, 2 November 2004, and *İzci v. Turkey*, no. 42606/05, §§ 72-73, 23 July 2013). Therefore, the Court cannot accept that the purpose of effective protection against acts of ill-treatment was achieved in any manner in this case (see *Beganović v. Croatia*, no. 46423/06, § 85, 25 June 2009, and *V.K. v. Russia*, no. 68059/13, § 189, 7 March 2017). The Court reiterates that it expects States to be all the more stringent when punishing their own law-enforcement officers for the commission of such serious life-endangering crimes than they are with ordinary offenders, because what is at stake is not only the issue of the individual criminal-law liability of the perpetrators but also the State's duty to combat the sense of impunity the offenders may consider they enjoy by virtue of their very office and to maintain public confidence in and respect for the law-enforcement system (see *Enukidze and Girgvliani v. Georgia*, no. 25091/07, § 274, 26 April 2011, and *Makuchyan and Minasyan v. Azerbaijan and Hungary*, no. 17247/13, § 157, 26 May 2020).

43. Furthermore, there is no indication that disciplinary measures were taken against the officers and that they were suspended from work pending the criminal proceedings against them. P. was still part of the police force at the time of his conviction, occupying the post of head of a unit at a higher police department, and T. had apparently chosen to resign, whereas the case-law says that where State agents have been charged with crimes involving ill-treatment, the Court underlines the importance of the suspension from duty of the agent under investigation or on trial as well as his dismissal if he is convicted (see *Nikolova and Velichkova*, cited above, § 63, with further references; *Ali and Ayşe Duran v. Turkey*, no. 42942/02,

§ 64, 8 April 2008; *Savin v. Ukraine*, no. 34725/08, § 71, 16 February 2012; and *Myumyun*, cited above, § 71).

44. By exempting the officers from the criminal liability under one applicable provision of the Criminal Code and punishing them with suspended terms of imprisonment under another, more than twelve years after their wrongful acts, and never disciplining them, the State in effect fostered the law-enforcement officers' sense of impunity and their lack of a critical attitude to their deeds, as noted by the prosecutor (see paragraph 24 above).

45. The Court does not overlook that the domestic courts in the civil proceedings awarded the applicant compensation for the unreasonable length of the criminal proceedings into his ill-treatment. However, having regard to the other serious deficiencies of the investigation, unacknowledged by the authorities, notably the exemption of the two police officers from the criminal liability and suspension of their terms of imprisonment, which was manifestly disproportionate to the gravity of their acts and did not have the necessary deterrent effect on State agents who feel they can abuse the rights of those under their control with impunity, as well as the lack of any serious efforts to identify and punish the third perpetrator, the applicant may still claim to be the victim of a violation of Article 3 within the meaning of Article 34 of the Convention. Accordingly, the Government's objection must be dismissed.

46. In view of the foregoing, there has been a violation of Article 3 of the Convention under its procedural limb.

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

47. The applicant contended that the domestic remedies of which he had availed himself in respect of the breach of his rights guaranteed by Article 3 of the Convention had not been effective. He relied on Article 13, which 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."

48. The Government contested that argument.

### A. Admissibility

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

### B. Merits

50. In so far as the applicant complained that he did not have an effective criminal-law remedy in respect of his allegations of torture by the police, the Court notes that this part of the complaint does not raise any separate issue from that examined under the procedural limb of Article 3 of the Convention and considers that there is no need to examine it separately under Article 13.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 76 euros (EUR) in respect of pecuniary damage, notably some of his medical expenses. He further claimed EUR 100,000 in respect of non-pecuniary damage.

53. The Government stated that Article 41 should be applied in accordance with the Court's case-law.

54. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, taking into account the award made in the domestic civil proceedings, it awards the applicant EUR 11,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### B. Costs and expenses

55. The applicant also claimed 71,097.90 Russian roubles for the costs and expenses incurred before the domestic authorities and EUR 1,740 for his legal representation before the Court.

56. The Government's submissions are indicated at paragraph 53 above.

57. 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 943 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable to the applicant. The Court further notes that the applicant was paid EUR 850 in legal aid by the Council of Europe in the proceedings before the Court. As regards his claim in respect of his

legal representation in the proceedings under the Convention, the Court notes that the applicant neither submitted any document establishing his liability to pay for it nor made any payment. The Court therefore rejects that claim.

### C. Default interest

58. 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. *Decides* to join to the merits the question whether the applicant may still claim to be a victim of a violation of Article 3 of the Convention, *holds* that he may still claim to be a victim for the purpose of Article 34 of the Convention, and *dismisses* the Government's objection to that effect;

2. *Declares* the application admissible;

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

4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 943 (nine hundred and forty-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 15 June 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Milan Blaško
Registrar

Paul Lemmens
President