THIRD SECTION

**CASE OF MALYSHEV v. RUSSIA**

*(Application no. 46192/07)*

JUDGMENT

STRASBOURG

3 March 2020

*This judgment is final but it may be subject to editorial revision.*

In the case of Malyshev v. Russia,

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

Alena Poláčková, *President,* Dmitry Dedov, Gilberto Felici, *judges,*  
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 4 February 2020,

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

PROCEDURE

1.  The case originated in an application (no. 46192/07) 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 Aleksandr Pavlovich Malyshev (“the applicant”), on 9 September 2007.

2.  The applicant, who had been granted legal aid, was represented by Mr E.V. Markov, a lawyer practising in Budapest. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3.  The applicant alleged, in particular, that he had been ill-treated by the officers of a local department of the Federal Drug Control Service and that the inquiry into his ill-treatment complaint had been ineffective.

4.  On 18 February 2013 notice of the complaints concerning the applicant’s alleged ill-treatment in police custody, the authorities’ failure to carry out an effective investigation into his complaints, the lack of the effective remedy in respect of that complaint and an alleged interference with the applicant’s property rights was given to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1979 and lives in St Petersburg.

A.  The applicant’s alleged ill-treatment on 10 and 17-18 January 2007

1.  Events of 10 January 2007

6.  According to the official account of the events, on 10 January 2007 officers of the Cherepovets Unit of the Vologda Regional Department of the Federal Service of Drug Control (“the Drug Control Service”, “the FSKN”) held an operative-search activity “test purchase” in respect of the applicant on the basis of the operative information received from K., the applicant’s acquaintance, who had identified him as a person who had been selling drugs to her since November 2006.

7.  At about 8 p.m. on that date the Drug control officers apprehended the applicant on the street and brought him to the local Drug Control office. The arrest record was not compiled.

8.  According to the applicant, a FSKN officer G. searched him, seized a mobile phone, 100 US dollars (USD) and 7,100 Russian roubles (RUB) allegedly won by the applicant in a casino, planted sachets of methamphetamine on him and “replaced” a part of the banknotes (RUB 2,100) belonging to the applicant with those marked with special substance. G. allegedly hit the applicant to the head and body and threatened to rape him. Then at some point the officer again searched the applicant in the presence of lay witnesses and seized the drugs from him.

9.  On the same date an investigator recorded the applicant’s explanations. The applicant submitted, in particular, that the police had seized RUB 7,100 from him. The record, signed by the applicant without any objections, did not mention the mobile phone or an amount in US dollars.

10.  Between 8.20 p.m. and 9.20 p.m. the applicant was searched at the Drug Control office in the presence of the lay witnesses Pop. and Lap. Methamphetamine and MDMA, commonly known as “ecstasy”, and the sum of RUB 7,100 were seized from him. The applicant signed the record and had not objected to its contents.

11.  On the same date G. proposed to the applicant to participate in another “test purchase”, that is to buy drugs from a certain private person. G. allegedly threatened to beat and rape him if the test purchase failed. According to subsequent refusals to initiate criminal proceedings, the applicant agreed that his USD 100 be used for the test purchase.

12.  On 11 January 2007 the applicant met the dealer and gave him money but the latter allegedly fled the police. The applicant did not come back to the Drug Control office, allegedly out of fear. The official account of the events is that the applicant escaped during the covert operation.

13.  On the same date the applicant met Ms B., his partner, and told her that he had been ill-treated by a Drug Control officer. Ms B. did not see any injuries on his body. The applicant told her that the policemen had hit him to the head, so that the injuries could not be seen on him.

14.  The applicant did not undergo a medical examination after these events.

15.  On 17 January 2007 the applicant called Ms Kud., his acquaintance, using the SIM card he had previously used in the mobile phone allegedly taken from him by G. (as confirmed by Mal.’s statement and a billing record). According to the applicant, he inserted the card into a different mobile phone to make a call.

2.  The applicant’s arrest and alleged ill-treatment on 18 January 2007

16.  At about 11 p.m. on 17 January 2007 the Drug Control officers apprehended the applicant and brought him onto the Drug Control premises. At 0.25 a.m. on 18 January 2007 the applicant’s arrest as a suspect was recorded. At 3.10 a.m. on the same date the applicant was transferred to the temporary detention centre of Cherepovets (“the IVS”). He was examined by the IVS officer on arrival. No injuries were found on him.

17.  According to the IVS logbooks, at 9.40 a.m. on 18 January 2007 the applicant was transferred from the IVS to the Drug Control Service.

18.  The applicant submits that officer G. threatened him there and urged him to confess in the presence of I. and Gan., private persons who had been transferred to the Drug Control office in connection with inquiries unrelated to the applicant’s case.

19.  Between 10.30 and 11.50 a.m. the applicant was questioned as a suspect by investigator Sov. in the presence of a lawyer. According to the interrogation record, the applicant informed the investigator about G.’s threats and the alleged theft of his money and mobile phone on 10 January 2007. At noon on that date the investigator charged the applicant with attempted sale of narcotic drugs and ordered a forensic medical examination aimed at detecting “any evidence of the applicant’s consumption of narcotic drugs and any injuries”. The applicant and his lawyer studied relevant documents until 12.15 a.m.

20.  According to the applicant, thereafter G. took him to a gym in the Drug Control building. G. had a photo camera with him. He ordered the applicant “to put a carton cockscomb on his head[[1]](#footnote-1)”, so that G. could take pictures of him. The applicant refused, and G. hit and kicked him in the face and body. He attempted to undress the applicant, threatened to rape him and to take pictures. G. continued to beat the applicant urging him to write a confession; however, the applicant did not produce a self-incriminating statement.

21.  Then G. brought the applicant to a cell in the same building. I. allegedly saw G in the corridor hitting the applicant in the head.

22.  After that G. took the applicant to his office and allegedly hit his back with a roll of wall-paper. He also continued to insult the applicant and told him, in particular, that the applicant “could complain to anyone, G. [would] never be punished”.

B.  Transfer to the IVS and medical evidence of the applicant’s injuries

23.  At 3 p.m. on 18 January 2007 the applicant was transferred back to the IVS. According to the applicant, he asked the IVS officers to call a doctor. They allegedly replied that the doctor would come and see him on 19 January 2007.

24.  According to IVS officer V., interviewed by an investigator during the first round of the pre-investigation inquiry (see below), on 18 January 2007, the applicant had looked depressed but had not had visible injuries. Once the Drug Control officers who escorted him left the cell, the applicant told V. that he had been beaten by the policemen.

25.  At some point on 19 January 2007 the applicant made a handwritten note in the IVS’s logbook of medical examinations: “Was not beaten in the IVS. Have no complaints”. On the same date an IVS officer M. saw a redness on the applicant’s cheek. She called the ambulance for him. At 4.39 p.m. an ambulance doctor examined the applicant.

26.  According to the medical certificate of 19 January 2007 by the local emergency hospital, the applicant complained about the beatings by a Drug Control officer. The applicant had the following injuries: “a bruise of 4 cm in diameter in the right lower eyelid area; a minor oedema of the soft tissues in the haematoma area; a mucosal break of the lower lip in the incisors area on the right”. No injuries were detected on his body. The applicant was diagnosed with soft tissue injuries of the face.

27.  On the same date the applicant was transferred to remand centre IZ‑35/3 of Cherepovets. According to an “act” compiled on 19 January 2007 by two remand prison officers on duty and a medical assistant (feldsher) of the remand centre, the applicant had a red-blue bruise on the right zygomatic region. On 20 January 2007 the applicant wrote “an explanation” to the remand centre officers to the effect that on 18 January 2007 he had been beaten by G. at the Drug Control Office premises.

28.  On 2 February 2007 the applicant’s forensic medical examination was conducted pursuant to the investigator’s order (see paragraph 19 above). The expert found traces of drug injections on the applicant and found no other visible injuries on him.

C.  Pre-investigation inquiries and refusals to institute criminal proceedings into the applicant’s alleged ill-treatment

29.  On 16 January 2007 the applicant complained about the alleged beatings and the theft of his belongings on 10 January 2007 to the prosecutor’s office of Cherepovets of the Vologda Region (“the prosecutor’s office”). On 19 January 2007 the applicant lodged a complaint about the beatings of 18 January 2007. In both complaints the applicant requested that criminal proceedings be brought against G. on account of abuse of power and ill-treatment.

30.  On 2 and 22 February 2007 an investigator of the town prosecutor’s office on two occasions held inquiries and refused to bring criminal proceedings against G. On 15 March 2007 the Cherepovets Town Court quashed those refusals upon the applicant’s complaint, having found that the investigator had failed to make legal assessment of the applicant’s allegations of theft and ill‑treatment.

31.  In the meantime, the investigator questioned I. and Gan. Mr Gan. stated that he had heard G. calling the applicant “a cock”, seen him taking the applicant out from the office, and then heard the applicant screaming behind a wall. When G. had brought the applicant back, the latter had a red bruise on his cheek and an abrasion of the lips. Mr I. said that he had seen G. slapping the applicant in the face when brining the applicant to a cell.

32.  On 4 April 2007 the prosecutor’s office issued a new refusal to bring criminal proceedings against the policeman, which was subsequently quashed on 1 June 2007 by the Deputy Prosecutor of Cherepovets.

33.  On 10 June 2007 the prosecutor’s office held an inquiry in accordance with Article 144 of the Code of Criminal Procedure and refused to bring criminal proceedings against G., for the lack of *corpus delicti* in his actions.

34.  As regards the allegations that the alleged beatings and the theft of the applicant’s belongings on 10 January 2007, the prosecutor found no evidence of the offence apart from the applicant’s own statements. In particular, the applicant’s injuries had never been recorded. Two lay witnesses who had been present at the applicant’s search had not seen G. beating the applicant, and had not noticed any injuries on him. Furthermore, his allegations contradicted to the submissions of G. who denied accusations of theft. The prosecutor concluded that the applicant complained about the theft in order to avoid criminal liability for drug trafficking.

35.  As regards the alleged ill-treatment on 18 January 2007, the prosecutor referred to the applicant’s account of the events, as well as to the depositions of I. and Gan., who confirmed that on 18 January 2007 they had seen the applicant at the Drug Control office, and that his lip had been split and there had been a bruise on his face. The prosecutor cited a statement by Drug Control officer Yu. , identified by the applicant as an eye-witness of the beatings; Yu. had denied having seen any use of force against the applicant. The prosecutor further referred to the testimony by IVS officer V. who submitted that the applicant’s examination of 18 January 2007 had not revealed any injuries on his body; to the submissions of the IVS official M. who had called the ambulance for the applicant on 19 January 2007; and to the depositions of G. and Yu. who denied any use of force against the applicant. G. claimed that the applicant had told him that he would injure himself and then lodge a complaint against the policeman. The prosecutor rejected the statements by Gan. and I. as unreliable since they had been the applicant’s acquaintances. In particular, between 20 January and 28 April the applicant and I. were detained in the same cell and could have agreed on a version of the events favourable to the applicant. The prosecutor noted that on 18 January 2007 the applicant had not had visible injuries and therefore the traumas revealed on 19 January 2007 had been self-inflicted.

36.  At some point the refusal was set aside by an unknown authority.

37.  On 8 July 2007 the town prosecutor’s office issued another refusal to initiate criminal proceedings. This decision was upheld by the deputy prosecutor of Cherepovets on 7 September 2007. On 12 February 2008 the Cherepovets Town Court granted the applicant’s appeal against the refusals and quashed them. The court observed, in particular, that the prosecutor’s office had failed to examine the episode of the applicant’s transfer from the IVS to the Drug Control Service between 9.40 a.m. and 3 p.m. on 18 January 2007; and that several persons, including lay witnesses, had not been interviewed and that the investigation authorities had failed to establish all relevant facts. The court further noted that the investigator had omitted to assess the depositions of IVS officer V. (see paragraph 24 above). The court also noted the investigator’s failure to interview Ms Mal. who had received on 17 January 2007 a phone call from the mobile phone allegedly stolen from the applicant.

38.  In 2008-15 several further refusals were issued by the Cherepovets Investigative Department of the Investigative Committee of the Vologda Region (“the investigative department”), in charge of the investigation since 14 March 2008. All the refusals were set aside either by a higher investigative authority or a court (see paragraph 41 below for details).

39.  On 5 May 2015 investigator K. of the investigative department again refused to open criminal proceedings against G. upon the applicant’s ill‑treatment complaint. He found that the applicant had inflicted injuries to himself to avoid criminal liability, and that the applicant’s account was not supported by any evidence, since his allegations and the testimonies of Gan. and I. had been refuted by statements of officers G. and V.

40.  On 2 June 2016 the decision was upheld by the first-instance court.

41.  On 12 September 2016 the Vologda Regional Court quashed the lower court’s decision and declared the refusal of 5 May 2015 unlawful and unfounded. The court observed that the inquiry had been pending for eight years. Twenty-two refusals to bring criminal proceedings had been issued, and twenty-one of them had been subsequently set aside as unlawful and unfounded. Refusals of 22 May, 7 August and 3 September 2008, 4 May 2009, 14 January 2011 had been issued without any additional measures being taken, and quashed for the failure to rectify the previously identified shortcomings. The refusals of 30 May, 3 July, 3 August, 11 September, 15 November and 29 December 2013 had been set aside for the failure to comply with the instructions contained in the decision of 30 April 2013. The conclusion on the injuries being self-inflicted of 5 May 2015 had not been supported by any proof, the applicant’s statements had not been recorded correctly in the decision and, furthermore, the first-instance court had failed to address those shortcomings.

42.  It appears that at some point in 2016 a domestic court convicted twelve Drug Control officers of Cherepovets, including G. , Yu., Vor. and Sov., of several counts of unlawful drug sale, abuse of power, fraud, perjury and causing serious bodily harm, and sentenced them to various terms of imprisonment. There is nothing to suggest that those criminal proceedings concerned the applicant’s allegations of ill-treatment and theft.

43.  On 23 January 2017 the investigator of the prosecutor’s office again refused to open criminal proceedings. On 27 March 2017 the Cherepovets town court upheld the refusal. The applicant appealed, arguing, in particular, that the decision reproduced verbatim the previous refusal of 5 May 2015, already declared unlawful (see paragraphs 39 and 41 above). On 7 June 2017 the Vologda Regional Court quashed the lower court’s decision as taken in G.’s absence and remitted the case for a fresh examination by the first-instance court.

44.  It appears that the inquiry into the applicant’s allegations of ill‑treatment was pending until at least late 2017.

D.  Criminal proceedings against the applicant

45.  On 19 January 2007 the Cherepovets Town Court of the Vologda Region ordered the applicant’s placement into custody pending trial. His pre‑trial detention was further twice extended by the same court.

46.  On 28 April 2007 the town court convicted the applicant of illicit purchase and attempted sale of narcotic drugs on 10 January 2007 and sentenced him to five years and six months’ imprisonment and a fine in the amount of RUB 20,000.

47.  During the trial the applicant argued that some of the banknotes and drugs seized from him on 10 January 2007 had been planted on him by G. He further submitted that on 10 and 17-18 January 2007 G. had beaten him up. The court heard witnesses I. and Gan. who submitted that they had seen bruises on the applicant’s face on 18 January 2007. The court found that those witnesses’ depositions did not corroborate the applicant’s allegations of beatings on 10 January 2007. The court did not address the ill-treatment allegations in respect of the episode of 18 January 2007.

48.  As regards the amount of RUB 7,100 allegedly seized from the applicant, the court established that RUB 2,100 of that amount had not belonged to the applicant as these were banknotes marked with the special substance given to him during the test purchase operation. The court found that the remaining RUB 5,000 belonged to the applicant and ordered that amount to be directed to the State Treasury for the repayment of the fine (see paragraph 46 above).

49.  On 5 June 2007 the Vologda Regional Court quashed the conviction for illicit purchase of drugs and upheld the remainder of the judgment. The appeal court did not address the ill-treatment complaint raised by the applicant on appeal.

II.  RELEVANT DOMESTIC LAW

50.  For the relevant provisions of domestic law on the prohibition of torture and other ill-treatment and the procedure for examining a criminal complaint, see *Lyapin v. Russia*, no. 46956/09, §§ 96-102, 24 July 2014, and *Ryabtsev v. Russia*, no. 13642/06, §§ 48‑52, 14 November 2013.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

51.  In the application form of 22 April 2008 applicant complained under Article 3 of the Convention that on 10 and 18 January 2007 he had been ill‑treated by the Drug Control officers and the investigation into his allegations had been ineffective. Article 3 of the Convention reads as follows:

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

A.  The parties’ submissions

52.  The Government argued that the complaint had been lodged out of time, since the applicant should have brought his grievance to the Court within six months after 15 March 2007, the date of the Cherepovetsk Town Court decision, but had only done so on 22 April 2008. They submitted that the domestic inquiry had complied with the procedural requirements of Article 3 of the Convention. The inquiry had been pending by the time of submission of their observations (11 June 2013), and the final domestic decision had not been taken yet.

53.  The applicant noted in reply that on 15 March 2007 the domestic court detected several shortcomings in the pre-investigation inquiry and returned the case-file to the investigating authority. Therefore, at that time it was not evident for the applicant that his respective complaints had no prospects of success – on the contrary, he reasonably expected that the shortcomings would be rectified. In any event, he noted that the Government had failed to advance any explanation of how the applicant could have sustained the injuries confirmed by the medical certificate of 19 January 2007 if not as a result of the ill-treatment on 17-18 January 2007 by officer G. at the FSKN premises. The applicant’s handwritten note in the IVS logbook should be understood as stating that the injuries had not been inflicted on him by the IVS personnel. Since 19 January 2007 he had consistently complained to the authorities about the ill-treatment by G. However, no effective investigation had followed, and no explanation of the injuries advanced by the authorities.

B.  The Court’s assessment

1.  Admissibility

(a)  Six months issue

54.  The Court is unable to accept the Government’s argument that the six-month time-limit in respect of the complaint should have been calculated as from 15 March 2007, the date of the first-instance court’s decision pointing to the lack of legal assessment of the applicant’s grievances by the investigative authority. In is not disputed by the parties that between that date and the applicant’s submission of the application form to the Court several rounds of the pre-investigative inquiry were conducted, and each time the applicant challenged their outcome before either a higher investigative authority or a court (see paragraphs 32-43 above). The applicant clearly maintained reasonable contact with the authorities, cooperated with the investigation and took steps to speed the proceedings up, in the hope of a more effective outcome. The Court concludes that there were no unexplained delays in bringing his application to the Court and dismisses the Government’s objection.

(b)  As regards the events of 10 January 2007

55.  As regards the alleged ill-treatment of 10 January 2007, the Court notes that there is no evidence is support of the applicant’s submissions. The applicant, even though at liberty, had not sought medical assistance to record his injuries (see paragraph 14 above), and did not advance any reasons for that omission. The Court further has regard to certain inconsistencies in his account of events. On the one hand, he submitted to the domestic authorities and the Court that the lay witnesses could have confirmed having seen injuries on his body. However, the lay witnesses, interviewed during the inquiry, had maintained that the applicant had been in good health on the impugned date. On the other hand, it appears that he had told to his partner that he had been to the head, and therefore had had no visible injuries – and, indeed, the partner had not seen any injuries on him after the events (see paragraph 13 above). These factors damage the credibility of the applicant’s allegations of ill-treatment (see, *mutatis mutandis, Andreyevskiy v. Russia*, no. 1750/03, § 62, 29 January 2009, with further references). Accordingly, the Court is unable to find that the applicant made an arguable claim in respect of the alleged ill-treatment of 10 January 2007.

56.  It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(c)  As regards the events of 18 January 2007

57.  The Court further notes that the applicant’s ill-treatment complaint in respect of the events of 18 January 2007 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2.  Merits

58.  The Court reiterates that where an individual displayed traces of blows after having been under the control of the police and complained that those traces were the result of ill-treatment, there was a – rebuttable – presumption that this was indeed the case (see *Bouyid v. Belgium* [GC], no. 23380/09, § 91, ECHR 2015).

(a)  Credibility of the applicant’s allegations of ill-treatment at the hands of the police officers and the presumption of fact

59.  The Court observes that the applicant was placed in the IVS early in the morning on 18 January 2007 and that no injuries had been detected on him at that time (see paragraph 16 above). Then he was brought to the FSKN premises and at some point between noon and 3 p.m. was allegedly beaten by G.. On his return to the IVS immediately after the events he was depressed and told the IVS officers that he had been beaten at the FSKN (see paragraph 24 above). Once the IVS stuff called the doctor, on 19 January 2007 – that is, one day after the alleged ill-treatment – the emergency doctor detected injuries on the applicant’s face (see paragraphs 26 and 27 above). The witnesses’ statements suggest that the applicant was seen being pushed and slapped in the face by G. and was heard screaming at the FSKN premises (see paragraphs 31 and 35 above). The Court considers that his injuries could arguably have resulted from the violence allegedly suffered by him at the hands of the FSKN officers. The applicant’s description of the alleged ill‑treatment was detailed and remained consistent throughout the proceedings in 2007-17.

60.  The above factors are sufficient to give rise to a presumption in favour of his account of events and to satisfy the Court that his allegations of police violence were credible. Accordingly, the authorities had an obligation to carry out an effective official investigation into his allegation.

(b)  Whether an effective investigation was carried out into the applicants’ allegations of police ill-treatment

61.  Whilst the Court accepts that the authorities promptly reacted to the applicant’s complaint, it observes that the applicant’s consistent allegations of ill‑treatment at the premises of the Drug Control Service were summarily rejected as a result of the pre‑investigation inquiry, which is the initial stage in dealing with a criminal complaint under Russian law and should normally be followed by the opening of a criminal case and the carrying out of an investigation if the information gathered has disclosed elements of a criminal offence (see *Lyapin*, cited above, § 129).

62.  The Court reiterates its finding that the mere carrying out of a pre‑investigation inquiry under Article 144 of the Code of Criminal Procedure of the Russian Federation is insufficient if the authorities are to comply with the standards established under Article 3 of the Convention for an effective investigation into credible allegations of ill‑treatment in police custody. It is incumbent on the authorities to institute criminal proceedings and conduct a proper criminal investigation in which a full range of investigative measures are carried out and which constitutes an effective remedy for victims of police ill-treatment under domestic law (see, among many others, *Lyapin,* cited above, §§ 129 and 132-36; *Devyatkin v. Russia*, no. 40384/06, § 34, 24 October 2017; and *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 80-82, 2 May 2017).

63.  The Court has no reason to hold otherwise in the present case, which involves credible allegations of ill-treatment of which the authorities were promptly made aware. Since 2007 more than twenty refusals to open a criminal investigation were issued, each time as a result of the pre‑investigative inquiries. Each time the refusals were set aside as lacking reasoning, unlawful, and based on inquiries that had not been thorough. However, criminal proceedings were never instituted. As a result of the refusal to conduct a fully-fledged criminal investigation, such important investigative activities as, inter alia, confrontations, identification parades and witnesses’ examinations were never carried out. No forensic medical examination in respect of the injuries detected on the applicant on 19 January 2007 has ever been conducted. Indeed, the expert examination held on 2 February 2007, aimed primarily at detecting the drug injections’ traces, was held two weeks after the alleged beatings, when the traces of bruises had disappeared, whilst no forensic expert assessment of the injuries recorded on 19 January 2007 has never been performed. No attempt was made to explain the apparent discrepancies in the parties’ accounts of events, and statements of I. and Gan. had either been rejected in summary manner (during the pre‑investigative inquiries, see, for instance, paragraph 35) or simply disregarded (by the trial court, see paragraph 47 above). The investigative authorities’ decisions were unreservedly based on the “explanations” collected from police officers who had either allegedly ill‑treated the applicant, or witnessed the ill-treatment.

64.  The Court finds that the State has failed to carry out an effective investigation into the applicant’s allegations of police violence.

(c)  Whether the Government provided explanations capable of casting doubt on the applicant’s account of events

65.  The authorities’ only explanation, that the applicant could have inflicted injuries on himself on 18 January 2007, was not based on any specific facts. Given that the explanation denying the applicant’s credible allegations of the police violence was advanced as a result of the superficial domestic inquiries falling short of the requirements of Article 3, the Court finds that they cannot be considered satisfactory or convincing. Otherwise, no explanation of the applicant’s injuries was provided by the Government. The Court holds that the Government have failed to discharge the burden of proof and produce evidence capable of casting doubt on the applicant’s account of events, which it therefore finds established (see *Olisov and Others*, cited above, §§ 83-85, and *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, §§ 102‑04, 12 December 2017).

(d)  Legal classification of the treatment

66.  Taking into account the nature of the injuries, the Court finds that the police subjected the applicant to inhuman and degrading treatment (see *Gorshchuk v. Russia*, no. 31316/09, § 33, 6 October 2015; *Aleksandr Andreyev* *v. Russia*, no. 2281/06, §§ 56‑62, 23 February 2016; and *Leonid Petrov v. Russia*, no. 52783/08, §§ 65-76, 11 October 2016).

(e)  Conclusion

67.  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.

II.  ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

68.  The applicant complained under Article 13 of the Convention in conjunction with Article 3 that the authorities had failed to carry out an effective investigation into his complaint of ill-treatment. Article 13 reads as follows:

“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.”

69.  The Government contested that claim, arguing that the applicant was able to challenge the refusal to open the criminal proceedings at courts and effectively made use of that opportunity.

70.  The Court notes that this complaint is linked to the issue raised under the procedural aspect of Article 3 of the Convention and must therefore be declared admissible.

71.  Having regard to the finding of a violation of Article 3 under its procedural head on account of the respondent State’s failure to carry out an effective investigation (see paragraphs 62-64 and 67 above), the Court considers that it is not necessary to examine this complaint separately under Article 13 (see *Olisov and Others*, cited above, § 92).

III.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

72.  By the letter of 9 September 2007 the applicant submitted, without any further details, that Articles 3, 5 § 2, 6 §§ 1, 3 (a) and 3 (b) were violated in his case. In the application form of 22 April 2008 he complained under Article 6 that his conviction was unlawful, that he had been convicted in the absence of a final decision in the proceedings concerning his duress allegations, that the conviction was based on the evidence unlawfully transferred from a criminal case concerning another person and that one witness’s testimony was inaccurately recorded by the trial court.

73.  The Court notes that the applicant’s first letter of 9 September 2007 only contained a reference to the dates of the domestic judgments in his criminal case and an allegation of being a victim of unspecified violations of Article 6. The letter did not contain any indication of the relevant facts and the nature of any alleged violation, apart from the very fact of the conviction. Conversely, the application form submitted by the applicant to the Court on 22 April 2008 described the nature of the alleged violations and the relevant facts in detail. In the light of the Court’s case-law (see, for instance, *Zverev v. Russia* (dec.), no. 16234/05, §§ 10-17 and 20, 3 July 2012, with further references) the Court considers that this part of the application was introduced outside the six-month time-limit set out in Article 35 § 1 of the Convention and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

74.  The applicant further complained on 22 April 2008 under Article 5 about unlawfulness of his arrest and the lack of reasons for his pre-trial detention. This part of the application was introduced outside the six-month time-limit and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

75.  Finally, the applicant complained under Article 1 of Protocol No. 1 that his personal property – that is, the mobile phone, RUB 2,100 and USD 100–had been stolen from him on 10 January 2007.

76.  As regards the amount in Russian roubles, the Court notes that the applicant raised the deprivation of property issue mostly in the context of the alleged forgery of the evidence in his criminal case, arguing that some banknotes had been stolen from him and replaced by those marked with the special substance. His argument to that effect is rather confined to the allegedly incorrect establishment of the facts by the trial court. The Court has no grounds to depart from the trial court’s assessment (see paragraph 48) and accepts that RUB 2,100 had not belonged to the applicant as these were banknotes marked with the special substance given to him during the test purchase operation. As regards the mobile phone and an amount in US dollars, the Court observes that since 2007 no evidence of alleged theft has been established. Notwithstanding the Court’s considerations concerning the quality of the inquiry (see, in so far as relevant, paragraph 63 above), the Court cannot but notice various unexplained inconsistencies of the applicant’s own account of the events, such as the applicant’s failure to mention those items in his explanations or the search record of 10 January 2007 (see paragraphs 9 and 10 above); or to provide an explanation as regards the phone call of 17 January 2007 (see paragraph 15 above). Accordingly, the Court does not have sufficient grounds to consider it established that any of the above belongings were taken from the applicant by State agents, and that there has therefore been an interference with the applicant’s rights under Article 1 of Protocol No. 1 on that account.

77.  It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

78.  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

79.  The applicant claimed 2,100 Russian roubles and 100 US dollars in respect of the amount allegedly seized from him, and 80 euros (EUR) representing the value of a mobile phone seized, in respect of pecuniary damage. He further claimed EUR 25,000 in respect of non-pecuniary damage.

80.  The Government submitted that the claims for pecuniary damage, all related to the applicant’s allegations of the unlawful seizure of his belongings, were unfounded as there had been no violation of his Convention rights. They further contested the amount claimed in respect of non-pecuniary damage as excessive.

81.  As regards the claim for pecuniary damage, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

82.  On the other hand, it awards the applicant EUR 25,000 in respect of non-pecuniary damage.

B.  Costs and expenses

83.  The applicant, who had been granted legal aid, claimed EUR 300 for the costs and expenses incurred in the domestic proceedings and specified that, due to a specific nature of the expenses, he was unable to submit any evidence to support the claim. He further claimed EUR 4,150 for legal costs incurred before the Court, to be paid to Mr E. Markov, a lawyer who had represented him until 17 February 2017. That amount comprised EUR 150 of the representative’s administrative and postal expenses at the post‑communication stage and EUR 4,000 the representative’s fees corresponding to forty hours’ work on the case. In support of that claim he submitted a contract with his representative stipulating, inter alia, that the applicant had no money to pay the lawyer with. In accordance with its terms, if the Court should grant legal aid or award legal costs and expenses, it would be the Government, not the applicant, who would have to pay for the lawyers’ services.

84.  The Government, referring to *Romenskiy v. Russia* (no. 22875/02, §§ 34-36, 13 June 2013), noted that the involvement of the representative in the case did not incur any costs for the applicant and invited the Court to reject the claim for costs and expenses.

85.  According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings as not substantiated with evidence.

86.  As regards the legal representation fee in the amount of EUR 4,150, The Court takes into account that the applicant was granted legal aid in the amount of EUR 850 from the Court, that the involvement of the representative in the case did not incur any costs for the applicant, and that he has no legal obligation to pay for his legal representation before the Court. Accordingly, the Court dismisses the claim for costs and expenses (see *Nizov v. Russia*, no. 66823/12, § 56, 2 May 2017).

C.  Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1.  *Declares* the complaint under Article 3 of the Convention concerning the applicant’s alleged ill-treatment on 18 January 2007 and the complaint under Article 13 of the Convention about the lack of the effective remedy in respect of the alleged ill-treatment admissible and the remainder of the application inadmissible;

2.  *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb in that the applicant has been subjected to inhuman and degrading treatment;

3.  *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the lack of an effective investigation into the applicant’s allegations;

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, EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, 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 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 3 March 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Alena Poláčková  
 Registrar President

1. .  A humiliating reference to the lowest rank of the Russian prison hierarchy. [↑](#footnote-ref-1)