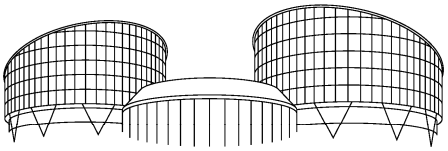

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BELUGIN v. RUSSIA

(Application no. 2991/06)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Use in trial of self incriminating statements obtained under duress in absence of lawyer

STRASBOURG

26 November 2019

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 Belugin v. Russia,

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

Paul Lemmens, *President,*
Paulo Pinto de Albuquerque,
Dmitry Dedov,
Alena Poláčková,
María Elósegui,
Gilberto Felici,
Lorraine Schembri Orland, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 22 October 2019,

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

PROCEDURE

1. The case originated in an application (no. 2991/06) 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 Dmitriy Yuryevich Belugin ("the applicant"), on 31 October 2005.

2. The applicant was represented by Mr A.V. Karev, a lawyer practising in Tomsk. The Russian Government ("the Government") were initially 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 that he had been ill-treated by police officers while in police custody and that an adequate investigation had not been carried out in this respect. He also claimed that the criminal proceedings against him had been unfair because his conviction had been based on a forced confession made in the absence of a lawyer.

4. On 13 April 2012notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and is serving his sentence in Tomsk.

A. The applicant's arrests and alleged ill-treatment

1. Events of 25 and 26 December 2002

6. At around 12 noon on 25 December 2002 the applicant was arrested on suspicion of having assaulted Mr Kon. and takento the offices of the Organised Crime Unit of Tomsk (*Управлениепоборьбесорганизованнойпреступностьюпо Томскойобласти* – "the UBOP"). According to the applicant, he was beaten up for nine hours by police officers with a view to making him confess to a crime which he had not committed.

7. At 9 p.m.,in the absence of a lawyer,the applicant signed a record of his statement of surrender (*протоколявкисповинной*) describing the robbery of Mr Kon. His confession was recorded by an investigator,Mr M.An arrest record was drawn up at 9.20 p.m.

8. At 9.55 p.m. the applicant was interviewed as a suspect, in the presence of a State-appointed lawyer, Mr F. The applicant reiterated his earlier confession. The interview was recorded on video. According to the applicant, he did not have a confidential meeting with the lawyer prior to his questioning, and the lawyer also ignored the blood stains on his shirt.

9. In the meantime, according to the applicant, his relatives hired for him another lawyer, Mr T.

10. At 11.37 p.m. the applicant was taken to the scene of the crime. This investigative measure was recorded on video. The State-appointed lawyer Mr F. was present.

11. Atan unspecified time the applicant was placedin a temporary detention facility (IVS). According to an entry in his medical record, he had no injuries at that time.

12. At 10.30 p.m. on 26 December 2002 in the absence of a lawyer,the applicant signed two documents: a handwritten statement of surrender and confession (*явкасповинной*); and a record of his statement of surrender regarding the robbery and murder of Mr Kol.According to the applicant, he made those statements as a result of the ill-treatment inflicted by police officers.

2. Events of 27 December 2002

13. On 27 December 2002 the applicant was taken to the Leninskiy District Court of Tomskto take part in a hearing. According to him, he then met with his lawyer, Mr T., for the first time.The court decided to release the applicant under an undertaking not to leave his place of residence.

14. After the hearing, the applicant went to the investigator's office together with his lawyer and relatives in order to sign the aforementioned undertaking. According to the applicant, the investigator invited the lawyer to stay outside the room while three police officers accompanied the

applicant thereinand arrested him. He contended that hedid not resist the arrest but only claimed access to his lawyer. According to the Government, the police used physical force against the applicant because he had actively resisted the arrest.

15. According to the applicant, on the night of 27 to 28 December 2002 the UBOP officers threatened himwith further ill-treatment if he complained and identifiedthem.

16. At 8 p.m. on 28 December 2002 the applicant was placed inan IVS. According to his medical record, he had no injuries.

17. On 29 December 2002, during an interview in the presence of his lawyer,Mr T., the applicant submitted that he had confessed under duress to two counts of robbery and one count of murder.

18. On 30 December 2002 the applicant was examined by a forensic medical expert. According to forensic report no. 1779,he had several bruises on the back of his head, the right temple and his left ear, and an abrasion on his right wrist. The injuries had been sustained between three and five days before the examination as a result of repeated blows by a hard blunt object with a limited surface area, for example by a fist. The expert considered that the abrasion on the applicant's wrist could have been caused by handcuffs. The injuries were not considered as harmful to health.

3. Investigation into the applicant's alleged ill-treatment

19. On 13 and 29 January 2003 the applicant's mother and grandfather complained to a prosecutor about his arrests on 25 and 27 December 2002 and his allegedill-treatment by the police.

20. On 30 January 2003 an assistant prosecutor issued a refusal to institute criminal proceedings in respect of the applicant's alleged ill-treatment on the grounds that allof the applicant's injuries, such as the bruises on the back of his head, his right temple and his wrists had been sustained on 25 December 2002 in the course of his arrest in response to his resistance.No appeal was lodged against that decision.

4. Proceedings in respect of the failure of theregional prosecutor's office to specify the dates of the applicant's detention

21. On 9 September 2005 the Sovetskiy District Court discontinued proceedings in respect of the alleged inaction of the regional prosecutor's office,which had refused to specify the exact dates of the applicant's detention on the grounds that the examination of thecriminal case against him was pendingbefore the Tomsk Regional Court. The District Court considered that the calculation of the term of the applicant's pre-trial detention fell within the competence of the trial court.

22. On 13 October 2005 the decision of the Sovetskiy District Court was upheld on appeal.

B. The applicant's trial and conviction

23. On an unspecified datein July 2004 the applicant's criminal case was referred to the Tomsk Regional Court for examination. The applicant was represented by his lawyer Mr T. On 1 September 2005 he asked the trial court to replace Mr T. by another lawyer. The applicant was henceforth represented by another lawyer, Mr K.

24. The applicant was charged with three counts of robbery and one count of murder.He pleaded not guilty to all charges. One of his co-defendants, Mr Ku., pleaded guilty and made statements incriminating other co-defendants, including the applicant. Another co-defendant,Mr Kash., retracted the statements he had made at the investigation stage incriminating the applicant, alleging that they had been obtained under duress.

25. The applicant challenged the admissibility of his self-incriminating statements,arguing that they had been obtained as a result of ill-treatment byUBOP officers. He referred to the refusal to open a criminal case of 30 January 2003 and requested that the refusal and forensic report no.1779 be appended to his criminal case file.

26. The trial court questioned officers U., G. and F. who had carried out the applicant's arrestin the investigator's office. They testified that they had brought the applicantto the floor and handcuffed his arms behind his back to overcome his resistance. The defencechallenged their testimony that the injuries had been caused to the applicant during arrest, on the grounds that the police officershad been obliged,under the relevant legislation, to draw up a report about the circumstances of the arrest and the use of force, provide the applicant with medical assistance and immediately inform his relatives and the prosecutorabout the arrest.

27. The trial court further questioned Ms A., a court clerk who had been present at the hearing of 27 December 2002.She submitted that she had not noticed any visible injuries on the applicant, but could not be certain whether he had any injuries as she was not a doctor and had not examined him.

28. When describing the circumstances in which he had given his self-incriminating statements, the applicant also referred to his unrecorded detention on 25 December 2002 and the delay in drawing up his arrest record.He asked the trial court to acknowledge the fact of thefalsification of the latter in a separate decision.

29. After having examined the materials submitted by the parties in relation to the applicant's allegations of ill-treatment, the trial court considered that the applicant's self-incriminating statements were admissible for the following reasons.

30. As regards the applicant's self-incriminating statements about the robbery and murder of Mr Kol., the trial court first noted thaton

26 December 2002 the applicant had made two statements of surrender and confession, one of which was handwritten. He had made them after he had been arrested on suspicion of having committed another offence, and the police officers who had arrested him could not have known about those other facts which he had confessedto having committed.

31. The trial court rejected the applicant's argument that he had made the statements as a result of ill-treatment inflicted by police officers, on the following grounds:

> "At trial Ms D.B., his mother, and Ms E.K., his sister, when questioned as witnesses, confirmed that [the applicant]had been severely beaten up; they had seen his injuries on 27 December 2002 after he had been released in the courtroom. [The applicant] contends that these injuries were inflicted on 25 December 2002 when one of the police officers hit him on the head with his shoe. It follows from the forensic medical examination of 30 December 2002 that [the applicant] had a wound on the back of his head, bruises on his left temple and his left ear, which could have been caused to him 3-5 days before the examination. In the meantime, it was established at the trial that these injuries could have been inflictedon him only after the hearing held by the Leninskiy District Court of Tomsk on 27 December 2002. On that day the District Court examined the request to place[the applicant] in detention, which was rejected by that court. It follows from the testimony of Ms A., the clerk ofthe hearing on 27 December 2002, that when [the applicant] was present in the District Court neither [he] nor his defence formulated any complaints regarding his ill-treatment; she remembers that when [the applicant] arrived at the District Court, she did not notice any injuries on his head or his face. These circumstances are confirmed by the hearing record of 27 December 2002 examined at the trial, demonstrating that [the applicant] expressed his readiness to cooperate with the investigation, an element which was taken into account in the court's refusal to place him in detention. The absence of any injuries on the [the applicant's] face on the night of 26 December 2002 follows from the video record of his interview carried out in the presence of a lawyer and examined in the courtroom. It follows from a certificate drawn up by the Seversk temporary detention centre (IVS), where Belugin was detained between 25 and 27 December 2002 before the detention hearing, and submitted to the trial court that he did not have any injuries. It follows from [his] own testimony that after the court [hearing] on 27 December 2002, he went together with his relatives and his lawyer to the regional prosecutor's office to sign the undertaking not to leave his place of residence; however, he was arrested again in the investigator's office. Witnesses Mr G., Mr U., Mr F., police officers, and Mr M., the investigator, testified that in the premises of the regional prosecutor's office [the applicant] had been arrested again on suspicion of having committed another criminal offence; he actively resisted the arrest and physical force was used against him. In these circumstances, the trial court considers that [the applicant] was not ill-treated by police ... when he made his statements of surrender on 26 December 2002 regarding the circumstances of the attack and murder of Mr Kol.; physical force was used against him during his second arrest on 27 December 2002. The trial court thus considers that his statements of surrender were obtained at the pre-trial investigation stage in accordance with the law.
>
> Since a confession statement constitutes a voluntary report of a person about a committed crime, the requirements prescribed by the relevant legislation on the mandatory participation of a lawyer when obtaining statements from a suspect or an accused person do not apply; consequently, the absence of a lawyer when [the

applicant] voluntarily reported on the committed crime to the police cannot constitute a breach of his defence rights."

32. The trial court further considered that the applicant's self-incriminating statements had been corroborated by other evidence, namely the testimony of co-defendant Ku. that the applicant himself had told him about the murderof Mr Kol., and that of co-defendant Kash.,given during the investigation. Italso relied on the forensic reports, considering that their findings as to the way in which the victim's injuries had been inflictedwere consistent with the applicant's statements. Finally, it noted that the investigation had examined alternative hypotheses that other people could have killed the victim. The trial court rejected the applicant's alibi on account of several inconsistencies in the statements given by his mother and his sister.

33. Referring to the applicant's self-incriminating statement of 25 December 2002 in relation to the robbery of Mr Kon., the trial court rejected his allegations of ill-treatment for similar reasons (see paragraph 31above). It further considered that the applicant's guilt was corroborated by thetestimony of his co-defendants Ku. and Kash., and other evidence, such as forensic medical reports, witnesses' statements, and search records.

34. On 9 June 2006 the Regional Court found the applicant guilty onthree counts of robbery and one count of murder. It sentenced him to twenty years of imprisonment, starting on 25 December 2002, the day of his arrest. The court also ordered the applicant and two other co-defendants to pay jointly to Mr Kol.'s sister 188,762 roubles in respect of non-pecuniary damage.In accordance with the court's decision, all physical evidence was to be destroyed.

35. On 8 April 2008 the Supreme Court of Russia rejectedan appeal lodged by the applicant and upheld the conviction. The applicant's arguments that his self-incriminating statements had been obtained under duress were rejected as unsubstantiated.

C. Developments following notification of the application to the Government

36. On 30 May 2012 the deputy prosecutor of the Tomsk Region overruled the refusal to institute criminal proceedings of 30 January 2003 and referred the complaints lodged by the applicant's relatives on 13 and 29 January 2003 to the Investigative Committee for further investigation.

37. On 4 June 2012 a forensic medical examination was carried out. According to forensic medical report no. 3139-M, the applicant's injuries indicated in forensic report no. 1779 could have been inflicted in the circumstances described by the police officers, that is during the applicant's arrest on 27 December 2002. The injuries were not considered as harmful to health.

38. On 5 June 2012 a senior investigator of the regional department of the Investigative Committee issued a refusal to institute criminal proceedings. The decision referred to the Tomsk Regional Court's findings according to which the applicant's injuries recorded by the forensic medical expert on 30 December 2002 had been caused to him during his arrest on 27 December 2002.In addition to the elements referred to by the trial court, the investigator pointed tothe inconsistencies in the applicant's description regarding the time and place of his alleged ill-treatment. He noted, in particular, that before 29 December 2002 neither the applicant nor his lawyer hadcomplained about his alleged ill-treatment by the police. He further indicated that at the hearing of 27 December 2002 the applicant had confirmed that he had made his confession statements voluntarily and that on 26 and 27 December 2002 his lawyer had asked the investigator and the court to take that fact into account when deciding on a preventive measure. The investigator thus concluded that it was not until 29 December 2002 when the applicant had made his allegations of ill-treatment on26 December 2002. Lastly, the investigator observed that at a later stage,the applicanthad also stated that he had been ill-treated on 25 December 2002 and in his application to the Court he had added that he had been ill-treated again between 27 and 28 December 2002.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Criminal Procedure

39. For relevant domestic law and practice concerning the rights of suspects, see *Turbylev v. Russia*(no. 4722/09, §§ 46-49, 6 October 2015). In particular, the relevant Articles of the CCrP regarding the use of self-incriminating statements made by criminal suspects at the pre-trial investigation stage provide as follows:

Article 75

"2. The following constitute inadmissible evidence:

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

Article 142

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

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

40. In its decision no. 391-O of 20 October 2005, the Constitutional Court of the Russian Federation held that Article 142 CCrP, which only lists "surrender with confession" among the reasons for opening a criminal investigation, does not prevent the application of Article 75 of the same Code governing the admissibility of evidence at trial and in particular the circumstances in which a self-incriminating statement made at the pre-trial investigation stage may be read out at trial.

B. Ruling no. 1 "on the practice of examination by the courts of complaints lodged under Article 125 of the Code of Criminal Procedure" adopted by the Plenum of the Supreme Court of the Russian Federation on 10 February 2009

41. Paragraph 9 of this Ruling provides that complaints lodged under Article 125 of the CCrP may be examined only as long as the criminal investigation is pending. If the case has already been transferred to a court for trial, the judge declares the complaint inadmissible and explains to the complainant that he or she may raise the complaints before the relevant trial court.

C. Ruling no. 55 "on criminal conviction" adopted by the Plenum of the Supreme Court of the Russian Federation on 29 November 2016

42. Paragraph 10 of this Ruling provides that before admitting in evidence a statement of "surrender and confession" referred to by the prosecution, the trial court should examine, among other things, whether prior to such a confession statement, the defendant had been informed about his rights, including the privilege against self-incrimination and the right to a lawyer, and whether he or she had been able effectively to use them.

43. If the defendant changes his previous statements or retracts them on the grounds that they were obtained under duress, the trial court should take adequate and effective measures for the examination of such allegation. In doing so, the courts must take into account that it is for the prosecution to refute the defendant's allegations that his statements were obtained under duress (paragraph 12).

44. If there are grounds to carry out a preliminary inquiry into the applicant's allegations of ill-treatment raised at trial, the court should refer them to the competent investigative body. The court must then examine the results of such inquiry in its decision (paragraph 13).

45. If the defendant's allegations of ill-treatment have not been refuted, his statements made as a result of such treatment may not be used in evidence (paragraph 14).

D. The Police Act

46. Sections 18-20 of the Police Act 2011 (Federal Law no. 3-FZ of 7 February 2011) provide that

- a police officer may use physical force, special means or a weapon during an arrest;
- a police officer must ensure that an injured arrestee receives first aid;
- where the physical force used results in damage to health, and where special means or a weapon are used, a police officer must submit a report about the use of physical force, special means or a weapon to his supervisor within twenty-four hours.

47. The Police Act 1991 (Federal Law no. 1026-I of 18 April 1991) and respective by-laws contained similar provisions.

E. Other by-laws

48. The Instructionsfor Police Station Duty Officers (approved by Order no. 389 of the Ministry of the Interior of the Russian Federation on 30 April 2012) provides that

- a police officer on custody duty must inform his superior of all cases where a person arrested and taken into police custody has visible wounds, injuries or is in a state that requires urgent medical intervention;
- a police officer must call an ambulance or take an injuredperson to a nearby hospital;
- a police officer must find out the reasons and circumstances of the injuries sustained by the person concerned. If the latter reports violent actions that resulted in his injuries, then the police officer must receive a criminal complaint from the person; if not, he must draw up a reasoned report and file it in the criminal complaints register.

49. The Instructionsreproduced the rules that were in force at the time of the events (see *Chernetskiy v. Russia*, no. 18339/04, § 50, 16 October 2014).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

50. The applicant complained of ill-treatment in police custody on 25-26 and 27-28 December 2002 and the lack of an effective investigation in this respect. 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. The parties' submissions

51. The Government submitted that the applicant had complained of ill-treatment for the first time on 29 December 2002 and that he had subsequently raised the issue again during the criminal court proceedings within the context of admissibility of evidence. They pointed out that the task of the trial court was to determine whether or not a defendant was guilty of the offences with which he had been charged, and not to hold the alleged perpetrators liable. Referring to the case of *Belevitskiy v. Russia* (no. 72967/01, § 63, 1 March 2007),the Government consideredthat the applicanthad failed to exhaust domestic remedies in respect of his allegations of ill-treatment.He had been represented by an experienced criminal lawyer andit would not have been excessively burdensome for him to have lodged an appeal against the refusal to institute criminal proceedings, which would be a normal avenue of exhaustion of domestic remedies in respect of his complaint. Nevertheless, he had failed to explain why he had chosen not to do so.

52. The applicant maintained his complaint that he had been beatenup on 25 December 2002 during his arrest and that the beatingshad continued thereafter, in order to make him signseveral self-incriminating statements. He claimed that after his second arrest on 27 December 2002 he had spent the night in the UBOP where he had received threats from police officers. He further challenged the reliability ofthe IVS medical records referred to by the trial court when dismissing his allegations of ill-treatment. He referred in this respect to the absence of injuries recorded on 27 December 2002 when he had been placed in the IVS for the second time, notwithstanding the authorities' acknowledgment that he had been injuredin the course of that second arrest. He further argued that he had raised the issue of ill-treatment in his complaint against the prosecutor in September 2005,butthat the Sovetskiy District Court had dismissed it. Lastly, he had raised the issue at his trial, but it had also been dismissed as unfounded. He contended that in such circumstances,to have lodged with a court a separate complaint against the refusal of 30 January 2003 would not have remedied his situation.

B. The Court's assessment

53. The Court observesat the outset that the applicant complained of several episodes of ill-treatment. Firstly, he complained of being ill-treated on 25 and 26 December 2002 and, secondly, of receiving threats during his overnight stay at the UBOP premises between 27 and 28 December 2002. The latter allegationswere raised for the first time before the Court in his application form of 31 October 2005. The Court thus considers that this part of the complaint is inadmissible for failure to exhaust domestic remedies

and in any event falls outside the six-month time-limit (see *Trubnikov v. Russia* (dec.) no. 49790/99, 14 October 2003).

54. As regards the applicant's allegations of ill-treatment on 25 December 2002, the Court reiterates its long-standing position that an appeal to a court against a prosecutor's refusal to open criminal proceedings in response to an applicant's complaint of ill-treatment would be a normal avenue of exhaustion in respect of an Article 3 complaint (see, for example, *Belevitskiy*, cited above, § 61, and *Trubnikov*(dec.), cited above). No such appeal was lodged by the applicant against the prosecutor's refusal of 30 January 2003 in the present case.TheCourt further finds that the decision of 5 June 2012 not to open a criminal investigation appears no more than a mere formality. It wastaken more than nine years after the decision of 30 January 2003, and came to the same conclusions (see paragraphs 36-38 above). In any event, the applicant did not appeal against it either, so the above reasoning is not affected.

55. As to the applicant's submission that he had brought his grievances to the attention of the trial and appellate courts and, thereby, had made use of the judicial avenue of redress in the process of exhaustion, the Court reiterates in the first place that the purpose of the criminal proceedings against the applicant was to find him innocent or guilty of the criminal charges brought against him, rather than to attribute responsibility for the alleged beatings or to afford redress for an alleged breach of Article 3 (see *Toteva v. Bulgaria* (dec.), no. 42027/98, 3 April 2003). Having examined the materials submitted by the parties, the Court notes that they contain no proof that the applicant challenged the prosecutor's findings before the domestic courts or asked for the investigation to be reopened because of its deficiencies. The request made by the applicant's counsel to admit the forensic report of 30 December 2002 in evidence cannot be construed as an attempt by the applicant to challenge the prosecutor's decision (see *Radzhab Magomedov v. Russia*, no. 20933/08, § 67, 20 December 2016).

56. In these circumstances, the Court cannot but agree with the Government that the applicant failed to exhaust domestic remedies in respect of his complaint under Article 3 of the Convention. It must therefore be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

57. The applicant complained that his detention on 25 December 2002was incompatible with Article 5 § 1 of the Convention, the relevant parts of which read as follows:

> "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."

A. The parties' submissions

58. The Government acknowledged that there had been a violation of Article 92 of the Code of Criminal procedure on account of the delay in recording the applicant's arrest on 25 December 2002. However,they raised a preliminary objection as to the admissibility of the complaint on account of the applicant's failure to challenge the accuracy of the arrest record before the domestic courtsin accordance with Article 125 of the CCrP. Lastly, they indicated that although the applicant referred to his unrecorded detention on 25 December 2002 at his trial, it should not be considered as an appropriate way of exhausting domestic remedies since he did so in the context of the examination of admissibility of evidence.

59. The applicant submitted that hehad challengedthe arrest records under Article 125 of the CCrP and at trial,but to no avail. He argued that it had been established in the course of his trial that his *de facto* arrest had taken place at around 12 noon on 25 December 2002, and not at 9 p.m. on that date, and that despite his requests to recognise that fact, the court had failed to adopt a relevant decision so that he could have received compensation for his unrecorded detention.

B. The Court's assessment

60. In assessing whether an applicant has complied with Article 35 § 1 of the Convention, it is important to bear in mind that the requirements contained in that Article concerning the exhaustion of domestic remedies and the six-month period are closely interrelated. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. However, where it is clear from the outset that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant. The pursuit of remedies which do not satisfy the requirements of Article 35 § 1 will not be considered by the Court for the purposes of establishing the date of the "final decision" or calculating the starting point for the running of the six-month rule (see *Raush v. Russia* (dec.), no. 17767/06, § 53, 22 March 2016; see also, *mutatis mutandis*, *R.S. v. Hungary*, no. 65290/14, 2 July 2019, § 36, both with further references).

61. The Court first remarks that, as noted above (see paragraph 56 above), the applicant has not pursued the question of his alleged ill-treatment and unlawful detention through criminal proceedings (compare with *Fartushin v. Russia*, no. 38887/09, §§ 19, 30 and 51, 8 October 2015). It also does not appear that the applicant has challenged the alleged unlawfulness of this period of detention in the proceedings concerning the lawfulness and justification of his pre-trial detention, either on 27 December 2002 before the Leninskiy District Court (see paragraph 13 above), or in the context of his subsequent pre-trial detention.

62. As regards the applicant's reference during his trial to unrecorded detention, the Court observes that at that stage of the proceedings, he either referred to this unrecorded detention as an element in support of his requests to declare his self-incriminating statements inadmissible or invited the trial court to adopt a separate decision, in the context of obtaining possible compensation which he did not pursue any further (see paragraphs 28 and 59 above). The issue of the weight attached to the self-incriminating statements will be examined below under Article 6; in the present case it isenough to point out that this claim did not address questions of the lawfulness of the detention. Furthermore, the applicant provided no explanation of the reasons why he had waited for almost two and a half years before raising the issue of alleged criminal unlawfulness of this detention (compare and contrast with *Rakhimberdiyev v. Russia*, no. 47837/06, § 28, 18 September 2014, *Aleksandr Sokolov v. Russia*, no. 20364/05, § 66, 4 November 2010). In view of this, the Court finds that in the present case the applicant brought up the issue of unlawful detention essentially as an element of defence against the criminal charges brought against him. The Court has no grounds to conclude that in the circumstances of the present case this avenue could be considered as an effective remedy in the context of Article 5.

61. The Court finds, accordingly, that in the present case there was no "final decision" of any domestic authority with regard to the applicant's complaint about the unlawfulness of his deprivation of liberty on 25 December 2002. In such circumstances, the Court should regard the period of unlawful detention as the starting date for the calculation of the six-month period (see, for similar reasoning, *Raush,* cited above, § 66, and *Zelenin v. Russia*, no. 21120/07, § 67, 15 January 2015).

62. In these circumstances, the Court holds that the complaint under Article 5 of the Convention concerning the events of 25 December 2002 was lodged out of time and must be rejected under Article 35 §§ 1 and 4 of the Convention. In view of this conclusion it finds that it is unnecessary to address the Government's preliminary objection.

III. ALLEGED VIOLATION OF ARTICLE 6OF THE CONVENTION

63. The applicant complained that his self-incriminating statements should have been declared inadmissible evidence on the grounds that he had made them as a result of beatings by the police and in the absence of a lawyer.He relied on Article 6§§ 1 and 3 (c) of the Convention, which, in so far as relevant, provides:

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

A. Admissibility

64. The Court notes that the complaintsare not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

65. The Government did not comment on the applicant's complaint that his self-incriminating statements had been obtained as a result of his ill-treatment. Notwithstanding their acknowledgment that the applicant's self-incriminating statements made in the absence of a lawyer and not reiterated at trial should have been declared inadmissible in accordance with Article 75 of Russian Code of Criminal procedure, as interpreted by the Constitutional Court (see paragraph 40 above), they considered that this circumstance had not undermined the overall fairness of the proceedings. The applicant had been rapidly provided with a lawyer and subsequently granted access to a lawyer of his own choosing, and all investigative actions had been carried out in the presence of his counsel.

66. The applicant insisted that not only had his self-incriminating statements been made in the absence of a lawyer, but they had also been the result of the ill-treatment he had sustained between 25 and 26 December 2002. He challenged the effectiveness of the legal assistance provided by the State-appointed lawyer, Mr F., during his interview as a suspect on 25 December 2002,since he had not had an opportunity to discuss the

defence strategy with him, the lawyer had failed to explain his rights and had disregarded his injuries. Moreover, there had been a delay in granting him access to a lawyer of his own choosing.

2. The Court's assessment

(a) Alleged violation of Article 6 § 1 of the Convention

(i) General principles

67. The Court reiterates that it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, this being primarily a matter for regulation under national law (see *Jalloh v. Germany* [GC], no. 54810/00, § 94, ECHR 2006-IX, and *Gäfgen v. Germany* [GC], no. 22978/05, § 162, ECHR 2010). It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found (see *Jalloh*, cited above, § 95, and *Gäfgen*, cited above, § 163).

70. The Court reiterates that the admission of confession statements obtained as a result of torture or of other ill-treatment in breach of Article 3 as evidence to establish the relevant facts in criminal proceedings renders the proceedings, as a whole, unfair. This finding applies irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction (see *Ryabov v. Russia*, no. 2674/07, § 57, 17 July 2018). The Court further reiterates that the use of evidence, allegedly obtained as a result of ill-treatment, always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction (see, for example, *Özcan Çolakv. Turkey*, no. 30235/03, § 43, 6 October 2009, and *Örs and Othersv. Turkey*, no. 46213/99, § 60, 20 June 2006). Consequently, even in the absence of an admissible Article 3 complaint, the Court is not precluded from taking into consideration allegations of ill-treatment for the purposes of deciding on compliance with the guarantees of Article 6 (see *Aydın Çetinkayav. Turkey*, no. 2082/05, § 104, 2 February 2016, and *Kolu v. Turkey*, no. 35811/97, § 54, 2 August 2005).

68. In determining whether the proceedings as a whole were fair, regard must be had to whether the rights of the defence have been respected. It must be examined in particular whether the applicant was given the opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see *Gäfgen*, cited above, § 164, and *Jannatov v. Azerbaijan*, no. 32132/07, § 74, 31 July 2014). In the light of the principle of presumption of innocence and a defendant's right to challenge any evidence against him, a criminal court must conduct a full, independent and comprehensive examination and assessment of the admissibility and reliability of evidence pertaining to the determination of the defendant's guilt, irrespective of how the same evidence may have been assessed in any other proceedings (see *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 212, 26 July 2011).

(ii) Application of these principles to the present case

69. In the present case, on 9 June 2006 the Tomsk Regional Court found the applicant guilty on three counts of robbery and one murder, and sentenced him to twenty years of imprisonment. In doing so, the trial court referred, among other evidence, to his self-incriminating statements of 25 and 26 December 2002. All statements were subsequently retracted by the applicant, who claimed that they had been made under duress. He requested that his statements be declared inadmissible by the trial court. In support of this request, he referred to a refusal to open criminal proceedings of 30 January 2003 seeking to establish that his injuries had been caused to him during his arrest on 25 December 2002, to the forensic medical report of 30 December 2002 (see paragraphs18and 25above) and the statements given by his relatives, namelyhis mother and his sister, who on 27 December 2002 prior to the detention hearing, had noticed marks on him left by the beatings (see paragraph 31above).

70. The trial court did not ignore the applicant's request that his self-incriminating statements be declared inadmissible,andcarried out an examination of his allegations of ill-treatment. It summoned and questioned a series of witnesses, notably the applicant's relatives, police officers, and a clerk who had been present at the detention hearing.It also examined medical evidence, in particular the forensic medical report and the applicant's medical records from the IVS(see paragraphs 11 and 16 above), as well as other evidence such as videorecordings of the applicant's interview as a suspect. As a result of that examination, the trial court came to the conclusion that the applicant's injuries had been caused on 27 December 2002, namely after he had made his confession statements, in the course of his second arrest when the police had had to apply force to overcome his resistence. It therefore declared the applicant's

self-incriminating statements admissible and included them in the body of evidence against him.

71. The Court will thus examine whether the domestic courts adequately addressed the objections raised by the applicant in respect of the reliabilityand probative value of his self-incriminating statements and provided him with an effective opportunity to challenge their admissibility and to effectively oppose their use (see*Gäfgen*, cited above, § 164,and *Huseyn and Others*, cited above, § 212). It reiterates in this respect that when dealing with allegations that evidence was obtained as a result of ill-treatment, the trial court may be called for to assess the same facts and elements which had previously been subject to the investigative authorities' examination. However, its task is not to examine individual criminal responsability of the alleged perpetrators but to address through a full, independent and comprehensive review the issue of admissibility and reliability of evidence. Admission in evidence of testimony notwithstanding credible allegations that it was obtained as a result of the ill-treatment raises serious issues as to the fairness of the proceedings.

72. The Court notes thatthe applicant was arrested twice, first on 25 December 2002 and a second time on 27 December 2002. Between those two dates he was held in police custody and made a number of self-incriminating statements, which he claimed to be the result of ill-treatment. It appears from the casefile that on both occasions, the applicant showed resistance, and physical force was used against him (see paragraphs 20 and 31 above). As a result, he sustained a number of injuries, which were notably recorded by a forensic medical expert who examined him on 30 December 2002, that is three days after his second arrest by the police. The forensic expert established that the applicant'sinjuries might have been caused between three and five days before the examination (see paragraph18 above).

73. Although that report was referred to by the trial court as an element corroborating the prosecution's version that all the applicant's injuries had been caused on 27 December 2002 in the course of his second arrest, the Court notes that the report does not give a detailed determination of when the injuries had been sustained, but it did put the age of the injuries at between three and five days before the examination.The report thus expressly includes the possibility of the injuries having been incurred before the self-incriminating statements were made. The trial court did not, however,question the way in which the forensic medical examination was carried out, notably by enquiring into whether the forensic medical expert had been provided with full information on the circumstances of the applicant's arrests, made aware of his allegations of ill-treatment and invited to express himself on the degree of consistency between the different versions of the origin of the applicant's injuries. Nor did the court summon and question the forensic medical expert for more explanations.

74. The trial court further referred to a certificate issued by IVS officials stating that the applicant had hadno injuries during his detention there between 25 and 27 December 2002. However after both arrests, that is on 25 and on 27 December 2002, the applicant's medical records drawn up at the IVS mentioned that he had no injuries (see paragraphs 11 and 16 above), whereas it is clear that at least on one occasion certain injuries should have been recorded. The trial court's reliance on the certificate cannot therefore help dispel the doubts as to the applicant's claims.

75. When challenging the medical evidence referred to by the trial court, the applicant pointed out that it was inconclusive and questionable in the absence of any reports describing the circumstances of his arrests and the necessity to use physical force against him prepared by the police officers involved in the incident (see *Shamardakov v. Russia*, no. 13810/04, § 133, 30April 2015) and without any medical examination having been carried out as soon as he had been taken to the police station(see paragraphs 46and 48above, *Korobov v. Ukraine*, no. 39598/03, § 70, 21 July 2011, and *Chernetskiy v. Russia*, no. 18339/04, §§ 69-70, 16 October 2014). The Court reiterates that this measure would have considerably facilitated the trial court's examination of the applicant's allegations that he was also beaten after his arrest, particularly bearing in mind that there had been a scuffle during his arrest (see, *inter alia*, *Parnov v. Moldova*, no. 35208/06, § 30, 13 July 2010, and *Türkan v. Turkey*, no. 33086/04, § 42, 18 September 2008). Such a medical examination would not only have ensured that he would have been fit for questioning in police custody, but would have constituted evidence showing whether the injuries were caused before the applicant had been taken to the police station and would have assisted the courts in examining the veracity of his ill-treatment allegations (see *Khani Kabbara v. Cyprus*, no. 24459/12, § 156, 5 June 2018).

76. The Court has similar reservations as regards other evidence used by the trial court to substantiate the version that the applicant's injuries had been caused to him on 27 December 2002, that is the testimony of the clerk present at the detention hearing of 27 May 2002 and the video recording of the applicant's interview of 25 December 2002 (see paragraphs10, 26and 31above). While the Court is ready to accept that the injuries to the applicant's face could hardly have gone unnoticed, others such as bruises on the back of his head would have been difficult to observe. In addition, the clerk expressly limited her testimony to visible injuries, whereas the lawyer who had represented the applicant on 25 December 2002 during his interview as a suspect and during the on-site verification of statements was not even questioned (see paragraphs 8 and 10 above).Thus, none of the elements referred to by the trial court had decisive importance.

77. The Court concludes that in deciding to admit in evidence the applicant's self-incriminating statements, the trial courtbased its decision on evidencethe probative value of which remained questionable and open to

doubt. In doing so, it disregarded other elements put forward by the applicant and pointing at a different version. For instance, although the decision of 30 January 2003 refusing to open criminal proceedings was included in the case-file materials at the applicant's request (see paragraph 25 above), the trial court did not comment on its conclusion that the injuries recorded by the forensic expert had been inflicted on 25 December 2002.

78. Thus, the Court cannot but conclude that the trial court failed to carry out an independent and comprehensive review of the applicant's credible allegations that his self-incriminating statements were the result of the police violence. This is all the more problematic, given that all those statements,which the applicant subsequently retracted,had been made in the absence of a lawyer.Moreover, at least one statementhad been made while the applicant was being held in unrecorded detention and without prior notification of his rights as a person arrested on suspicion of having committed a criminal offence (see paragraph 7 above).

79. In these circumstances, the Court findsthat the applicant's request that his self-incriminating statements be declared inadmissible was not subject to a full, independent and comprehensive examination and assessment by the trial court. It is therefore not convinced that the applicant had an effective opportunity to challenge the admissibility of his self-incriminating statements and to effectively oppose their use.

80. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 § 1 of the Convention.

(b) Alleged violation of Article 6 §§ 1 and 3 (c) of the Convention

81. Having regard to the findings relating to Article 6 § 1 of the Convention, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. 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

83. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

84. The Government contested the claim, arguing that it was unsubstantiated.

85. The Court reiterates that when an applicant has been convicted despite an infringement of his rights as guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be a retrial or the reopening of the proceedings, if requested (see *Öcalan v. Turkey* [GC], no. 46221/99, § 210 *in fine*, ECHR 2005-IV). Having regard to the fact that domestic lawprovides that criminal proceedings may be reopened if the Court finds a violation of the Convention, and given the position of the Russian Supreme Court, the Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant (see *Zadumov v. Russia*, no. 2257/12, §§ 80-81, 12 December 2017, and most recently, *Kumitskiy and Others v. Russia*, nos. 66215/12 and 4 others, § 28, 10 July 2018).

B. Costs and expenses

86. The applicant also claimed EUR 3,000 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

87. The Government submitted that the applicant had not provided documents substantiating his expenses at the national level. Regarding the proceedings before the Court, it followed from the services contract that the applicant's representative was entitled to payment only if the Court were to make an award in respect of the applicant's claims.

88. Having regards to the parties' submissions, the Court finds it appropriate to award the applicant EUR 1,000 under this heading.

C. Default interest

89. 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

1. *Declares*, unanimously, the complaints concerning the use in the trial of self-incriminating confession statements admissible and the remainder of the application inadmissible;

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

3. *Holds*, unanimously,that there is no need to examine the complaint under Article 6 § 1 taken in conjunction with Article 6 § 3 (c) of the Convention;

4. *Holds*, by four votes to three, that the finding of a violation constitutes sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

5. *Holds*, by five votes to two,
(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 1,000 (one thousand 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 26 November 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Paul Lemmens
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Pinto De Albuquerque, Elósegui and Felici is annexed to this judgment.

P.L.
J.S.P.

JOINT DISSENTING OPINION OF JUDGES PINTO DE ALBUQUERQUE, ELÓSEGUI AND FELICI

We regret that we cannot join the majority in holding that, in the circumstances of the present case, the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. We would award some damages to the applicant in view of his obvious suffering. This is in line with previous opinions expressed by several judges, both in Russian cases such as *Urazbayev v. Russia*, no. 13128/06, 8 October 2019, *Gorlov and Others v. Russia*, nos. 27057/06 and 2 others, 2 July 2019, and in non-Russian cases such as *T.W. v. Malta* [GC], no. 25644/94, 29 April 1999; *Abdullah Yıldız v. Turkey,* no. 35164/05, 26 April 2011; *Murray v. the Netherlands* [GC], no. 10511/10, 26 April 2016; and, more recently, *Oddone and Pecci v. San Marino*, nos. 26581/17 and 31024/17, 17 October 2019.