



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

THIRD SECTION

CASE OF FREDRIKSEN AND OTHERS v. RUSSIA

(Applications nos. 15476/08 and 4 others – see appended list)

JUDGMENT

STRASBOURG

11 January 2022

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

In the case of Fredriksen and Others v. Russia,

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

Peeter Roosma, *President*,

Dmitry Dedov,

Andreas Zünd, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 15476/08 and 4 others) 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 eight Russian nationals (“the applicants”), on the various dates indicated in the appended table;

the decision to give notice of the applications to the Russian Government (“the Government”);

the notice given to the Norwegian Government of their right to intervene (Article 36 § 1 of the Convention and Rule 44 § 1 (a) of the Rules of Court), and the fact that they did not avail themselves of this opportunity;

the parties’ observations;

Having deliberated in private on 30 November 2021,

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

INTRODUCTION

1. The applications concern the applicants’ alleged ill-treatment in police custody in Chechnya between 2003 and 2006, and the alleged ineffective investigation into the ill-treatment, as well as other complaints under well-established case-law.

THE FACTS

2. The applicants are Russian nationals, except for Mr Fredriksen (see paragraph 5 below). Their personal details are indicated in the appendix.

3. The Government were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

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

I. FREDRIKSEN v. RUSSIA (No. 15476/08)

5. At the time of lodging his application with the Court, Mr Fredriksen was a Russian national. His name was Aslan Ocherkhadzhiyev. In 2016 he obtained Norwegian citizenship and changed his name to Adam Fredriksen.

A. Alleged ill-treatment

6. On 11 May 2005 police officers of the Leninskiy Temporary Department of the Interior (“VOVD”) in Grozny arrested the applicant during a special operation. The applicant was taken to the Operational-Search Division of the North Caucasus Operations Department of the Chief Directorate of the Russian Ministry of the Interior in the Southern Federal Circuit (*ОПБ-2 СКОВУ ГУ МВД РФ по ЮФО* – “the ORB-2”). According to the applicant, he was subjected to electric shocks, beaten with wooden sticks, suffocated with a gas mask, forced to inhale liquid ammonia, burned with cigarette butts. The officers forced him to confess to terrorist crimes.

7. On 13 May 2005 the applicant’s arrest record was drawn up.

8. On 27 May 2005 the applicant was examined in remand prison no. 20/1 in Grozny. According to his medical notes, he had two marks from cigarette butts, crusted skin on his legs, his left knee, a haematoma on his leg, and a scar on his head. The applicant complained to the doctor about the pain all over his body and deterioration of his eyesight caused by beatings in the ORB-2.

9. According to the applicant, he was taken to the ORB-2 and beaten there also between 9 and 15 June, 13 and 19 December 2005, and between 27 January and 3 February 2006.

10. On 26 April 2006 the applicant underwent a forensic medical examination. According to the forensic report, his injuries recorded on 27 May 2005 were confirmed. Besides that, the applicant had a post-traumatic contusion of both eyes and post-traumatic encephalopathy due to brain injury which could have been caused in the circumstances described by the applicant.

B. Inquiry into the alleged ill-treatment

11. On 20 May 2005 the applicant complained to the prosecution office of the Leninskiy District in Grozny about his ill-treatment.

12. On 25 May 2005 an investigator refused to open a criminal case, relying on statements of ORB-2 officers that no force had been applied to the applicant.

13. On 14 April 2006 the Supreme Court of Chechnya, which examined the applicant’s criminal case, ordered a prosecution inquiry into his complaints of ill-treatment. On 2 May 2006 a criminal case was again refused.

14. On 27 June 2006 the trial court ordered another inquiry.

15. On 17 July 2006 the investigator refused to open a criminal case, citing the applicant’s medical documents and relying on the statements of ORB-2 officers.

16. On 29 January 2007 the Supreme Court of Chechnya acquitted the applicant and his co-defendant on the grounds that the police officers had

subjected them to “physical and psychological impact”, forcing to confess, and that the applicant had not had proper legal assistance. The court referred to the applicant’s medical forensic documents and noted that the investigator had failed to rebut the applicant’s well-founded allegations of ill-treatment. The court also found that the applicant had been apprehended on 11 May 2005, and not on 13 May 2005.

17. On 13 September 2007 the Supreme Court of Russia quashed the applicant’s acquittal, referring to the refusals to open a criminal case. It remitted the case to the Supreme Court of Chechnya for a new examination.

18. On 25 October 2007 the Supreme Court of Chechnya suspended the examination of the criminal case against the applicant because he had absconded.

II. DZHANTEMIROV AND OTHERS v. RUSSIA (No. 8607/09)

19. The applicants are Mr Dzhantemirov, Mr Matsiyev, Mr Salavatov and Mr Khabibulayev. Their personal details are indicated in the appendix.

20. The applicants were suspected of membership in illegal armed groups and participation in a number of episodes of terrorist attacks, murder and life attempts on law-enforcement officers in Chechnya between 2000 and 2002.

A. The applicants’ alleged unrecorded detention

21. On 8 January 2003 a group of armed men in military uniform apprehended Mr Salavatov near the village of Germenchuk in Chechnya and took him to the ORB-2. The applicant’s apprehension on that day was witnessed by passers-by. His arrest was recorded on 13 January 2003.

22. On 21 January 2003 a group of armed men broke into the house of Mr Matsiyev in the village of Ordzenikidzevskaya in Ingushetia and apprehended him and Mr Dzhantemirov. Their apprehension was witnessed by Mr Matsiyev’s neighbours. The men took the applicants to the ORB-2 in Grozny. Their arrests were recorded on 25 January 2003.

23. On 23 January 2003 police officers apprehended Mr Khabibulayev in Kalmykia and took him to the ORB-2 in Chechnya. His arrest was recorded on 27 January 2003.

24. According to the applicants, Mr Dzhantemirov, Mr Matsiyev and Mr Khabibulayev were held in the ORB-2 until 25 April 2003. Mr Salavatov was held there until 17 July 2003. The Government submitted that the copies of the ORB-2 official logs had been destroyed following the expiry of the time-limit for their storage.

B. Alleged ill-treatment

25. According to the applicants, the ORB-2 officers regularly ill-treated them by electric shocks, suffocation, severe beatings by rubber truncheons, threats of sexual violence. They were held in the ORB-2 until their wounds healed. The officers forced them to confess to various episodes of terrorist attacks on law-enforcement officers in Chechnya.

26. On 24 and 25 April 2003 Mr Dzhanemirov and Mr Matsiyev were examined in remand prison no. 20/1 in Grozny. The doctor noted that they did not have any freshly inflicted injuries. According to undated remand prison medical notes of Mr Salavatov and Mr Khabibulayev, they did not have any injuries.

27. No forensic medical examinations were carried out.

C. Inquiry into the alleged ill-treatment

28. On 3 and 7 May 2003 the applicants complained to an investigator about their ill-treatment in the ORB-2.

29. On 21 and 29 May 2003 the investigator issued two refusals to open a criminal case on the grounds that the applicants' allegations were unsubstantiated.

30. On 5 March 2005 the Supreme Court of Chechnya, which examined the applicants' criminal case, ordered a prosecution inquiry into their complaints of ill-treatment.

31. On 21 April 2005 the investigator refused to open a criminal case, noting that the applicants had not had any injuries and they had not complained about ill-treatment during their detention in the ORB-2. The investigator also relied on the statements of the ORB-2 officers. One of the officers, N.S., was not interviewed as he had left Chechnya for the Kemerovo Region, his permanent service location.

32. On an unspecified date in 2008 the applicants challenged the refusal of 21 April 2005 before the domestic court.

33. On 24 March 2008 the Leninskiy District Court found the applicants' allegations unsubstantiated, referring to the outcome of their criminal proceedings at that time (see paragraphs 35 and 36 below).

34. On 23 July 2008 the Supreme Court of Chechnya upheld the first-instance court decision.

D. The applicants' trial

35. On 18 July 2005 the Supreme Court of Chechnya convicted the applicants of a number of terrorism-related crimes. By a separate ruling, it found that the dates of their arrest records did not correspond to the dates of their actual arrests.

36. On 18 September 2007 the Supreme Court of Russia quashed the conviction and remitted the case for a new examination.

37. On 2 September 2008 the Supreme Court of Chechnya convicted the applicants as charged, relying on their confession statements given during the investigation. It found the applicants' allegations of ill-treatment and confessions obtained under duress unsubstantiated, referring to the refusal of 21 April 2005. As to their unrecorded detention, the court found their allegations unsubstantiated.

38. On 2 April 2009 the Supreme Court of Russia endorsed the reasoning and upheld the conviction.

E. Inquiry carried out following the Government being notified of the applicant's application to the Court

39. On 19 October 2020 the Investigation Committee in Chechnya resumed the inquiry into the alleged ill-treatment.

40. On 18 February 2021 the investigator refused to open a criminal case. The reasoning of the decision was similar to the one contained in the refusal of 21 April 2005.

III. RAZHAYEV v. RUSSIA (No. 21531/09)

A. Alleged ill-treatment

41. On 7 August 2007 police officers in Nazran, Ingushetia, arrested the applicant and transferred him to the ORB-2 in Grozny, where he was allegedly beaten, subjected to electric shocks and suffocation, threatened with sexual violence, and forced to confess to terrorist crimes. His arrest was recorded on 8 August 2007. The applicant was held in the ORB-2 until 17 August 2007.

42. On 17 August 2007 the applicant was transferred to remand prison no. 20/1 in Grozny. According to his admission medical notes, his chest and neck were reddened, he had a haematoma on his right shoulder and left shin, and a bruising on his right temple.

B. Inquiry into the alleged ill-treatment

43. On an unspecified date, following the applicant's medical examination in the remand prison, an investigator initiated an inquiry. On an unspecified date he refused to open a criminal case. The applicant was informed about the refusal to open a criminal case on 4 September 2007.

44. On 12 December 2007 during the applicant's trial he complained that he had been ill-treated and that he had confessed under duress. The court ordered a prosecution inquiry into the matter.

45. On 17 December 2007 the applicant underwent a forensic medical examination. A forensic expert confirmed the injuries recorded in the remand prison, and noted that the applicant's haematoma on his right shoulder could have been caused within one or two days before the examination on 17 August 2007.

46. On 6 February 2008 the investigator refused to open a criminal case, mainly referring to the statements of the ORB-2 officers, M.B., Zh. and I.

47. The applicant received a copy of the refusal on 26 March 2009.

48. On 30 November 2009 the Zavodskoy District Court dismissed his complaint against the refusal, referring to the applicant's conviction (see paragraphs 50 below).

49. On 15 May and 19 October 2020 the investigators again refused to open a criminal case. The applicant's attempts to challenge the refusals at the domestic courts were unsuccessful.

C. The applicant's trial

50. On 4 April 2008 the Supreme Court of Chechnya convicted the applicant as charged, relying on his confession statements given during the investigation, to nine years of imprisonment. It dismissed the applicant's allegations of ill-treatment and confessions allegedly being obtained under duress, referring to the refusal 6 February 2008.

51. On 16 September 2008 the Supreme Court of Russia upheld the conviction. On 15 October 2008 the applicant received a copy of the decision of the Supreme Court of Russia.

IV. GAIRBEKOV v. RUSSIA (No. 19278/10)

A. Alleged ill-treatment

52. On 15 March 2005 the Federal Security Service ("the FSB") officers arrested the applicant in Dagestan on suspicion of having committed terrorist attacks.

53. On 22 April 2005 the officers took the applicant to the ORB-2 in Grozny, where they subjected him to electric shocks and severe beatings, forcing to confess.

54. On 2 June 2005 a doctor in the remand prison in Grozny recorded that the applicant had a dislocated shoulder and refused to admit him to the prison.

55. The applicant was taken back to the ORB-2, where he was again beaten.

56. The applicant made several confession statements on 28 and 31 May, 2 and 3 June 2005.

B. The applicant's complaints about ill-treatment and his trial

57. On 17 May 2005 the applicant complained to an investigator about his ill-treatment in the ORB-2.

58. On 3 June 2005 the applicant underwent a forensic medical examination. No injuries were found on him.

59. On 28 April 2009 the Supreme Court of Dagestan examined the applicant's criminal case and found him guilty as charged, relying on his confessions. The court examined the applicant's allegations of ill-treatment, finding them unsubstantiated, referring to the statements of the FSB officers. The court also admitted the applicant's forensic report of 3 June 2005.

60. On 22 September 2009 the Supreme Court of Russia endorsed the reasoning and upheld the conviction.

V. GANAYEV v. RUSSIA (No. 26030/10)

A. Alleged ill-treatment

61. On 3 January 2006 the ORB-2 officers arrested the applicant in Grozny. The applicant was held in the ORB-2 until 16 January 2006, between 18 January and 7 February, and between 27 February and 7 March 2006. According to the applicant, he was severely beaten and subjected to electric shocks.

62. According to his remand prison medical notes of 16 January 2006, he had extensive haematomas on his thighs. On 23 January 2006 he underwent a forensic medical examination, which revealed bruises on his face and right thigh inflicted within three to seven days before the examination. According to his remand prison medical notes of 28 January 2006, he had closed fractures of his fifth, sixth and seventh right ribs.

B. Inquiry into the alleged ill-treatment

63. On 25 January 2006 the applicant complained to a prosecutor about his ill-treatment.

64. On 5 February and 30 April 2006 an investigator refused to open a criminal case, referring to the statements of the ORB-2 officers, M.B. and Ya., who had denied the applicant's allegations.

65. On 11 August 2006 the Supreme Court of Chechnya, which examined the applicant's criminal case, ordered a prosecution inquiry into his complaints of ill-treatment.

66. On 28 March 2008 the investigator refused to open a criminal case, referring to the explanations of two ORB-2 officers.

67. On 25 April 2008 the Supreme Court convicted the applicant, dismissing, among other things, his allegations of ill-treatment.

68. On 30 April 2009 the Leninskiy District Court dismissed the applicant's appeal against the refusal of 28 March 2008 as unfounded. On 28 October 2009 the Supreme Court of Chechnya upheld the court decision.

69. On 3 February 2010 the applicant's lawyer received a copy of the Supreme Court of Chechnya decision.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

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

RELEVANT COUNCIL OF EUROPE MATERIAL

71. The relevant part of the Public statement of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT) concerning the Chechen Republic of the Russian Federation of 10 July 2003, reads as follows:

“5. One establishment stands out in terms of the frequency and gravity of the alleged ill-treatment, namely ORB-2 (the Operative and Search Bureau of the North Caucasus Operations Department of the Chief Directorate of the Russian Ministry of Internal Affairs in the Southern Federal District) in Grozny.

ORB-2 has never appeared on any official list of detention facilities provided to the CPT. However, persons certainly are being held there, on occasion for very lengthy periods of time. In the course of its visits in 2002, the CPT received a large number of allegations of ill-treatment concerning this establishment which were supported in several cases by clear medical evidence gathered by its delegation. During the CPT's most recent visit to the Chechen Republic, in May 2003, further allegations were received, once again supported in some cases by medical evidence.

When the CPT re-visited ORB-2 in May 2003, it was holding 17 persons, some of whom had been there for several months. The persons detained were extremely reluctant to speak to the delegation and appeared to be terrified. From the information at its disposal, the CPT has every reason to believe that they had been expressly warned to keep silent. All the on-site observations made at ORB-2, including as regards the general attitude and demeanour of the staff there, left the CPT deeply concerned about the fate of persons taken into custody at the ORB.

The CPT has repeatedly recommended that a thorough, independent inquiry be carried out into the methods used by ORB-2 staff when questioning detained persons; that recommendation has never been addressed in a meaningful manner. To argue that ‘a formal, written complaint is required for action to be taken’ is an indefensible position to adopt given the climate of fear and mistrust which currently pervades the Chechen Republic, and constitutes a dereliction of responsibility. The CPT calls upon the Russian authorities to put a stop to ill-treatment at ORB-2 in Grozny.”

72. For the CPT Public statements concerning the Chechen Republic of the Russian Federation of 13 March 2007 and 24 January 2013, also mentioning the ORB-2 in Grozny, see *Mukayev v. Russia*, no. 22495/08, §§ 60-61, 14 March 2017.

73. The relevant parts of the CPT Public statement concerning the Chechen Republic and other republics of the North Caucasian region of 11 March 2019 read as follows [original emphasis]:

“Since it issued the 2007 public statement, the CPT has carried out a further three visits to the Chechen Republic (in April 2009, April/May 2011 and November/December 2017), while seeking to pursue a constructive dialogue with the Russian authorities on various matters related to the treatment of persons detained by the law enforcement agencies in that Republic. Regrettably, it is clear from the information gathered by the Committee in the course of those visits that **resort to torture and other forms of ill-treatment by members of law enforcement agencies in the Chechen Republic remains widespread**, as does the related practice of unlawful detentions which inevitably heightens significantly the risk of resort to ill-treatment, in particular due to the denial of fundamental safeguards. Further, it remains deeply worrying that, in their responses to the CPT’s visit reports, the Russian authorities have failed to acknowledge the gravity of the situation.

...”

THE LAW

I. JOINDER OF THE APPLICATIONS

74. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

75. The applicants complained that they had been subjected to police ill-treatment, that no effective investigation had been carried out in the matter, and that there had been no effective remedies available in respect of their complaints. The applicants relied on Articles 3 and 13 of the Convention, the relevant parts of which read as follows:

Article 3

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

A. Admissibility

76. The Government stated that Mr Fredriksen (no. 15476/08) had failed to challenge the refusal to open criminal investigation of 17 July 2006. The applicant submitted that he had raised the issue during the trial.

77. The Court observes that the investigators refused to open a criminal case into the applicant's allegations of ill-treatment twice (see paragraphs 12 and 15 above). The trial court, being dissatisfied with the results of the inquiries, acquitted the applicant, finding his allegations of ill-treatment credible (see paragraph 16 above). Later the Supreme Court of Russia, quashed that decision, relying on both refusals (see paragraph 17 above).

78. The Court finds that in such circumstances the applicant made the domestic authorities sufficiently aware of his grievances as the prosecution inquiry into his alleged ill-treatment was ordered and examined by the first instance court and eventually accepted by the appeal court in its final decision of 13 September 2007 (see, in a similar context, *Tangiyev v. Russia*, no. 27610/05, § 39, 11 December 2012). Accordingly, the Court dismisses the Government's objection that the applicant failed to exhaust domestic remedies.

79. The Court notes that the applicants' remaining complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

80. The applicants maintained their complaints. The Government argued that there had been no violations of Articles 3 and 13 of the Convention, referring to the conclusions of the domestic inquiries.

81. The Court observes that the applicants were apprehended by State officers on suspicion of terrorism-related crimes (see paragraphs 6, 21-24, 41, 52 and 61 above). The applicants provided detailed and consistent accounts of the circumstances of the physical and psychological violence, which involved severe beatings with rubber truncheons, administration of electric shocks, suffocation, threats of sexual violence (see paragraphs 6, 25, 41 and 61 above). After spending time in the hands of the police, applicants Fredriksen (no. 15476/08), Razhayev (no. 21531/09), Gairbekov (no. 19278/10) and Ganayev (no. 26030/10) sustained injuries of varying degrees of severity, as recorded by forensic medical experts and detention facilities doctors (see paragraphs 8, 10, 42, 45, 54 and 62 above).

82. The Court observes that no injuries were recorded for Mr Dzhantemirov and the other applicants in no. 8607/09 (see paragraph 26 above). However, it takes into account that these applicants were detained in the ORB-2 between 2003 and 2006 and were allegedly ill-treated there with a view to extracting confession statements. The Court has previously

examined similar complaints of ill-treatment occurring on the premises of the ORB-2 in 2002, 2003 and 2006, and found violations of Article 3 of the Convention on account of torture (see *Tangiyev*, cited above, § 63; *Mukayev v. Russia*, no. 22495/08, § 77, 14 March 2017; *Abdulkadyrov and Dakhtayev v. Russia*, no. 35061/04, § 71, 10 July 2018; and *Orazbayev and Others* [Committee], no. 15367/07 and 3 others, 13 July 2021). The torture suffered by the applicants in those cases was similar to the treatment described by the applicants in the present case, involving beatings, electric shocks and gas masks.

83. The Court takes particular note of the observations made by the CPT after their visits in Chechnya in 2003 and 2007 and which qualified ORB-2 as a facility which stood out in terms of frequency and gravity of ill-treatment (see paragraphs 71 and 72 above). In view of the above, the Court has sufficient grounds to consider that the applicants' allegations of ill-treatment by ORB-2 officers were credible (see *Abdulkadyrov and Dakhtayev*, cited above, § 62). Even more so in the case of Mr Dzhantemirov and the other applicants in no. 8607/09, where they had not been examined by a doctor for at least three months following their arrests (see paragraph 26 above) and the Government failed to provide the applicants' any medical documents from the temporary detention facility in the ORB-2 to order to call into question the applicants' statements.

84. The Court observes that the applicants' credible allegations of police ill-treatment were dismissed by the investigators as unfounded mainly on the basis of the ORB-2 officers' statements or for the alleged absence of the applicants' injuries (see paragraphs 12, 15, 29, 31, 46, 64 and 66 above). The Court points out that in two unrelated cases both applicants Mr Razhayev and Mr Ganayev identified Mr M.B., as one of the ORB-2 officers who had ill-treated them. Despite the allegations and the fact that the same officer was accused by two persons in unrelated incidents of ill-treatment, the investigators principally relied on his statements to dismiss the applicants' allegations (see paragraphs 46 and 64 above).

85. Also, the Court observes that the medical examinations of the applicants were either carried out with a significant delay (see paragraphs 10, 45, 58 and 62 above), or not carried out at all (see paragraphs 27 above).

86. The Court has previously found that in the context of the Russian legal system in cases of credible allegations of treatment proscribed under Article 3 of the Convention, it is incumbent on the authorities to open a criminal case and conduct a proper criminal investigation. The Court has no reason to hold otherwise in the present cases, which involve credible allegations of particularly serious ill-treatment (see *Abdulkadyrov and Dakhtayev*, cited above, § 65). The Court holds that the Government have failed to discharge their burden of proof and produce evidence capable of casting doubt on the applicants' account of events, which it therefore finds established (see *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, § 85, 2 May 2017).

87. It finds that the repeated acts of violence to which the applicants were subjected by ORB-2 officers, given their severity and the aim of obtaining confessions, amounted to torture (see *Tangiyev*, cited above, § 56).

88. There has, accordingly, been a violation of Article 3 of the Convention under its substantive and procedural limbs on account of the applicants' ill-treatment.

89. In view of the above, the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

90. Mr Dzhantemirov, Mr Matsiyev, Mr Salavatov and Mr Khabibulayev (no. 8607/09) complained that they had been held in unrecorded detention following their arrests in breach of Article 5 § 1 of the Convention, the relevant part of which reads as follows:

“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 ...”

A. Admissibility

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

B. Merits

92. The applicants maintained their complaint. The Government argued that there had been no violation of Article 5 § 1 of the Convention, referring to the decision of the Supreme Court of Chechnya of 2 September 2008 (see paragraph 37 above).

93. Having regard to the case materials and the parties' submissions, the Court finds that there is sufficient factual basis to conclude that the applicants were detained in unrecorded detention between their actual arrest and the dates of their arrest records (see paragraphs 21-24 above). Besides, the Court notes the CPT's observations regarding unlawful detentions as being related to ill-treatment practice in the Chechen Republic for an extended period of time (see paragraph 73 above).

94. The Court finds that the applicants' unrecorded detention was a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention (see *Golubyatnikov and Zhuchkov*, nos. 44822/06 and 49869/06, § 83, 9 October 2018, with further references). There has accordingly been a violation of Article 5 § 1 of the Convention in respect of

Mr Dzhantemirov, Mr Matsiyev, Mr Salavatov and Mr Khabibulayev (no. 8607/09).

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

95. Mr Dzhantemirov, Mr Matsiyev, Mr Salavatov and Mr Khabibulayev (no. 8607/09), Mr Razhayev (no. 21531/09) and Mr Gairbekov (no. 19278/10) complained that their convictions had been based on their confession statements obtained as a result of their ill-treatment, which had rendered their respective trials unfair. They relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

96. The Court notes that the complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

97. The applicants maintained their complaints. The Government argued that there had been no violation of Article 6 of the Convention, relying on the applicants' trial court decisions in their criminal proceedings.

98. The Court has already found that the applicants were subjected to torture at the hands of State officers (see paragraph 87 above), as a result of which the applicants gave confession statements, which were subsequently used for their conviction. The domestic courts did not exclude the confession statements as inadmissible evidence, relying on the investigators' decisions not to open criminal cases into the alleged ill-treatment (see paragraphs 39, 50 and 59 above), and referred to them when convicting the applicants of crimes to which they had confessed in those statements.

99. The Court concludes that the domestic courts failed to carry out an independent and comprehensive review of the applicants' credible allegations that their self-incriminating statements had been the result of police violence (see *Belugin v. Russia*, no. 2991/06, § 81, 26 November 2019), and that the use of the applicants' confessions obtained as a result of torture, regardless of their impact on the outcome of the criminal proceedings, rendered the applicants' trials unfair.

100. Accordingly, there has been a violation of Article 6 § 1 of the Convention in respect of Mr Dzhantemirov, Mr Matsiyev, Mr Salavatov and Mr Khabibulayev (no. 8607/09), Mr Razhayev (no. 21531/09) and Mr Gairbekov (no. 19278/10).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

101. 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.”

102. The amounts claimed by the applicants in respect of non-pecuniary damage and costs and expenses are indicated in the appended table.

103. Mr Ganayev (no. 26030/10) did not claim just satisfaction in respect of costs and expenses. Mr Gairbekov (no. 19278/10) was self-represented. Other applicants did not provide legal contracts with their representatives.

104. The Government submitted that no compensation for costs and expenses should be made in respect of the applicants who had failed to provide contracts with their representatives. As to the remaining claims, they submitted that Article 41 of the Convention should be applied in accordance with the Court’s established case-law.

105. Wherever the Court finds a violation of the Convention, it may accept that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations and make a financial award.

106. As to costs and expenses, the Court has to establish whether they were actually incurred and whether they were necessary and reasonable as to quantum (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

107. Having regard to the conclusions and principles set out above and to the parties’ submissions, the Court awards the applicants the amounts detailed in the appended table, plus any tax that may be chargeable to them on those amounts.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Dismisses* the Government’s objection concerning exhaustion of domestic remedies in respect of Mr Fredriksen’s complaint (no. 15476/08) under Articles 3 and 13 of the Convention;
3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs in that the applicants were subjected

to torture in custody, and that no effective investigation into their complaints was carried out by the authorities;

4. *Holds* that that there has been a violation of Article 5 § 1 of the Convention in respect of Mr Dzhantemirov, Mr Matsiyev, Mr Salavatov and Mr Khabibulayev (no. 8607/09);
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of Mr Dzhantemirov, Mr Matsiyev, Mr Salavatov and Mr Khabibulayev (no. 8607/09), Mr Razhayev (no. 21531/09) and Mr Gairbekov (no. 19278/10);
6. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, plus any tax that may be chargeable to them, 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 amounts indicated in the appended table at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Peeter Roosma
President

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APPENDIX

List of cases:

No.	Case name Application no. Lodged on	Applicant Year of Birth / Place of Residence Nationality Represented by	Non-pecuniary damage	Costs and expenses
1.	Fredriksen v. Russia 15476/08 13/03/2008	Adam FREDRIKSEN 1979 / Oslo Norwegian STICHTING RUSSIAN JUSTICE INITIATIVE	Sought by the applicant At the Court's discretion	EUR 4,333.5 No legal contract with the representative provided
			Awarded by the Court	
			EUR 52,000 (fifty-two thousand euros)	-
2.	Dzhantemirov and Others v. Russia 8607/09 12/01/2009	Dokka DZHANTEMIROV 1974 / Kharp Russian Sultan MATSIYEV 1974 / Sol-Ilets Russian Shamsudin SALAVATOV 1971 / Solikamsk Russian Viskhan KHABIBULAYEV 1979 / Grozny Russian STICHTING RUSSIAN JUSTICE INITIATIVE	Sought by the applicants EUR 100,000 for each applicant	EUR 11,918.17 No legal contract with the representative provided
			Awarded by the Court	
			EUR 52,000 (fifty-two thousand euros) to each of the applicants	-

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No.	Case name Application no. Lodged on	Applicant Year of Birth / Place of Residence Nationality Represented by	Non-pecuniary damage	Costs and expenses
3.	Razhayev v. Russia 21531/09 02/04/2009	Mansur RAZHAYEV 1977 / Elban Russian Nadezhda YERMOLAYEVA	Sought by the applicant	
			At the Court's discretion	EUR 1,500 No legal contract with the representative provided
			Awarded by the Court	
			EUR 52,000 (fifty-two thousand euros)	-
4.	Gairbekov v. Russia 19278/10 20/03/2010	Gazimagomed GAIRBEKOV 1977 / Barnaul Russian	Sought by the applicant	
			EUR 80,000	-
			Awarded by the Court	
			EUR 52,000 (fifty-two thousand euros)	-
5.	Ganayev v. Russia 26030/10 05/05/2010	Amur GANAYEV 1978 / Grozny Russian Anton RYZHOV	Sought by the applicant	
			At the Court's discretion	Not claimed
			Awarded by the Court	
			EUR 52,000 (fifty-two thousand euros)	-