



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

FIFTH SECTION

CASE OF IVAN KUZMIN v. RUSSIA

(Application no. 30271/03)

JUDGMENT

STRASBOURG

25 November 2010

FINAL

25/02/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kuzmin v. Russia,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Rait Maruste,
Anatoly Kovler,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 2 November 2010,

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

PROCEDURE

1. The case originated in an application (no. 30271/03) 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 Ivan Viktorovich Kuzmin (“the applicant”), on 3 September 2003 in the form of an introductory letter signed by the applicant and Mr V. Kuzmin, his father. The applicant enclosed a notarised power of attorney signed by him and confirming Mr V. Kuzmin's authority to represent him before “any judicial bodies”. The power of attorney was issued on 17 November 2001 and was valid for three years from that date. On 20 October 2003 and 6 March 2007 Mr V. Kuzmin submitted two completed application forms signed by him.

2. As of 22 June 2007 the applicant was represented by Ms O. Sadchikova, a lawyer practising in Stavropol. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had been beaten up by policemen, that his detention at the police station had been unlawful and that the criminal proceedings against him had been unreasonably long.

4. On 20 August 2007 the President of the Fifth Section decided to give notice of the application to the Government. The parties were also advised that the application lent itself to having its admissibility and merits examined at the same time (Article 29 § 1).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1973 and lives in Stavropol.

A. The applicant's account of the events of 5 June 2001

7. At the material time the applicant was a physical education teacher in School no. 15 in Stavropol.

8. At about 10 a.m. on 5 June 2001 police officer B. and trainee Ch. went to the applicant's school and asked him to go with them to the police station to give an explanation with regard to a complaint by a parent, alleging that the applicant had hit his son. The policemen did not produce a summons to appear or an arrest warrant. The applicant agreed to go with them.

9. On arrival at the police station the applicant saw a red Moskvich car near the entrance and three men nearby. One of them was police officer P. and another was subsequently identified as former chief of police G.

10. B. and Ch. were the first to go up the stairs and into the office. The applicant followed them and G. was behind him. G. pushed the applicant in the back. The applicant turned round and asked him why he had done that. G. replied that since the applicant considered himself tough enough to beat his pupils, he should take him on instead. With these words G. hit the applicant twice in the chest with the palm of his hand. Then the applicant was pushed into an office and G. told him that he had two options, either to apologise to the pupil's father and pay damages, or to be reported to the Ministry of Education and fired. In reply, the applicant denied that he had ever beaten the pupil. G. said that he had no time to deal with the matter and left, while B. and Ch. stayed.

11. Officer B. took the applicant's statement and asked him to sign it. The applicant spotted an incorrect recording of his words, crossed a sentence through and signed the paper. B. got angry, jumped up from the table and hit the applicant in the face. Protecting his face with his hands, the applicant turned round to leave the office.

12. B. ordered Ch. to stop the applicant, search him and put him in a cell, because their discussion was not yet over. Ch. pulled the applicant out of the office into the hallway and put him against the wall. The applicant told B. that he needed to call the school and tell them that he would be late. B. and Ch. started beating him; the applicant fought back. B. stepped behind his back, bent his arms and pushed his head down, then made him lie on his stomach and handcuffed him. Claiming that the applicant had broken his glasses, Ch. kicked him twice in the left shoulder. B. put the applicant in a

cell behind bars and locked himself in the office with Ch. After a while P., a former classmate of Ch., arrived at the police station.

13. B. and Ch. took the applicant to T., an investigator with the Promyshlennyi district prosecutor's office, where he stayed until 5 p.m. The applicant was then allowed to call the school. At 5.15 p.m. the headmaster and two teachers picked him up. The applicant was taken to city hospital no. 4 by ambulance. He underwent treatment in hospital until 28 June 2001.

B. Investigation into the applicant's allegations of ill-treatment

14. On 6 June 2001 the applicant lodged a complaint of ill-treatment in police custody and unlawfulness of his detention there with a district prosecutor's office. He submitted, *inter alia*, that police officers had beaten him, handcuffed him and put him in a cell in order to make him confess to a crime he had not committed.

15. On the same day a medical expert from the Stavropol Bureau for Forensic Medical Expert Studies examined the applicant. According to report no. 1560, the expert observed the following injuries to the applicant's body: an abrasion on the right cheekbone, a moderate swelling of the left temple, cheek and periorbital (eye cavity) area, purple bruises on both eyelids, several bruises on the left shoulder blade, abrasions on the left shoulder and right wrist, and neck instability. In the expert's assessment, the injuries had been caused by the impact of hard blunt objects, probably on 5 June 2001. The expert took into account that before the incident of 5 June 2001 the applicant had suffered from epileptic seizures and post-traumatic encephalopathy, noting that his pre-existing condition had nothing to do with the injuries sustained on that day.

16. On 13 September 2001 the investigator issued a decision refusing to institute criminal proceedings in respect of the applicant's allegations of ill-treatment. Relying solely on the statements by B., Ch. and P., the investigator found that while at the police station the applicant had used obscene language to them and had been warned that he would be detained for insulting State officials. He had continued to engage in verbal abuse and was then told that he was under arrest. While trying to escape, the applicant had hit Ch. and broken his glasses. The police officers had applied physical force to restrain the applicant and handcuffed him. The cell within the police station was locked and senior operational officer Bi., who had the keys, was away at that time. The investigator concluded that B. and Ch. had acted lawfully and that the applicant had not been placed in detention.

17. On 14 March 2002 the prosecutor at the Prosecutor General's Office quashed the decision of 13 September 2001 and ordered a more thorough investigation. In particular, he directed that confrontations be arranged between P. and the applicant and between Bi. and the applicant, and that

other people who might have seen P. on 5 June 2001 be identified and examined.

18. On 7 May 2002 the investigator issued a new decision refusing to institute criminal proceedings in respect of the ill-treatment of the applicant. It repeated word for word the decision of 13 September 2001, the only difference being that it was not stated whether the applicant had actually been placed in the cell.

19. The applicant contested the prosecutor's decision before a court. On 29 August 2002 the Promyshlennyi District Court dismissed his complaint. However, on 27 November 2002 that judgment was quashed on appeal by the Stavropol Regional Court, which ordered a new examination of the matter by the District Court.

20. On 21 January 2003 the District Court allowed the applicant's complaint, finding that the prosecutor's decision had been made prematurely and without detailed analysis of the applicant's submissions. On 16 May 2003 the Regional Court quashed that judgment on appeal, noting that the District Court had breached the principle of equality of arms in that it had not examined police officers B. and Ch. The matter was remitted for fresh consideration.

21. On 18 June 2003 the District Court found that the prosecutor's decision of 5 May 2002 refusing to institute criminal proceedings had been unlawful, because it had been based on the materials of the criminal case against the applicant rather than on the applicant's own submissions. The District Court directed that the prosecutor carry out an appropriate inquiry into the applicant's allegations of ill-treatment. On 13 August 2003 the Stavropol Regional Court upheld that judgment on appeal.

22. On 10 October 2003, with reference to the statements made by B. and Ch., the investigator refused to open a criminal investigation into the applicant's allegations. On 27 October 2003 the supervising prosecutor quashed the decision of 10 October 2003 for failure by the investigator to carry out an inquiry properly, and ordered further examination of the matter.

23. On 31 October 2004 the investigator at the Promyshlennyi District Prosecutor's Office, issued a new decision refusing to institute criminal proceedings in respect of the alleged ill-treatment of the applicant. He heard statements from the headmaster and two teachers from the applicant's school, who testified that they had seen an abrasion on his temple and bruises on both wrists when they arrived at the police station on 5 June 2001. B. and Ch. maintained that the applicant had attacked Ch. when trying to escape after B. had told him that he would be detained for insulting a State official. P. stated that he had seen the applicant hitting Ch. in the face. G. denied that he had hit the applicant on the stairs or that he had told him to apologise to the pupil's father or else face dismissal. The investigator found that the use of force and handcuffs against the applicant had been lawful because the applicant had committed "a crime" against Ch. The

injuries had been caused to the applicant when putting a stop to his criminal behaviour, detaining him and neutralising his resistance.

24. The applicant contested the investigator's decision before a court, exposing inconsistencies in the statements by B., Ch. and P. He said that he had not committed any crime and that there was no evidence that he had.

25. On 24 November 2004 the District Court allowed the applicant's complaint and set aside the investigator's decision of 31 October 2004 as unlawful and unreasoned. The District Court found that there were discrepancies in the statements by the police officers which called for a more detailed investigation. On 2 March 2005 the Regional Court upheld that judgment on appeal.

26. According to the Government, on 28 April 2005 the investigator again refused to open a criminal investigation. His decision was quashed by the District Court on 19 January 2006. On 4 October 2007 the case file was transferred to the Regional Prosecutor's office. On 27 October 2007 the investigator in charge of the case decided to close the inquiry. His decision was quashed by his superior on 18 March 2008 and the inquiry was resumed. It appears that the proceedings are still pending.

C. Criminal proceedings against the applicant

1. Investigation

27. On 13 August 2001 the investigator instituted criminal proceedings against the applicant. He was charged with assaulting police trainee Ch. on 5 June 2001.

28. On 19 November 2001 the supervising prosecutor closed the case against the applicant. The prosecutor found that the only evidence against the applicant was the statements by B. and Ch. The statement made by P. was not reliable because he said that he had gone to the police station on 6 June rather than 5 June, and because, in the applicant's submission, P. had only appeared after the fight in the hallway was over.

29. On 14 March 2002 the supervising prosecutor quashed the decision of 19 November 2001. The proceedings against the applicant were reopened and the case file was transferred to the District Court for trial.

2. First set of proceedings

30. On 7 May 2002 the District Court fixed the first hearing for 10 June 2002.

31. The Government provided the following information in respect of the development of the trial:

Date of hearing	Reasons for adjournment
10 June 2002	The applicant was undergoing treatment in hospital.
15 July-19 August 2002	The judge was on leave.
20 August 2002	The applicant failed to appear.
4 September 2002	Certain witnesses failed to appear.
16 and 17 September 2002	Ch. failed to appear.
25 September 2002	The court summoned B. to testify.
1, 10 and 21 October 2002	P. failed to appear.
23-24 October 2002	The prosecutor asked the court to stay the proceedings pending consideration of the applicant's complaint of ill-treatment.
18 November 2002	The applicant failed to appear.
10 December 2002	The court ordered a new forensic medical examination regarding the seriousness of the applicant's injuries.
15-16 May 2003	The applicant asked the court to summon witness G.
22-23 May 2003	The trial was completed.

32. On 26 May 2003 the District Court found the applicant guilty as charged and sentenced him to one year's imprisonment, suspended. The guilty verdict was founded on the statements by Ch., B., P. and Bi., the medical expert report of 6 June 2001 which recorded injuries to Ch.'s face and neck, and physical evidence, namely Ch.'s broken glasses. With respect to the applicant's injuries, the District Court determined that they had been caused unavoidably when his violent behaviour towards Ch. was stopped. The District Court also noted that there was no detention cell at the police station, but a cupboard, which remained locked at all times, officer Bi. being the key-holder.

33. On 1 August 2003 the Regional Court quashed the conviction, finding substantial deficiencies in the District Court's reasoning, and thus determining that the District Court had not established legal grounds for applying handcuffs and physical force to the applicant. Although B. had claimed that he had intended to arrest the applicant for insulting a State official, that claim was not supported by any report of an administrative offence. Furthermore, the District Court had not verified the lawfulness of B.'s bringing the applicant into the police station, given that his superior had merely asked B. to make enquiries at the applicant's school. In the Regional Court's view, the District Court should have taken into account that liability for assault on a State official only arises in the event of resistance to lawful demands by that State official.

34. As regards the applicant's injuries, the Regional Court pointed out that the District Court had not elucidated the discrepancies in the statements by B. and Ch. as to how they had been caused. They had claimed that the

applicant had banged his head against the floor, walls and door, but this would not have been possible if the applicant had been lying handcuffed on the floor.

35. Finally, the Regional Court noted that the District Court had premised its findings on the medical report concerning Ch. That report had previously been declared inadmissible evidence because the examination had already been carried out on 6 June 2001 whereas the criminal case against the applicant was instituted only on 13 August 2001.

3. Second set of proceedings

36. On 19 August 2003 the District Court set down the trial for 2 September 2003. The Government provided the following information with regard to the development of the proceedings:

Date of the hearing	Reasons for adjournment
2 September 2003	Ch. failed to appear.
12 September 2003	Ch. failed to appear and the applicant asked the court to replace his counsel.
13 November 2003	Ch. failed to appear.
3 December 2003	The judge was involved in another case.
22 December 2003 and 8 January 2004	Ch. failed to appear.
22 January 2004	The judge was involved in another case.
29 January 2004	The court ordered a forensic psychiatric examination of the applicant.
19 April 2004	
6 July 2004	The applicant failed to appear.
20 July 2004	Ch. and the lawyers failed to appear.
2 August 2004	The applicant and his lawyer failed to appear.
9 August 2004	The court fixed a new date for the applicant's forensic psychiatric examination.
5 and 14 October 2004	The applicant was ill.
26 October, 3, and 11 and 23 November 2004	Ch. and other witnesses failed to appear.
30 November 2004	
15 December 2004	The applicant and his lawyer failed to appear.
21 December 2004	Ch. and other witnesses failed to appear.
28 December 2004	The applicant asked the court to summon additional witnesses.
20 January 2005	The applicant and witnesses failed to appear.

2 February 2005	The applicant asked the court to summon additional witnesses.
18 February 2005	The applicant failed to appear.
24 February 2005	The applicant asked the court to procure certain documentary evidence.
10 March 2005	Ch. failed to appear.
18 March 2005	The applicant's lawyer was involved in another case.
25 March 2005	The applicant was undergoing treatment in hospital.
13 April 2005	No explanation provided.
22 April 2005	The applicant's lawyer asked for additional time to prepare for the final argument.
27 April 2005	The applicant and his lawyer failed to appear.

37. On 16 May 2005 the District Court again found the applicant guilty as charged and sentenced him to one year's imprisonment, suspended. It relied on the same evidence as before.

38. On 26 August 2005 the Regional Court quashed the conviction, noting that the District Court had listed the evidence submitted by the defence but had not explained why it had rejected that evidence. Moreover, the District Court's finding as to the reliability of P.'s testimony was not sufficiently reasoned, given that P. had been Ch.'s classmate for several years and that they had initially attempted to hide that fact from the investigation. The District Court had not ascertained the legal basis for the applicant's detention at the police station after he had given the statement on the matter in connection with which his attendance had been required. No report of an administrative offence of insulting a State official had been compiled and a decision had been made not to bring a criminal prosecution against the applicant for that offence. Accordingly, the District Court should have clarified under what lawful order the police officers had detained the applicant at the police station. Finally, the Regional Court pointed out that the District Court had failed once again to consider the admissibility of the medical report concerning Ch.'s injuries. The Regional Court remitted the matter for fresh examination.

4. Third set of proceedings

39. On 30 September 2005 the District Court fixed the trial for 12 October 2005. The court chose to proceed without a preliminary hearing of the matter. The applicant appealed. By a final decision of 22 February 2006 the Regional Court upheld the decision of 30 September 2005 on appeal.

The Government provided the following information with regard to the development of the proceedings:

Date of the hearing	Reasons for adjournment
12 October and 2 November 2005	The applicant, his counsel and Ch. failed to appear.
17 November and 21 December 2005	
22 March 2006	The applicant, his counsel, Ch. and other witnesses failed to appear.
6 April 2006	Ch. and other witnesses failed to appear.
18 April 2006	The proceedings were stayed because of the applicant's illness.
13 June 2006	The parties failed to appear.
23 June and 2006	Ch., B., P. and Bi. failed to appear.
7 July 2006	Ch. and other witnesses failed to appear.
2 August 2006	B. failed to appear.
8 and 18 August 2006	Ch. and other witnesses failed to appear.
4 September 2006	P., Bi. and another witness failed to appear.
15 September 2006	Ch. and other witnesses failed to appear.
22 September 2006	Ch. failed to appear.
2 October 2006	The court commissioned a forensic medical examination of Ch. in order to determine the seriousness of the injuries he had allegedly sustained.
4 December 2006	The parties failed to appear.
13 and 27 December 2006	The applicant's representative, Ch. and other witnesses failed to appear.
25 January and 16 February 2007	Ch. and other witnesses failed to appear.
2 March 2007	The applicant did not appear because of illness. Certain witnesses failed to appear.
4 April 2007	Certain witnesses failed to appear.
19 April and 4 May 2007	The applicant, his representative, Ch. and other witnesses failed to appear.
16 May 2007	Certain witnesses failed to appear.
22 May 2007	Ch. and other witnesses failed to appear.
1 and 22 June, 6 13 and 20 July, 9 August, 7 September 2007	A witness failed to appear.
21 September 2007	Ch. failed to appear.

40. On 25 September 2007 the trial was completed at the District Court.

41. On 1 October 2007 the District Court acquitted the applicant. The court found, *inter alia*, that B. and Ch. had had no legitimate grounds to take the applicant to the police station or to question him there and that Ch. had sustained injuries as a result of the applicant's resistance to unlawful

actions by the police officers. Furthermore, the court disregarded the testimonies by witnesses B., Ch., P. and Bi. noting that they had made false statements in order to evade responsibility for their unlawful acts.

42. According to the Government, on 17 December 2007 the Regional Court upheld the applicant's acquittal on appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Right to compensation

43. The Civil Code of the Russian Federation provides as follows:

Article 1070: Responsibility for damage caused by unlawful acts of investigative authorities, prosecuting authorities and courts

“1. Damage caused to a person as a result of unlawful conviction, unlawful criminal prosecution, ... unlawful pre-trial detention ..., unlawful administrative arrest... be compensated [by the State] ... in full, irrespective of the fault of the [police], prosecutor's office or the court.”

Article 1100: Grounds for compensation for non-pecuniary damage

“Compensation for non-pecuniary damage shall be afforded irrespective of the fault of the tortfeasor if:

... the damage is caused to a person as a result of his unlawful conviction, unlawful criminal prosecution, unlawful pre-trial detention ..., unlawful administrative arrest ...”

44. The Civil Code provides that the damage caused by an unlawful criminal prosecution should be compensated irrespective of the fault of the tortfeasor (that is, the State agency which decided to prosecute, detain etc.). However, the notions of “unlawful” prosecution or detention (see Article 1070) are not developed in the relevant provisions of the Civil Code.

THE LAW

I. THE GOVERNMENT'S OBJECTIONS TO ADMISSIBILITY

A. Compatibility *ratione personae*

45. The Government submitted that it was Mr V. Kuzmin who had introduced the complaint on behalf of the applicant before the Court. However, in the Government's view, Mr V. Kuzmin was not duly authorised to do so. The application should therefore be dismissed by the Court in accordance with Article 35 § 1 of the Convention.

46. The applicant contested that argument. He noted that he had signed a notarised power of attorney for Mr V. Kuzmin to represent his interests before “any judicial bodies”.

47. In this connection, the Court refers to Rules 36 and 45 of the Rules of Court which, in so far as relevant, read as follows:

Rule 36

“1. Persons, non-governmental organisations or groups of individuals may initially present applications under Article 34 of the Convention themselves or through a representative.”

Rule 45

“1. Any application made under Articles 33 or 34 of the Convention shall be submitted in writing and shall be signed by the applicant or by the applicant's representative.

...

3. Where applicants are represented in accordance with Rule 36, a power of attorney or written authority to act shall be supplied by their representative or representatives.”

48. Having regard to the above, the Court observes that the applicant introduced his application in the form of a letter of 3 September 2003 which he had duly signed himself. The letter was also signed by the applicant's father, Mr V. Kuzmin, whose authority was confirmed by a notarised power of attorney enclosed with the said letter. On 20 October 2003 and 3 March 2007 Mr V. Kuzmin signed and submitted two completed application forms on behalf of the applicant.

49. In these circumstances the Court considers that, by providing the Court with the notarised power of attorney authorising Mr V. Kuzmin to represent the applicant before “any judicial bodies”, the latter has

sufficiently demonstrated that he wished Mr V. Kuzmin to make an application to the Court on his behalf. It therefore finds that the present application cannot be rejected as incompatible *ratione personae* pursuant to Article 35 §§ 3 and 4 of the Convention, and dismisses the Government's objection.

B. Exhaustion of domestic remedies

50. The Government considered that the applicant had applied to the Court prematurely and his application should be dismissed for non-exhaustion of domestic remedies. In their view, it remained open to him to complain to the domestic judicial authorities with regard to the alleged unlawful acts or inaction on the part of the investigator under Article 125 of the Russian Code of Criminal Procedure. Furthermore, he could bring a civil claim for compensation for damage allegedly resulting from unlawful acts or inaction on the part of state bodies, including the investigating authorities and the court, as provided for in Articles 1069 and 1070 of the Russian Civil Code.

51. The applicant considered that the Government's objection should be joined to the merits of his complaints. In any event, the applicant asserted that in the circumstances of this case, where an inquiry into his allegations of ill-treatment in police custody was still pending, a civil claim for damages would have no prospect of success.

52. Having regard to the parties' submissions and in view of the nature of the applicant's complaints, the Court considers that it will be appropriate to examine the Government's objection with regard to each of the applicant's complaints separately.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

53. The applicant complained that he had been subjected to ill-treatment in contravention of Article 3 of the Convention. He further complained under Article 13 of the Convention that the ensuing investigation in response to his complaint about ill-treatment in police custody had been ineffective. The Court considers that the complaints fall to be examined under Article 3 of the Convention which reads as follows:

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

54. The Government contested that argument. In their opinion, it was impossible to determine whether the applicant had been subjected to ill-treatment while in police custody, given that the inquiry into the applicant's allegations was still pending. They further submitted that the Russian authorities had complied with their positive obligation arising out

of Article 3 of the Convention to carry out an effective investigation in response to his complaint of ill-treatment. The earlier deficiencies in the investigation had been rectified at the domestic level.

55. The applicant maintained his complaint. He noted that the Government did not dispute that he had sustained injuries while in police custody, which was confirmed by ample medical evidence. As regards the inquiry conducted by the authorities in response to his complaint, he considered it to be both ineffective and excessively long. The perpetrators had not been brought to justice to date.

A. Admissibility

56. The Court considers that the question whether this complaint is, as the Government asserted, premature in view of the pending investigation, and the question whether the applicant exhausted domestic remedies in respect of his complaint under Article 3 of the Convention, are closely linked to that of whether the investigation into his allegations of ill-treatment was effective. However, these issues relate to the merits of the applicant's complaint under Article 3 of the Convention. The Court therefore decides to join these issues to the merits.

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

B. Merits

1. Effectiveness of the investigation

58. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

59. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of

the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

60. An investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq.; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

61. Furthermore, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV). Consideration was given to the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, *Reports* 1998-IV, § 67), and the length of time taken to complete the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

62. Turning to the facts of the present case, the Court observes that the authorities have been carrying out an inquiry into the applicant's allegations of ill-treatment. It is not convinced, however, that the inquiry has been sufficiently thorough, prompt, and expeditious to meet the requirements of Article 3.

63. In this connection the Court notes, and this is not disputed by the Government, that the applicant brought his allegations of ill-treatment to the attention of the investigator in charge of his case on 6 June 2001, the day after the incident. The forensic medical examination ordered by the investigator and which identified multiple injuries on the applicant's body seemed to corroborate the applicant's allegations of ill-treatment. The Court is therefore satisfied that the applicant has raised an arguable claim of ill-treatment in police custody and that the authorities were under an obligation to conduct an effective investigation in response to his complaint.

64. Admittedly, at the initial stage of the investigation the authorities took certain steps necessary to verify the applicant's accusations. They questioned the witnesses and alleged perpetrators and commissioned a

forensic examination of the applicant. However, despite those efforts, the inquiry into the applicant's allegations has not been completed to date. The Court finds it striking that the case has been pending before the investigating authorities for over nine years and the latter have so far failed to elucidate the circumstances of the case and deliver a reasoned decision on the matter.

65. Finally, as regards the Government's argument that the complaint under Article 3 is premature, the Court recognises that the investigation is still pending but, in view of its length so far and the seriousness of the issues at stake, the Court does not consider that the applicant should wait for completion of the investigation before making his application to the Court, as the conclusion of those proceedings would not remedy their overall delay in any way (see *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, ECHR 2007-IX).

66. In the light of the foregoing, the Court dismisses the Government's objection and finds that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment. Accordingly, there has been a violation of Article 3 under its procedural limb.

2. *Alleged ill-treatment*

67. The Court has stated on many occasions that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman and degrading treatment or punishment, irrespective of the victim's conduct (see, among many other authorities, *Labita v. Italy*, cited above, § 119, ECHR 2000-IV, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

68. The Court further reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Labita*, cited above, § 121).

69. Where an individual claims to have been injured by ill-treatment in custody, the Government is under an obligation to provide a complete and sufficient explanation as to how the injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

70. Turning to the circumstances of the present case, the Court observes that the Government did not dispute the applicant's assertion that he sustained numerous injuries while in police custody. Nor did they provide any explanation as to the origin of the applicant's injuries, arguing that it would be premature since the domestic inquiry into the matter was still

pending. In such circumstances, and having regard to the Court's earlier finding that the domestic inquiry into the applicant's allegations has fallen short of the standards set forth in Article 3 of the Convention, the Court considers that the Government failed to rebut the presumption of their responsibility for the injuries inflicted on the applicant while in the hands of the State. Accordingly, the Court finds it established to the standard of proof required in Convention proceedings that the applicant's injuries resulted from the treatment he had complained of and for which the Government bore responsibility.

71. The Court further reiterates that the ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Asenov*, cited above, § 94).

72. The Court considers that the number and location of the injuries the applicant had sustained and the duration of the subsequent medical treatment he had undergone in hospital indicate that the beatings the policemen had subjected him to were sufficiently serious to fall within the scope of Article 3 (compare *ibid.*, § 95).

73. It follows that there has been a violation of Article 3 of the Convention under its substantive limb.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

74. The applicant complained that his detention at the police station had been unlawful. He relied on Article 5 of the Convention, which, in so far as relevant, reads 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:

...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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.”

75. The Government considered that any comments about the applicant's allegedly unlawful detention would be premature given that the inquiry into them was still pending.

76. The applicant submitted that he had been held at the police station without a legal order authorising his detention. The unlawfulness of the policemen's actions had been confirmed by the District Court on 1 October 2007 when it acquitted him of the charge of assault on a police trainee.

A. Admissibility

77. In so far as the Government may be understood to suggest that the applicant's complaint is premature and should be dismissed for his failure to exhaust domestic remedies in view of the ongoing investigation into his allegations (see paragraph 50 above), the Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

78. As regards the Government's assertion that the applicant can challenge the prosecuting authorities' inaction by lodging a complaint under Article 125 of the Code of Criminal Procedure, the Court observes that the investigation into the applicant's allegations has been pending since 2001. In view of its length and having regard to the Court's earlier findings that the investigation has not been effective (see paragraphs 58-66 above), the Court cannot agree with the Government that it was incumbent on the applicant to lodge yet another complaint challenging the actions or omissions on the part of the investigating authorities. In this connection the Court also observes that due to the on-going nature of the inquiry, it cannot be said that the applicant failed to comply with the six-month rule for lodging his grievance before the Court.

79. Furthermore, the Court reiterates that, in accordance with the Convention institutions' case-law, where lawfulness of detention is concerned, an action for damages against the State is not a remedy which has to be used because the right to have the lawfulness of detention examined by a court and the right to obtain compensation for any deprivation of liberty incompatible with Article 5 are two separate rights (see, among other authorities, *Wloch v. Poland*, no. 27785/95, § 90, ECHR 2000-XI, and *mutatis mutandis*, *Shcheglyuk v. Russia*, no. 7649/02, § 34, 14 December 2006). Finally, the Court observes that Russian law does not provide for State liability for detention which was unrecorded or

unacknowledged in any procedural form. This state of Russian law renders any civil-law remedy ineffective in the situation of unacknowledged detention such as is at issue in the present case.

80. Having regard to the above, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies by the applicant. The Court further notes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

81. The Court reiterates that Article 5 § 1 of the Convention requires in the first place that the detention be “lawful”, which includes the condition of compliance with a procedure prescribed by law. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. A period of detention will in principle be lawful if it is carried out pursuant to a court order (see *Benham v. the United Kingdom*, 10 June 1996, §§ 40 and 42, *Reports of Judgments and Decisions* 1996-III).

82. Turning to the circumstances of the present case, the Court observes that it was not disputed by the Government that the applicant was “deprived of his liberty” within the meaning of Article 5 § 1 of the Convention when he was brought by the policemen to the police station and held there for several hours. Nor did the Government dispute that no record was drawn up of his arrest or detention on 5 June 2001.

83. In this connection the Court observes that the absence of an arrest record must in itself be considered a most serious failing, as it has been the Court's constant view that unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Fedotov v. Russia*, no. 5140/02, § 78, 25 October 2005; *Menesheva v. Russia*, no. 59261/00, § 87, ECHR 2006; and *Kurt v. Turkey*, 25 May 1998, § 125, *Reports of Judgments and Decisions* 1998-III).

84. The lack of a proper record of the applicant's arrest and detention on 5 June 2001 is therefore sufficient for the Court to find that his confinement for several hours on 5 June 2001 was in breach of domestic law and contrary to the requirements implicit in Article 5 of the Convention for the proper recording of deprivations of liberty (see *Anguelova v. Bulgaria*,

no. 38361/97, § 157, ECHR 2002-IV, and *Menesheva*, cited above, §§ 87-89). There has therefore been a violation of Article 5 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

85. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been excessively long. Article 6 provides, in so far as relevant, as follows:

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

86. The Government considered that the length of the proceedings in the present case had been compatible with the “reasonable time” requirement. In their view, the judicial authorities had thoroughly considered the case without undue delay. It had been incumbent on the trial court to examine closely all the evidence in order to prevent an error in its findings. Accordingly, the court had had to devote time and effort to ensuring the attendance of all witnesses and obtaining forensic medical evidence. All the parties to the proceedings had been informed of the date and time of the court hearings in good time.

87. The applicant submitted that the criminal case against him had not been complex. It had concerned one defendant and one charge. During the first trial, the hearings had been adjourned on seven occasions due to witnesses' failure to appear. He further admitted that he had twice failed to appear in court without a valid reason. During the second trial, twelve hearings had been adjourned because witnesses' absence. He also acknowledged that on eight occasions he himself had failed to appear without a valid reason. Following the court's decision to commission a medical forensic examination the proceedings had been stayed for five months. As regards the third time his case was considered by the trial court, on twenty-six occasions witnesses failed to appear and hearings were adjourned. The applicant and his counsel had failed to appear in court without giving a valid reason five and four times respectively. Relying on excerpts from the register of incoming correspondence from his lawyer's office, the applicant claimed that his lawyer had not received any notification of the court hearings scheduled for 2 and 9 August and 15 and 21 December 2004, 7 July 2006 and 4 April 2007.

A. Admissibility

88. In so far as the Government may be understood to suggest that the applicant failed to complain to the domestic authorities of excessive length of the criminal proceedings against him, the Court observes that it has

already on a number of occasions examined the same objection by the Russian Government and dismissed it (see, among recent authorities, *Belashev v. Russia*, no. 28617/03, § 67, 4 December 2008). The Court also refers to its earlier finding made in the context of a complaint under Article 13 of the Convention, that in Russia there were no domestic remedies whereby an applicant could enforce his or her right to a “hearing within a reasonable time” (see *Sidorenko v. Russia*, no. 4459/03, § 39, 8 March 2007, and *Klyakhin v. Russia*, no. 46082/99, §§ 101-102, 30 November 2004). The Court sees no reason to depart from that finding in the present case and therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

89. The Court further notes that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The period under consideration

90. The Court notes that the criminal proceedings against the applicant were opened on 13 August 2001 and ended on 17 December 2007, when his acquittal was upheld on appeal and became final. The period under consideration therefore lasted approximately six years and five months and spanned the investigation stage and three sets of judicial proceedings, in which the case was reviewed by the courts at two levels of jurisdiction.

2. Reasonableness of the length of the proceedings

91. The Court reiterates that the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). In addition, only delays attributable to the State may justify a finding of a failure to comply with the “reasonable time” requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

92. The Court accepts the applicant's argument that the proceedings against him were not particularly complex, as their scope was limited to one charge of assaulting a police officer, in which the applicant was the only suspect. It was thus not the complexity of the case which accounted for the length of the proceedings.

93. The Court takes cognisance of the fact that the investigating authorities completed the investigation promptly and prepared the case for the trial, and that the trial court scheduled and held hearings at regular intervals without undue delay, and cannot be said to have remained inactive.

94. Furthermore, the Court is prepared to accept that certain problems with attendance of the parties, including the applicant and witnesses, even though persistent at certain times, did not seriously affect the length of the proceedings.

95. Nevertheless, in the Court's opinion, it was the repeated referrals of the case to the trial court for fresh examination that seriously delayed the proceedings. The judicial proceedings against the applicant lasted over five years and seven months. During that period the applicant had to stand trial three times. His conviction was quashed twice by the appeal court owing to the trial court's failure to give a well-reasoned verdict and to determine the admissibility of the evidence.

96. Although the Court is not in a position to analyse the juridical quality of the domestic courts' decisions, it considers that, since remittal of cases for re-examination is frequently ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see, *mutatis mutandis*, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003; *Matica v. Romania*, no. 19567/02, § 24, 2 November 2006; and *Falimonov v. Russia*, no. 11549/02, § 58, 25 March 2008). The fact that the domestic courts heard the case several times did not absolve them from complying with the reasonable time requirement of Article 6 § 1 (see *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004).

97. In the light of the criteria laid down in its case-law, and having regard to all the circumstances of the case, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the reasonable time requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

98. Lastly, the applicant complained under Article 6 of the Convention that the domestic courts had refused to consider his procedural requests and under Article 7 of the Convention that he had been falsely accused by the pupil and wrongly convicted. Lastly, he alleged under Article 14 of the Convention that he and his family had been discriminated against on account of their poverty.

99. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must

be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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

101. The applicant claimed 28,776 Russian roubles (RUB) in respect of pecuniary damage. He alleged that those were the costs he had incurred in connection with the psychiatric treatment he had undergone to recover after the beatings by the policemen, the cost of the medication prescribed and the cost of travel from Stavropol to Moscow, where he and his parents had consulted medical specialists. In substantiation of his claims he submitted excerpts from his medical file indicating that he had received treatment for epileptic seizures in July 2002 and December 2007. The applicant also claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

102. The Government submitted that (1) given that the applicant's rights under the Convention have not been infringed and (2) in view of the ongoing domestic investigation into the applicant's allegations of ill-treatment in police custody, his claims in respect of damage should be rejected in full. Alternatively, they proposed that a finding a violation would constitute sufficient just satisfaction. In any event, they considered the applicant's claims excessive.

103. The Court considers that the applicant has not shown a causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

104. The Court further notes that it has found a combination of grievous violations in the present case. The applicant was subjected to ill-treatment and unlawful detention in police custody. The ensuing investigation was ineffective. The criminal proceedings against him were excessively long. In such circumstances, the Court considers that the applicant's suffering and anguish cannot be compensated by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 27,000 in respect of non-pecuniary damage.

B. Costs and expenses

105. The applicant also claimed RUB 10,300 for the costs and expenses incurred before the domestic courts and EUR 2,970 for those incurred before the Court. He asked the Court that the latter amount be paid directly to the bank account of Ms. O. Sadchikova, a lawyer who represented him in the proceedings before the Court.

106. The Government considered that the applicant had failed to demonstrate that the costs and expenses he claimed were necessary or reasonably incurred and proposed that the applicant's claim be rejected in full.

107. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 900 covering costs under all heads. EUR 50 of this sum is to be paid directly to the applicant and EUR 850 into the bank account Ms O. Sadchikova, a lawyer who represented him in the proceedings before the Court.

C. Default interest

108. The Court considers it appropriate that the default interest 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. *Joins to the merits* the Government's objection as to the exhaustion of domestic remedies and *rejects* it;
2. *Declares* the complaints concerning ill-treatment in police custody, effectiveness of ensuing investigation, lawfulness of detention and excessive length of the criminal proceedings against the applicant admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's detention at the police station on 5 June 2001;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement:
 - (i) EUR 27,000 (twenty-seven thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 900 (nine hundred euros) in respect of costs and expenses, plus any tax that may be chargeable. EUR 50 (fifty euros) of this sum is to be paid to the applicant and EUR 850 (eight hundred and fifty euros) into the bank account of Ms O. Sadchikova, a lawyer who represented the applicant in the proceedings before the Court;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 25 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President