



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

FIRST SECTION

CASE OF BALENKO v. RUSSIA

(Application no. 35350/05)

JUDGMENT

STRASBOURG

11 October 2011

FINAL

11/01/2012

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

In the case of Balenko v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 35350/05) 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 Anatoliy Petrovich Balenko (“the applicant”), on 2 July 2005.

2. The applicant was represented by Mr S. Kiryukhin, a lawyer practising in Orsk. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been beaten up by policemen, that the investigation into his complaint had been ineffective and that the trial court had failed to ensure the attendance and examination of two eyewitnesses.

4. On 31 August 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1958 and lived in Novotroitsk, Orenburg Region. On 17 March 2010 the applicant died. On 29 April 2010

Ms Aleksandra Balenko, the late applicant's mother (born on 14 September 1937), and Mr Timofei Balenko, the late applicant's son (born on 17 January 2000), expressed their wish to pursue the proceedings before the Court.

A. The events of 1 May 2004

6. On an unspecified date the police received information that certain "persons with a criminal propensity" would be gathering at the grave of a deceased gangster on 1 May 2004 and that they would be carrying guns, explosives and drugs.

7. On 1 May 2004 a group of police officers came to the cemetery and started checking the identification of the men and women gathered at the said grave. The applicant was among them. He did not have any documents on him. He was placed in a police car together with G. and R. to be taken to the police station by officers S. and Kh.

8. On the way to the police station an altercation occurred between the applicant and the police officers. As a result, the applicant sustained multiple injuries and S. had an index finger cut. The police officers and the applicant disputed the circumstances of the incident. It appears that investigation was opened into the incident on the same day and resulted in two sets of proceedings.

B. The applicant's complaint about the police brutality

9. The applicant was released from the police custody on 2 May 2004. On the same day he was examined by a doctor in a clinic, who noted numerous bruises on his face and alcoholic intoxication.

10. On 23 June 2004 the applicant underwent an X-ray examination which showed that he had sustained a fractured nose.

11. On an unspecified date the applicant lodged a complaint about police brutality. With regard to the events of 1 May 2004, he submitted that he had been detained by the police at the cemetery. No explanation had been furnished by the police officers as to the reasons for his detention. The applicant had criticised the police's actions and the policemen had then forced him into the car together with G. and R. On the way to the police station he had continued to express his dissatisfaction with the police. S., who had been driving the car, had turned back, had told him to shut up and had hit him in the face, breaking his nose. Then S. had stopped the car, and together with Kh., the other police officer, had pulled the applicant out of the car and had continued beating him. The applicant had lost consciousness. He had then been taken to the police station and released the next day.

12. On 12 July 2004 the applicant was subjected to another forensic examination. The expert reiterated the earlier findings of the forensic examination of 2 May 2004, including the nature and time of the injuries, and added that the applicant had also sustained a fractured nose with a time of the injury similar to that of the other injuries.

13. On 3 November 2004 an investigator from the Leninskiy District Prosecutor's Office in Orsk dismissed the applicant's complaint of police brutality as unsubstantiated. In particular, the investigator stated as follows:

"In the course of the inquiry [the applicant] submitted that on 1 May 2004 the policemen had beaten him up at the cemetery ... in Orsk. As result, he sustained injuries, including the nose fracture. He denied having assaulted the police officer.

Within the framework of the inquiry in response to the [applicant's] complaint of police brutality, he underwent a medical examination. It was established that [the applicant] sustained bruises on the top right side of the head, bruises on the left part of the forehead, bruises under the left eye and dorsum of the nose, petechiae on the left temple and on the right cheek and a fractured nose. The said injuries resulted from blunt force trauma...

[Policeman] S. submitted that [on 1 May 2004] he had been in the taskforce which arrived at the cemetery... where he had asked [the applicant] to proceed to the police car. Neither he nor other policemen had beaten the applicant. [The applicant] could have sustained injuries ... when they had pulled him out of the car after his assault. It was possible that [the applicant] had caused those injuries himself when resisting the policemen, hitting himself against the car and then falling.

[Policeman] Kh. submitted that [the applicant] had refused to get out of the car and had resisted when they pulled him out.

...

Having regard to the above, [I conclude] that the [applicant's] complaint of police brutality has not been confirmed. ... The fact that the applicant resisted being pulled out of the car suggests that his injuries could have been caused by his own actions or by the actions of the policemen who restrained him."

14. The applicant did not appeal against the decision of 3 November 2004 to the courts

C. Criminal proceedings against the applicant

1. Investigation

15. A criminal investigation was opened against the applicant due to the version of events provided by police officers S. and Kh. concerning the incident of 1 May 2004. According them, in the car the applicant took out a knife and tried to stab S., who was driving the car, in the neck. S. saw the applicant's movements in the rear-view mirror and covered his neck with

his hands. The applicant cut S.'s right index finger. Kh. grabbed the applicant by the arm. S. stopped the car and got out. He opened the rear door and pulled out the applicant, who had managed to free himself from Kh. The applicant fell out of the car, hitting his head against the car as he did so, and then landed on his face. The knife fell onto the road. The police officers handcuffed the applicant and took him to the police station.

16. The investigator ordered the forensic examination of the applicant. On 2 May 2004 the forensic expert examined the applicant and noted the following injuries: bruises on the top right side of the head, bruises on the left part of the forehead, bruises under the left eye and top of the nose, and petechiae (evidence of bleeding under the skin) on the left temple. The expert considered that the said injuries could have resulted from blunt force trauma occurring no earlier than one day prior to the applicant's examination.

17. On the same day R. was questioned by an investigator and stated the following:

"As I had drunk wine, I immediately fell asleep in the back seat. Then I was woken up by noise. I saw that the policeman who was in the driver's seat had blood on his right hand. I can confirm that when we were leaving the cemetery, that policeman had no injuries on his hands. Nor did I see any blood on him.

When I was woken up by the noise to see the policeman's hand covered with blood, I felt sick and lost consciousness. I cannot tell whether the car stopped on the way [to the police station]. Nor do I know why the policeman's hand was bleeding. I do not know if anyone in the car had a knife on him...

I regained consciousness when the car stopped at the police station."

18. G. was also questioned on 2 May 2004. He stated the following:

"[At the cemetery] I was asked to get into [a police car]. I complied and got into the back seat. There was a guy wearing sunglasses sitting next to me behind the driver's seat... [He] was severely intoxicated. He was mumbling... On the way [to the police station] the guy who was sitting behind the driver moved his right arm towards the driver. In his hand he had an object which resembled a knife. The driver saw the guy's movements in the rear-view mirror and leaned forward. After that, the guy made another move with his right arm – [holding] the object resembling a knife – towards the driver. The driver, however, covered his neck with his right hand to protect himself and then grabbed the guy by the right hand. Then the driver stopped the car, opened the rear door next to the guy with the sunglasses with his left hand, grabbed the guy's right hand – holding a knife – with his left hand and pulled him out of the car. He kicked the guy in the chest. The other policeman ... took out a gun, told the others present in the car to sit and be quiet. Then he got out of the car and helped the driver to handcuff the guy. When the driver pulled the guy out of the car, the guy fell down on the asphalt and hit his face."

19. On 14 May 2004 the applicant was charged with assaulting S.

20. It appears that on 8 June 2004 the applicant was remanded in custody pending investigation. He was released on 11 June 2004.

21. On 21 July 2004 a court authorised the applicant's detention arguing that the applicant might abscond, tamper with evidence or put pressure on witnesses. He remained in custody pending investigation and trial. In particular, the court noted as follows:

"The court takes into account the fact that [the applicant] has a permanent place of residence. However, he is not officially married and he is unemployed ...

The [applicant's] contacts with G. and R., even though denied by the [applicant's] lawyer, have been noted by [the investigators]. Furthermore, the applicant himself did not deny that he was in contact with them... Pursuant to the materials in the case-file, G. and R. are the only eye-witnesses of the crime the applicant is charged with. Those persons have registered residence in Orsk and Novotroitsk. They are unemployed and failed to appear [for questioning]. The court considers that, if released, the applicant might influence those witnesses.

...

The court takes into account the information furnished by [the police department] concerning the applicant's connection with [known gangsters], that he is a member of an organised criminal group... Having regard to the above, the court considers that ... the applicant might continue his criminal activities."

22. The investigating officer commissioned several expert evaluations, including that of the knife found at the alleged crime scene. As it turned out, the quality of the fingerprints on the knife was not good enough to determine their origin. The investigator also questioned the applicant, the police officers involved, the paramedic who had attended to S., and R.'s mother.

23. On 13 September 2004 the investigator summoned G. and R. to appear for questioning. Neither G. nor R. were found at their last known addresses. The police questioned their neighbours and family, who stated that they had no knowledge of G. and R.'s whereabouts.

24. On 22 November 2004 the forensic expert prepared another report on the basis of the prior medical documentation, including the results of the medical examination of 2 May 2004, the forensic report of 2 May 2004, X-ray examinations of 23 June and 14 July 2004, and the applicant's medical file. The expert concluded that the applicant might have sustained a fractured nose approximately two to three weeks prior to the date of the first X-ray examination of 23 June 2004. As regards the origin of the injury, the expert reiterated the earlier forensic findings.

25. On 5 December 2004 the investigator forwarded the applicant's case file to the court.

2. The trial

26. During the trial the applicant pleaded not guilty. He denied assaulting S. or having had a knife.

27. On 23 December 2004 the applicant unsuccessfully asked the court to admit as evidence written statements made by G. and R. which corroborated his version of the events of 1 May 2004. In particular, the court indicated as follows:

“Pursuant to the [rules of criminal procedure], [such] statements cannot be considered as evidence. Furthermore, [G. and R.’s] signatures are not duly certified, which fact may give rise to doubts as to whether the statements were made by G. and R. and as to their admissibility as evidence. If the defence can obtain R. and G.’s attendance in court for questioning or indicate their whereabouts to the court, the court, if requested so by the parties, may summon and question those persons.”

28. On 27 December 2004 the Orenburg Regional Court found the applicant guilty as charged and sentenced him to twelve years’ imprisonment. In particular, the court noted as follows:

“... the fact that the [applicant] has committed the crime ... is confirmed by the following evidence:

By the testimony given by [police officer] S. ...;

...

By the testimony given by [police officer] Kh. ...;

...

By the testimony of [Police officer] Sh., who testified that on the way from the cemetery to [the police station] he was in the car that followed the one S. was driving. ... When S. stopped his car, [Sh.] saw S., whose right hand was bleeding, and Kh., who ran out of the car. They opened the rear door of the car and pulled [the applicant] out. [The applicant] had a knife in his right hand. The [police officers] knocked the knife out of his hand, put him on the ground and handcuffed him. Then S. wrapped his injured finger with a handkerchief. Some fifteen minutes later an ambulance appeared and provided medical assistance to S.

...

The crime scene investigation report notes that ... inside the [police car], eight brown stains were discovered on the left rear door. Brown spots resembling blood ... were also discovered inside the car on the steering wheel, on the interior of the window pane next to the driver’s seat, on the door near the driver’s seat, [and on the] windscreen wiper stalk near the steering wheel. A handkerchief covered with brown stains was found on the floor of the car, on the left side near the driver’s seat. A flick knife ... was found next to the left of the car ...

...

The report on the findings of the biological forensic expert evaluation ... of 25 October 2004 states that blood, which could have belonged to S., was found on the flick knife and the handkerchief and in four samples taken from the asphalt next to the police car, the car’s steering wheel, the handle in the car and the [applicant’s] right hand. It is possible that the samples also contain the [applicant’s] blood provided that

he sustained injuries causing bleeding, but it is ruled out that the blood belonged only to him...

Further to defence counsel's request, witness V., [R.'s mother], testified in court.

...

She learnt from her son, R., that on the way to the police station [the applicant] continued to "ask for trouble" in the car. The policemen advised him to shut up and then one of them punched him in the face with his fist. He started bleeding. The policemen pulled him out of the car and continued beating him.

Regard being had to all the evidence examined in the course of the proceedings, the court views witness V.'s testimony critically ... Her testimony is refuted not only by the testimony given by S. and Kh., but also by data contained in the crime scene investigation report and the findings of the biological forensic expert report.

According to the testimony given by S., Kh., and [the applicant], the latter was seated in the back seat of the car. [The applicant] and ... V. alleged that the [applicant] bled severely after the policeman hit him in the face.

However, this is not confirmed by the crime scene investigation report, which shows that there was no blood discovered in the seat occupied by the [applicant] in the car.

Furthermore, according to the above-mentioned report and the findings of the biological forensic expert evaluation report, the blood found both in the car and next to it, belonged to [S.] and possibly to [the applicant]. It did not belong only to [the applicant].

Having regard to the data contained in the crime scene investigation and the forensics reports, it is not possible to accept as substantiated the applicant's allegations about being beaten in police custody ...

According to the testimony given by S. and Kh., the applicant sustained the injuries as a result of the police efforts to put a stop to his unlawful actions. He hit his head and face against the asphalt and the frame of the car when [the policemen] pulled him out of the car. This is confirmed by the findings of the medical forensic report of 6 May 2004 confirming that [the applicant] could have sustained the injuries as a result of contact with solid blunt objects within the period in question.

...

The court finds [the applicant] guilty [beyond reasonable doubt]."

29. On 11 March 2005 the Supreme Court of Russia upheld the applicant's conviction on appeal. As regards the trial court's failure to question G. and R., the Supreme Court indicated as follows:

"According to the materials of the case file, G. and R. were detained together with [the applicant] and placed in the same police car. They made written statements [about the incident]. However, they were not questioned, pursuant to the rules of criminal procedure. During the investigation and at trial it was impossible to establish their whereabouts.

According to V.'s testimony, R. is her son. He left home on 3 May 2004. Since then, he has showed up only once – in August 2004. His whereabouts are not known to her.

As regards her son's account of the events of [1 May 2004], V. gave contradictory testimony. First, she claimed that her son had seen that [the applicant] had been beaten up and covered with blood. He had not remembered, however, what had happened in the car because he had been asleep there after drinking. Then she asserted that [the applicant] had been beaten up by the policemen in the car and then next to it. Under such circumstances, the [trial] court had reasons to critically assess that witness's testimony.

The court's decision not to admit as evidence G. and R.'s written statements submitted by [the applicant's] counsel has also been justified."

D. Action for damages

30. On an unspecified date the applicant sued the State Treasury for damages resulting from his injuries. On 29 May 2006 the Tverskoy District Court of Moscow dismissed the claim without examination of the merits for the applicant's failure to comply with certain procedural requirements for lodging civil claims. It appears that the applicant failed to comply with those requirements and on 1 August 2006 the statement of claim was returned to him. On 21 December 2006 the Moscow City Court upheld the decision of 1 August 2006 on appeal.

31. On an unspecified date the applicant resubmitted his claims. On 29 October 2007 the Tverskoy District Court dismissed them. The applicant's representative was present in court. On 4 March 2008 the Moscow City Court upheld the judgment on appeal.

E. Subsequent events

32. On 18 April 2006 the applicant was transferred to correctional colony no. 5 in the Orenburg Region. On 20 September 2007 he was placed in a prison hospital. He died on 17 March 2010. The autopsy showed tuberculosis and AIDS as causes of death.

33. On 15 June 2009 the case file containing the applicant's complaint of police brutality was destroyed after the expiry of the statutory period for its storage.

THE LAW

I. THE GOVERNMENT'S OBJECTIONS RATIONE PERSONAE AND AS TO THE *LOCUS STANDI* OF MS ALEKSANDRA BALENKO AND MR TIMOFEI BALENKO

34. The Government raised two objections as to the admissibility of the application.

35. Firstly, they contended that Mr S. Kiryukhin had not been duly authorised to represent the applicant. They submitted that on 12 May 2005 the applicant had signed a power of attorney authorising Mr S. Kiryukhin to represent him in the proceedings before the Court. The said power of attorney had been valid, however, for a period of three years, as indicated therein, and had expired on 12 May 2008. In the Government's opinion, Mr S. Kiryukhin had had no authority to represent the applicant after that date and, accordingly, could not have validly signed or submitted the observations on the applicant's behalf on 17 March 2010. In any event, they considered that, in view of the applicant's poor state of health, it was highly unlikely that he could have even read the said observations prepared by Mr S. Kiryukhin.

36. The Government further contended that, following the applicant's death, neither Ms A. Balenko nor Mr T. Balenko had had *locus standi* to pursue the application before the Court. In their view, the complaints had been personal to the applicant and had not raised any question of general interest which would justify the continued examination of the complaint.

37. In the circumstances of the case and, in particular, having regard to the fact that the applicant died after the introduction of the application, the Court finds the Government's objection as to the expiry date of the power of attorney issued by the applicant in favour of his representative to be without merit.

38. The Court further notes, that, following the applicant's death, his mother Ms A. Balenko and his son Mr T. Balenko expressed their wish to pursue the application. They submitted that they were the applicant's heirs and it was important for them that the applicant's rights were upheld. They signed forms authorising Mr S. Kiryukhin to represent them before the Court.

39. The Court reiterates that in a number of cases in which an applicant died in the course of the proceedings it has taken into account the statements of the applicant's heirs or of close family members expressing a wish to pursue the proceedings before the Court. It has done so most frequently in cases which primarily involved pecuniary, and, for this reason, transferable claims. However, the question of whether such claims are transferable to the individuals seeking to pursue an application is not the exclusive criterion. In

fact, human rights cases before the Court generally also have a moral dimension, and people close to an applicant may have a legitimate interest in seeing to it that justice is done even after the applicant's death (see, among other authorities, *Horváthová v. Slovakia*, no. 74456/01, § 26, 17 May 2005).

40. Having regard to the above, the Court accepts that the applicant's mother and son have a legitimate interest in pursuing the application in the late applicant's stead. It will therefore continue dealing with the case at their request.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

41. The applicant complained under Articles 3 and 13 of the Convention that he had been subjected to torture in police custody on 1 May 2004 and that the domestic authorities had failed to conduct an effective investigation into his allegations of ill-treatment. 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."

42. The Government contested that argument. They argued that the use of force against the applicant had been lawful and justified. The applicant had assaulted a police officer and the policemen had responded accordingly to put an end to his attack. The applicant's allegations of ill-treatment had been verified by the prosecutor's office and the courts at two levels of jurisdiction. The investigator had dismissed the applicant's complaint as unsubstantiated. He had based his conclusions on the statements made by the applicant and by the two policemen, as well as on forensic evidence. The investigator's findings had been confirmed by the courts in the course of the criminal proceedings against the applicant. The Government was unable to provide the relevant case file as it had been destroyed due to the expiry of the statutory time-limit for its storage. In sum, the investigation into the applicant's allegations of ill-treatment had been effective.

43. The applicant's relatives maintained his complaints.

A. Admissibility

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

B. Merits

1. *Alleged ill-treatment*

45. 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* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

46. As regards the use of force for effecting an arrest, the Court accepts that in defusing situations, maintaining order, preventing offences, catching alleged criminals and protecting themselves and other individuals, police officers are entitled to use appropriate means, including force. Nevertheless, such force may be used only if indispensable and must not be excessive. Recourse to physical force which has not been made strictly necessary by the individual's own conduct diminishes human dignity and is in principle an infringement of the rights set forth in Article 3 of the Convention (see *Kuzmenko v. Russia*, no. 18541/04, § 41, 21 December 2010).

47. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

48. Turning to the circumstances of the present case, the Court observes that it is not disputed by the parties that on 1 May 2004 the applicant sustained injuries after he was arrested and placed in the police car. Those injuries included a fractured nose and numerous bruises and resulted from his altercation with two police officers. The Court finds it therefore established "beyond reasonable doubt" that the applicant sustained those injuries as a result of the use of force against him by the police officers. The Court considers that the applicant's injuries were, as such, sufficiently serious. Accordingly, the burden rests with the Government to demonstrate

with convincing arguments that the use of force was not excessive (*Zelilof v. Greece*, no. 17060/03, § 47, 24 May 2007).

49. The Court notes that the exact circumstances of the altercation between the applicant and the police officers were disputed by the parties. The Government asserted that the use of force had been lawful and strictly necessary to put an end to the applicant's attempt to stab one of the policemen with a knife. The applicant, however, denied having been in possession of a knife or any other weapon. He alleged that the policemen had beaten him up to retaliate for his critical remarks in their respect.

50. The Court further notes that the applicant's allegations of ill-treatment had not been confirmed by the ensuing investigation carried out by the prosecutor's office and the courts at two levels of jurisdiction. In this connection, the Court reiterates that, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336).

51. Having regard to the materials in its possession, the Court accepts the Government's explanation that, in the circumstances of the case, the use of force against the applicant had been justified. The Court observes that, following the applicant's arrest, he was placed in the police car, where he assaulted the driver with a knife – trying to stab him in the neck. In response, the driver and the other policeman present in the car pulled the applicant outside, disarmed and handcuffed him. Whilst being pulled out of the car, the applicant hurt his head, hitting it against the car, and his face then came into contact with the asphalt on the road. As a result, he sustained numerous injuries, including a fractured nose.

52. In reaching the conclusion that the applicant had been injured in the course of the altercation with the police officers, who had had to pull him out of the car, disarm and handcuff him in order to put an end to his assault, the domestic courts had the benefit of seeing several witnesses make statements and of evaluating their credibility. They further examined forensic evidence which supported the witnesses' testimonies. No material has been adduced in the course of the Strasbourg proceedings which could call into question the findings of the national courts and add weight to the applicant's allegations. The Court discerns no cogent elements in his

submissions which could lead the Court to depart from the findings of fact of the national courts.

53. Lastly, the Court notes that the seriousness of the injuries in question, as such, does not overshadow the fact that the recourse to physical force in this case was made necessary by the applicants' own conduct. Therefore, while the applicant admittedly suffered as a result of the incident of 1 May 2004, the use of force against him cannot be held to have been excessive.

54. Accordingly, there has been no violation of Article 3 of the Convention with regard to the alleged ill-treatment by the police on 1 May 2004.

2. Adequacy of the investigation

55. 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).

56. 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).

57. 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 and Others*, 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* cited above, § 106; *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; 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.

58. Furthermore, the investigation must be expeditious. In cases examined under Articles 2 and 3 of the Convention, where the effectiveness of an official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita*, cited above, §§ 133 et seq.). Consideration has been 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, § 67, *Reports* 1998-IV), and the length of time taken to complete the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

59. Turning to the facts of the present case, the Court observes that the prosecutor's office opened an investigation into the incident of 1 May 2004 on the same day. It resulted in two sets of proceedings. The first set concerned the applicant's complaint about police brutality and the second one was carried out in connection with the charges against the applicant. Subsequently, the matter was subject to examination by the courts, with the final decision on the matter taken on 11 March 2005. The Court accepts that the authorities' response to the incident was prompt.

60. In the Court's view, the authorities took all the steps necessary to verify the applicant's accusations. They questioned the applicant, the police officers and other witnesses. They studied the forensic evidence and examined the crime scene. The judicial authorities reviewed the materials of the prosecutor's inquiry. The Court discerns nothing in the materials in its possession to suggest that the domestic authorities' findings in respect of the applicant's allegations were unreasonable or lacking a basis in evidence.

61. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the applicant's complaint of ill-treatment in police custody was "effective". There has therefore been no violation of Article 3 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

62. The applicant complained under Article 6 § 3 (d) of the Convention that the trial court had failed to ensure the attendance and examination of eyewitnesses R. and G. The Court will examine the complaint under Article 6 §§ 1 and 3 (d) of the Convention, which, in so far as relevant, reads as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him..."

63. The Government contested that argument. They noted that the Russian judicial authorities could not be held responsible for their failure to obtain the attendance and examination of G. and R., whose whereabouts had been impossible to establish. Furthermore, it appeared that the applicant had been privy to that information, given that his lawyer had been able to obtain their written statements, but he had not made any effort to communicate information on the witnesses' whereabouts to the trial court.

64. The applicant's relatives maintained his complaint. They submitted that G. and R. had been unwilling to testify for fear of police retaliation.

A. Admissibility

65. The Court reiterates that the right to call witnesses is not absolute and can be limited in the interests of the proper administration of justice. Article 6 § 3 (d) does not require the attendance and examination of every witness on the accused's behalf; its essential aim, as indicated by the words "under the same conditions", is full equality of arms in the matter (see *Vidal v. Belgium*, 25 March 1992, § 33, Series A no. 235-B, pp. 32-33). It is for the domestic courts to decide whether it is appropriate to call a witness. Nor will they be held responsible when it is impossible to obtain the attendance of a particular witness required by the defence (see *Ubach Mortes v. Andorra* (dec.), no. 46253/99, ECHR 2000-V).

66. Turning to the circumstances of the present case, the Court observes that the domestic authorities were unable to establish the whereabouts of G. and R. and, subsequently, to obtain their attendance and examination at trial. Furthermore, the Court notes that it was not contended by the applicant that the authorities had failed to make every reasonable effort to secure the said witnesses' presence in court. Nor had he provided any information, if known to him, on the issue or explain how it had been possible for him to obtain the witnesses' written statements. He never referred in the course of the domestic proceedings to the possibility of the witnesses having refused to testify for fear of police retaliation, and the Court cannot accept these allegations as having any substance.

67. Admittedly, G. and R. were present in the police car when the altercation between the applicant and the policemen took place, and their testimonies were relevant to the subject matter of the criminal proceedings against the applicant. Nevertheless, regard being had to the evidentiary basis underlying the applicant's conviction, the Court is unable to conclude that had G. and R. testified in court, their testimonies would have been decisive for the outcome of the trial. The applicant's version of events had been reviewed by the domestic courts. It had been rejected as unsupported – not only by the examined witnesses' statements, but by the forensic evidence as well.

68. In these circumstances, the Court concludes that the fact that it was impossible to obtain G. and R.'s attendance during the trial did not violate the right to mount a defence and that the fairness of the trial did not suffer due to their absence.

69. It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

70. Lastly, the applicant alleged that his arrest on 1 May 2004 had been unlawful and that he had been convicted of a crime that he had not committed. He further complained of unfairness in the civil proceedings concerning his claims for damages. He referred to Article 6 of the Convention, Article 1 of Protocol No. 1, Article 2 of Protocol No. 4 and Article 3 of Protocol No. 7.

71. However, having regard to all the material in its possession, the Court finds that the events complained of do not disclose any 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 manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 of the Convention concerning the ill-treatment of the applicant on 1 May 2004 and the effectiveness of the ensuing investigation admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention.

Done in English, and notified in writing on 11 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President