



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

FIRST SECTION

CASE OF CHERKASOV v. RUSSIA

(Application no. 7039/04)

JUDGMENT

STRASBOURG

18 October 2011

FINAL

18/01/2012

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

In the case of Cherkasov v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 7039/04) 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 Vladimirovich Cherkasov (“the applicant”), on 4 January 2004.

2. 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 that he had been beaten up by police officers on 23 August 2004 and that the authorities had subsequently failed to investigate the episode. The applicant was also dissatisfied with the outcome of various unrelated court proceedings against private individuals and State authorities.

4. On 4 September 2008 the President of the First Section decided to communicate the complaint concerning the applicant’s alleged ill-treatment and the lack of proper investigation of the matter. It was also decided to examine the merits of the application at the same time as its admissibility (former Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in the village of Ramon in the Voronezh Region.

A. The events of 23 August 2004 and related proceedings

1. The applicant's arrest on 23 August 2004 and his initial detention in a sobering-up cell

6. At around 6 p.m. on 23 August 2004 the applicant was on his way to a grocery store. According to him, he did not feel well and sat down on the steps of a local canteen.

7. Police officers from the Ramonskiy District Department of the Interior for the Voronezh Region ("the District Department of the Interior") who were patrolling the streets, having apparently taken the applicant for a drunkard, approached him and invited him to follow them to the District Department of the Interior's building.

8. The applicant having refused, they forced him into their car and then brought him to a cell in the District Department of the Interior's building which was used as a sobering-up centre. Upon admission, the applicant was diagnosed by a nurse as suffering from alcohol intoxication. It appears that the applicant spent a few hours in the cell, loudly demanding his release and even trying to force the door open with a wooden bench. He also sought access to his lawyer and a doctor.

9. Some time later a paramedic crew arrived but refused to examine the applicant, having allegedly been offended by his rude words and behaviour.

10. The applicant's stay in the sobering-up cell was documented in the District Department of the Interior's records as having lasted from 8.20 to 11.40 p.m. on 23 August 2004.

2. The applicant's fight with police officers and subsequent detention in a temporary detention ward

11. At around 10 p.m. the applicant was taken outside from his cell.

12. According to the applicant, when he came out of the District Department of the Interior's building into its internal yard, a police officer walking behind him struck three blows on his ribs. The applicant turned around and responded by hitting the officer's face with his fists. In the ensuing fight, the officer in question was joined by his colleagues and eventually prevailed. Together they forced the applicant on to the ground

and kicked him for some time. It appears that as a result the applicant passed out.

13. The applicant was then placed in a temporary detention ward at the local police station. The Government submitted a charge sheet confirming his administrative detention at around 11.50 p.m. The applicant's subsequent calls for a doctor throughout the night remained unanswered. In the morning a paramedic crew arrived. Apparently, they examined the applicant but did not detect any traces of injuries and soon left. The applicant submitted that the paramedic crew had again refused to examine him and that the so-called examination had not been proper, as the nurse present had simply looked at him from a distance.

3. The hearing before a judge of the District Court and the applicant's release

14. On the morning of 24 August 2004 at around 10.30 a.m. the applicant was brought before Judge P. of the Ramonskiy District Court, Voronezh Region ("the District Court") in connection with his allegedly rude behaviour and the use of offensive language in the sobering-up cell at the District Department of the Interior's building. The judge decided that the applicant had been liable for the administrative offence of minor breach of the peace and gave him an oral warning.

15. After the hearing at the District Court the applicant was released.

16. The applicant apparently failed to bring any appeal proceedings in respect of this decision and ten days later after its notification on 29 August 2004 it came into force.

17. This decision was subsequently quashed on 10 March 2005 by the president of the Voronezh Regional Court as inconsistent, unjustified and poorly motivated and the related administrative proceedings were discontinued as time-barred. The president of the Regional Court noted that some important documents had been missing from the case file concerning the matter.

4. The applicant's medical examinations and treatment in the Regional Hospital

18. Immediately after his release at around 11.00 a.m. on 24 August 2004 the applicant went in person to the Ramon District Prosecutor's office for the Voronezh Region ("the District Prosecutor's office"), which referred him to a local hospital for medical examination. The applicant was given a handwritten referral letter by an acting district prosecutor, N., which directed the applicant to undergo a medical examination in a local hospital.

19. On the same date at 11.30 a.m. he was examined by a surgeon from a local hospital, and on 25 August 2004 by a dentist and an otolaryngologist. According to the applicant, his blood was also tested for alcohol with a negative result.

20. The applicant's medical condition on 24 August 2004 during his visit to the surgeon was described in a medical report of the examination as follows:

“During the examination by a surgeon, the existence of numerous injuries on the top of the head, subarachnoid haematomas measuring up to three cm in diameter, three bruises on the face, scratches on the nose ..., a dark brown bruise measuring three to five centimetres on the side of the neck. On the back of the neck, a brown bruise of two to three centimetres; on the front of the right shoulder, a dark brown bruise measuring four to seven centimetres. On the surface of the ribcage, multiple scratches with bruises, concentrated mostly on the left side of the central collarbone line. On both forearms more than ten bruises and scratches. Scratches of up to two to four centimetres in the area of the elbow on both sides. On the back side of the rib cage and the back of the knee five scratches of up to three to four centimetres. Bruises in the lower area of thighs and shanks ...”

21. An additional entry in the applicant's medical file dated 25 August 2004 stated that the applicant had suffered “a closed fracture of the nose without splintering”.

22. Since the applicant did not feel well, on 26 August 2004 he went to a forensic-examination bureau in the town of Voronezh for an examination. The applicant was examined there and also referred to a specialised department of the Regional Hospital.

23. A medical report dated 26 August 2004 essentially confirmed the applicant's condition as already described in the report of 24 August 2004, having identified the same injuries in more detail.

24. On 27 August 2004 the applicant appeared at the Regional Hospital, which was unable to conduct the necessary tests on that date and invited the applicant to return on Monday, 30 August 2004. On that date the applicant was identified as being in need of urgent treatment. He was hospitalised in the neurosurgical department of the Regional Hospital with concussion and remained there until 13 September 2004.

5. The criminal inquiry into the events of 23 and 24 August 2004

25. On 15 September 2004, two days after his discharge from hospital, the applicant went in person to the District Prosecutor's office and registered a complaint of ill-treatment during his detention on 23 and 24 August 2004.

(a) First round of investigation

26. Following a preliminary inquiry, on 24 September 2004 investigator S. identified officers E. and O. as suspects and then took a decision to discontinue the proceedings in relation to the applicant's complaints for the lack of evidence of any crime having been committed.

27. In the course of the proceedings investigator S. collected statements of various police officers, including those who had brought the applicant to the sobering-up cell, those who had guarded that cell, those who had escorted the applicant to the temporary detention ward, as well as the medical staff who had been called to examine the applicant's condition on that night. All of them, except for officers T. and S., denied any knowledge of the fight mentioned by the applicant.

28. As regards the latter two, in a statement dated 3 September 2004 officer T. also mentioned the use of physical force – as well as special techniques – “to calm the applicant down”. In a statement dated 3 September 2004 officer S. mentioned the use of physical force in respect of the applicant during that night because the applicant had allegedly “used offensive language, had acted aggressively and had wanted to hit him and his colleagues on the face”.

29. The investigator did not make any additional inquiries into the episode mentioned by officers T. and S., nor ordered medical examination of the persons allegedly involved.

30. Having mentioned the parts of statements of various witnesses in which all of them had confirmed the applicant's detention in a sobering-up cell, but had denied that the fight described by the applicant had taken place, the investigator then stated as follows:

“Taking into account that there exists sufficient evidence showing the lack of any crime ... it is decided to discontinue the proceedings accordingly.”

31. On 29 November 2004 the Deputy Prosecutor of the District Prosecutor's office quashed the decision of 24 September 2004 and remitted the case to the investigator for additional examination. The prosecutor noted that the decision of 24 September 2004 had been incomplete and superficial, in that no evidence had been taken from two witnesses who would have been present during the applicant's admission to the sobering-up cell, as well as his former fellow inmates.

(b) Second round of investigation

32. On 1 December 2004, after additional inquiry, investigator S. again took a decision to discontinue the investigation for the lack of evidence of a crime. It appears that the decision now took into account the evidence given by additional witnesses, such as the applicant's former fellow inmates.

33. Having mentioned the parts of statements of various witnesses in which all of them had confirmed the applicant's detention in a sobering-up cell, but had denied that the fight described by the applicant had taken place, as well as the statements of the applicant's former fellow inmates who had not confirmed the presence of injuries on the applicant's body, the investigator made the following conclusion:

"... Thus, according to witness statements at the time of the [applicant's] detention in the [police station] the applicant had no injuries. And his allegation that the injuries were inflicted during the detention is not confirmed by any evidence. The statements of the medical staff ... are confirmed by the entries in the record of the emergency service ... Entry no. 3620 dated 23 August 2004 reflects the examination of [the applicant] and a diagnosis: alcohol intoxication ... no need in medical treatment. Entry no. 3623 dated 24 August 2004 reflects the examination of [the applicant] and a diagnosis: chronic bronchitis originating in asthma. There is no information about the presence of injuries on [the applicant's] body.

In view of the above, there is a sufficient data indicating the lack of crime ... and the proceedings should be discontinued."

34. By a decision of 5 February 2005, the District Prosecutor quashed the decision of 1 December 2004 as incomplete and superficial and remitted the case to the investigator for additional inquiry. The prosecutor noted that the alleged fight and the issue of the origin of the applicant's injuries remained without proper clarification.

(c) Third round of investigation

35. On 15 February 2005 the Deputy District Prosecutor took a decision to discontinue the investigation for the lack of evidence of a crime. The decision was essentially based on the same pieces of evidence as the previous decisions.

36. The officers who escorted the applicant from the sobering-up cell to the temporary detention ward had been identified, but the decision did not address the applicant's allegation concerning his fight with the policemen and the previous statements of the policemen mentioning the use of force. The prosecutor reasoned as follows:

"... the allegations that the injuries were inflicted by the policemen of the [local] police station, as described by [the applicant], remained unconfirmed in the course of the investigation. Thus, according to witness statements and other materials, during the [applicant's] detention at the ... police station there were no injuries on his body The statements of the questioned witnesses are credible and coordinate well among themselves, which is why there is no reason to doubt them.

Overall, the investigation was unable to obtain any data which would confirm that the injuries in question were inflicted on [the applicant] by policemen ... E. and O., who had escorted [the applicant] from the sobering-up cell to the temporary detention ward. In view of the above, there are no signs of any crime in the actions of E. and O. ... and the proceedings should be discontinued."

6. The judicial review of the decision of 15 February 2005

37. The applicant appealed against the decision of 15 February 2005 before the courts under Article 125 of the Code of Criminal Procedure, contesting the established version of events and pointing to its various inconsistencies and shortcomings in the investigative process.

38. On 6 June 2005 the District Court, acting as a first-instance court, upheld the decision of 15 February 2005. The court decided that the investigation had been lawful and sufficiently complete to exclude the criminal responsibility of the police officers in question. The court noted, in particular:

“... During the investigation carried out on the [applicant’s] request ... it was established that on 23 August 2004 [the applicant] was arrested and detained in the [local] police station, where he was placed in sobering-up cell, and then an administrative case against him was sent for examination on the merits to the justice of the peace of circuit no. 2 of the Ramon District of the Voronezh Region.

In taking a decision to discontinue the proceedings, the deputy prosecutor concluded that no sufficient data confirming that any injuries had been inflicted on [the applicant] by officers E. and O. who escorted him from the sobering-up cell was obtained.

The [applicant’s] arguments that this decision was unlawful remained unconfirmed...”

39. The judgment was upheld on appeal by the Voronezh Regional Court on 16 August 2005. The court noted that:

“... The reference to the erroneous assessment of the evidence in the case by the [prosecutor] is insufficient to quash the judgment... [T]he investigator checked and assessed the existing evidence in the case in accordance with the requirements of [the domestic law], having considered as trustworthy the statements made by the [policemen] and the [medical staff] and having rightly rejected the [applicant’s] version of the events, concluded that no crime had been committed by officers E. and O. ...”

7. Further court proceedings

40. On 6 November 2008, following notification of the present case to the respondent Government, the Voronezh Regional Prosecutor’s office applied for supervisory review of the judgment of 6 June 2005 and the decision of 16 August 2005.

41. On 8 December 2008 a judge of the Voronezh Regional Court examined and rejected the appeal as unsubstantiated. It was noted that:

“... The arguments that in taking the relevant decision no account was made of the presence of injuries on [the applicant’s body] are insufficient to quash the decisions of the lower courts, since the previous check failed to substantiate the version that the injuries in question had been inflicted as a result of violent, unlawful and intentional actions of the policemen. There are no reasons to consider that the check was

incomplete. In the course of the examination of the case by the first instance court [the applicant] had failed to discredit the existing witnesses, including those who were not policemen. No such arguments were made in the present appeal either...”

B. The applicant’s litigation with various bodies and individuals

42. In addition to the court proceedings in relation to the events of 23 August 2004, the applicant also took part in a series of unrelated proceedings against various State bodies and individuals.

43. He brought a set of civil proceedings which ended with a final judgment of the Voronezh Regional Court of 22 November 2001 and was also unsuccessful in two sets of court proceedings, in which he had sued different individuals and bodies for damages, which ended with final decisions dated 14 September 2004 and 21 October 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Detention in sobering-up centres by the police

44. Under paragraph 11 of Section 11 of the Police Act (no. 1026-1 of 18 April 1991, as in force at the relevant time) police officers have, amongst other powers, the right to escort individuals who are intoxicated in a public place and who have lost the ability to move independently to medical institutions or the premises of local departments of the interior and to detain them until they become sober.

B. Minor disorderly acts

45. The relevant section of the Code of Administrative Offences dated 30 December 2001 (as in force at the material time) reads as follows:

Article 20.1 Minor disorderly acts

“Minor disorderly acts, that is a breach of public order expressing an apparent lack of respect for society, accompanied by the utterance of obscenities in public places, offensive behaviour towards others as well as the destruction or deterioration of the property of others, shall be punishable by an administrative fine of between five hundred to one thousand roubles or by administrative arrest of up to fifteen days.”

C. The use of force by the police

1. General provisions

46. Article 21 § 2 of the Constitution provides that no one may be subjected to torture, violence or any other cruel or degrading treatment or punishment.

47. Article 117 § 2 (f) of the Criminal Code of the Russian Federation makes acts of torture punishable by up to seven years' imprisonment. Under Article 286 § 3 (a) and (c) abuse of an official position associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment.

48. Article 286 § 3 (a) of the Criminal Code provides that actions of a public official which clearly exceed his authority and which entail a substantial violation of the rights and lawful interests of citizens, committed with violence or the threat of violence, shall be punishable by three to ten years' imprisonment with a prohibition on occupying certain posts or engaging in certain activities for a period of three years.

2. The Police Act

49. The Police Act (no. 1026-1 of 18 April 1991, as in force at the relevant time) provides that police officers are only entitled to use physical force, special equipment and firearms in the cases and within the procedure established by the Police Act. Staff members of police facilities designated for temporary detention of suspects and accused persons may only use such force and special equipment in cases and within the procedure established by the Custody Act. A police officer must warn of his intention to use physical force, special equipment or a weapon and must give the person concerned sufficient time to comply with his order, except in cases where a delay in using physical force, special equipment or a weapon may create an immediate danger for the life and health of citizens and police officers, is likely to cause other serious consequences or where a warning is impossible or impracticable in the circumstances. Police officers must endeavour to minimise damage caused by the use of physical force, special equipment or a weapon, to the extent possible depending on the nature and seriousness of the offence, the dangerousness of the person who has committed it and the degree of resistance offered. Police officers must also ensure that individuals who have been injured as a result of the use of physical force, special equipment or a weapon receive medical assistance (section 12).

50. Police officers may use physical force, including martial arts, to stop a criminal or administrative offence being committed, arrest persons who have committed a criminal or administrative offence or overcome resistance to a lawful order, if non-violent methods are insufficient to ensure discharge of the police duties (section 13).

51. Sections 14 and 15 of the Police Act lay down an exhaustive list of cases when special equipment, including rubber truncheons, handcuffs and firearms, may be used. In particular, rubber truncheons may be used to repel an attack on civilians or police officers, to overcome resistance offered to a police officer, to repress mass disorder or to put an end to collective actions disrupting the operation of transport, means of communication or legal entities. Handcuffs may be used only to overcome resistance to a police officer, to arrest an individual caught while committing a criminal offence against life, health or property and if the offender is attempting to escape, and to bring arrestees to police stations, as well as to transport them and protect them if their behaviour allows the conclusion that they are liable to escape, cause damage to themselves or other individuals or offer resistance to police officers.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

52. The applicant complained that he had been subjected to ill-treatment by police officers during his overnight detention from 23 to 24 August 2004 and that the domestic authorities had failed to investigate the matter properly. The Court will examine this complaint 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.”

A. Admissibility

53. The Government maintained that the applicant’s case before the Court was premature, in that the competent prosecutor’s office had brought supervisory review proceedings challenging the decision of 15 February 2005 and the subsequent court decisions and that the supervisory review proceedings were still pending. They later informed the Court that the supervisory review proceedings were unsuccessful and that the lower courts’ judgments remained in force.

54. The applicant did not make any comments in respect of this objection and generally considered that the case was admissible.

55. The Court finds this part of the application 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

56. The Government submitted that the applicant's allegations of ill-treatment had been thoroughly examined by the competent domestic authorities and had been reasonably rejected as unfounded. According to them, the investigation had been of sufficient quality. At the same time, they admitted that the investigation had not resolved the question of the alleged fight between the policemen and the applicant.

57. The applicant disagreed with the Government and insisted on his initial version of events.

1. Alleged ill-treatment in police custody

(a) General principles

58. The Court has held on many occasions that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336; see also, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). Otherwise, torture or ill-treatment may be presumed in favour of the claimant and an issue may arise under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). The Court further recalls that, while it is sensitive to the subsidiary nature of its role and cautious about taking on the role of a first-instance tribunal of fact, it is nevertheless not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case (see, for example, *Matyar v. Turkey*, no. 23423/94, § 108, 21 February 2002 and, by contrast, *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B, and *Vidal v. Belgium*, 22 April 1992, §§ 33 and 34, Series A no. 235-B).

(b) Assessment of the evidence

59. The Court notes that the parties did not dispute the validity of the medical report drawn up on 24 August 2004 immediately following the applicant's release, which confirmed the presence of multiple injuries to his head, neck, face, ribcage, arms and legs (see paragraph 20). The Government were accordingly under an obligation to provide a plausible explanation of how the applicant's injuries had been caused.

60. At the outset, the Court observes that the applicant's allegations of ill-treatment were examined and rejected by the domestic authorities in the course of the criminal investigation into the events of 23-24 August 2004 which ended with the decision of 15 February 2005. That decision was upheld by the domestic courts at two judicial instances on 6 June and 16 August 2005 respectively (see paragraphs 36, 37-39 and 41).

61. The Court further notes that the authorities accepted the validity of the medical report of 24 August 2004 and thus the existence of the applicant's injuries. Indeed, the findings of the report were essentially confirmed during the applicant's medical examination at the bureau of forensic examinations two days later on 26 August 2004 (see paragraph 23). The applicant's allegations of ill-treatment were rejected with reference to the lack of any evidence implicating the policemen (see paragraph 36). The Court notes that the medical report was drawn up by the doctor very shortly after the events at issue (see paragraphs 18, 19 and 20) and there is nothing in the case file or the parties' submissions to suggest that the injuries described in the report had been inflicted either before the applicant's arrest on 23 August 2004 or in the period following his release on the next day.

62. In fact, the investigating authorities did not bother to collect evidence from two key witnesses, Judge P. of the Ramonskiy District Court and prosecutor N. of the Ramonskiy District Prosecutor's office, who saw the applicant in person on the morning after the events at issue (see paragraphs 14-18) and who could have given them very detailed information in this connection.

63. On the basis of all the material placed before it, the Court finds that neither the authorities at the domestic level nor the Government in the proceedings before the Strasbourg Court have advanced any convincing explanation as to the origin of the applicant's injuries (see, by contrast, *Klaas v. Germany*, 22 September 1993, §§ 29-31, Series A no. 269). The Court therefore concludes that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than - entirely, mainly, or partly - by the treatment he underwent while in police custody (see the *Ribitsch* judgment, cited above, § 34).

(c) Assessment of the severity of ill-treatment

64. As to the seriousness of the acts of ill-treatment complained of, the Court reiterates that in order to determine how a particular form of ill-treatment should be qualified, it must have regard to the distinctions embodied in Article 3 (see *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports of Judgments and Decisions* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83 and 84 and 86, *Reports* 1997-VI; *Selmouni*, cited above, § 105; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; and, among recent authorities, *Bati and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-IV (extracts), as well as *Menesheva v. Russia*, no. 59261/00, § 55, ECHR 2006-III).

65. Furthermore, the Court reiterates its well-established case-law that in respect of a person deprived of his liberty, any 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 rights set forth in Article 3 of the Convention (see *Tomasi*, § 115, and *Ribitsch*, §§ 38-40, both cited above).

66. Turning to the circumstances of the present case, the Court takes into account the information contained in the relevant medical reports and the applicant's own description of events and finds that the ill-treatment inflicted on the applicant caused physical suffering which required in-patient treatment in a hospital. Given these considerations and in view of the Convention case-law in this respect and, in particular, the criteria of severity and the purpose of the ill-treatment, the Court is persuaded that the accumulation of the acts of physical violence inflicted on the applicant amounted to inhuman and degrading treatment with meaning of Article 3 of the Convention.

67. Accordingly, there has been a breach of Article 3 of the Convention.

2. Alleged failure to carry out an effective investigation

(a) General principles

68. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would

be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 55, 15 February 2007; *Matko v. Slovenia*, no. 43393/98, § 84, 2 November 2006; *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII; and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

69. The minimum standards of “effectiveness” defined by the Court’s case-law also require that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005, and *Menesheva*, cited above, § 67).

(b) Application of the above principles in the present case

70. The Court notes that the parties did not dispute the validity of the medical report drawn up on 24 August 2004, almost immediately following the applicant’s arrest and detention between 23 and 24 August 2004, and confirming the presence of various injuries on the applicant’s body. The Court further observes that the matter was duly brought before the competent authorities at a time when they could reasonably have been expected to investigate the circumstances in question. The applicant’s allegations, which were detailed and consistent throughout the domestic proceedings and before this Court, were, at least to some extent, corroborated by a medical certificate recording an injury to the head and back. The domestic authorities were therefore under an obligation to conduct an effective investigation satisfying the above requirements of Article 3 of the Convention.

71. In this connection, the Court notes that the prosecuting authorities, who were made aware of the applicant’s ill-treatment, carried out a preliminary investigation which did not result in a criminal prosecution. The applicant’s ill-treatment complaints were also subsequently subject to examination by the domestic courts at two levels of jurisdiction. In the Court’s opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there was one, but whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was “effective”.

72. The Court reiterates that the applicant was entirely reliant on the prosecutor to gather the evidence necessary to corroborate his complaint. The prosecutor had the legal power to interview the police officers and order their medical examinations, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for the purpose of establishing the truth of the applicant’s account. The Court will therefore assess the thoroughness of the investigation. In this connection,

the Court notes a number of significant omissions capable of undermining its reliability and effectiveness.

73. First, the Court observes that the prosecutor did not launch an investigation after being notified of the alleged ill-treatment on 24 August 2004 and having seen the applicant's condition in person. Instead, he referred the applicant to the hospital for a medical examination and, instead of collecting vital evidence in the meantime, waited for almost twenty days for the applicant to return from hospital with a formal complaint (see paragraphs 18-25). The Court finds that this omission was indeed a very serious one, as the timeous medical examination of the police officers allegedly involved would have dissipated all possible doubt concerning the applicant's version of events and, in particular, his involvement in a fight with the policemen.

74. Second, the Court notes that on the day after the events at issue the applicant was seen in person by Judge P. of the Ramonskiy District Court and prosecutor N. of the Ramon District Prosecutor's office, who could both have objectively either confirmed or contradicted the applicant's account of events (see paragraphs 14 and 18). It appears that the investigating authorities did not consider these two individuals as witnesses. More generally, a thorough inquiry into the events between the applicant's release from custody and his visit to the prosecutor's office and the local hospital would have facilitated an objective assessment of the applicant's version of events.

75. Third, the Court would note that the investigators failed altogether to order medical examinations of the policemen allegedly involved with a view to identifying any marks on their bodies confirming possible involvement in a recent fight. The Court would also deplore that the rest of the evidence in the case file was collected and assessed in a non-critical manner. Thus, the Court is not convinced that, despite his reliance on numerous statements made by the police officers as noted in the relevant decisions, the investigator really questioned the witnesses, rather than simply collecting their statements. It appears that no effort was made to clarify the inconsistencies between the statements of various witnesses. The most glaring example of such conduct is the fact that two police officers, S. and T., vaguely mentioned the use of force in respect of the applicant in their depositions of 3 September 2004 (see paragraph 28) and that the competent investigator made no additional inquiries into this episode at all, either during those interviews or at any later date (see paragraphs 27-30, 33 and 35-36). The Court, however, is mindful of the important role which investigative interviews play in obtaining accurate and reliable information from suspects, witnesses and victims and, ultimately, the discovery of the truth about the matter under investigation. Observing the suspects', witnesses' and victims' demeanour during questioning and assessing the

probative value of their testimony forms a substantial part of the investigative process.

76. Having regard to the above failings of the Russian authorities, the Court considers that the investigation carried out into the applicant's allegations of ill-treatment was not thorough, adequate or effective.

77. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

78. Lastly, as regards the complaints about the alleged general unfairness of various proceedings in which the applicant was involved, having regard to the materials in its possession, and in so far as they fall within its jurisdiction, the Court finds that they have not been sufficiently made out and do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

79. It follows that this part of the application should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicant claimed over 144,413 euros (EUR) in compensation for pecuniary damage and EUR 1 million for non-pecuniary damage allegedly sustained.

82. The Government viewed these claims as unjustified and, in any event, excessive.

83. The Court does not discern any causal link between the violations found and the amounts of the pecuniary damage alleged and also considers that the applicant's claims are not substantiated by any documentary evidence. Accordingly, it rejects this part of the claim. On the other hand, the Court observes that it has found above that the authorities subjected the applicant to inhuman and degrading treatment, in breach of Article 3 of the Convention. Under this provision, it has also found that there was no effective investigation in respect of the events of 23 August 2004. Having regard to this as well as to its established case-law, the Court awards the

applicant EUR 20,000 for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

84. The applicant also claimed EUR 24,982 in respect of costs and expenses incurred before the domestic courts and the Court.

85. The Government considered that this claim was unsubstantiated.

86. 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. Having regard to the material in its possession, the Court considers it reasonable to award the applicant the sum of EUR 100 for the legal and postal expenses incurred in relation to the proceedings before the Court, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the applicant's ill-treatment by police officers during his detention between 23 and 24 August 2004 and the domestic authorities' failure to investigate the matter admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention in that the applicant was subjected to inhuman and degrading treatment;
3. *Holds* that there has been a violation of Article 3 of the Convention in that the authorities failed to carry out an effective investigation into the applicant's allegations of ill-treatment;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

- (i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage;
- (ii) EUR 100 (one hundred euros) in respect of costs and expenses;
- (iii) any tax that may be chargeable to the applicant on the above amounts;
- (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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President