



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

FIRST SECTION

CASE OF SHUVALOV v. RUSSIA

(Application no. 38047/04)

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 Shuvalov 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. 38047/04) 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 Gennadiy Aleksandrovich Shuvalov (“the applicant”), on 2 September 2004.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been ill-treated while in State custody and that the domestic authorities had failed to investigate the matter.

4. On 4 September 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided (pursuant to former Article 29 § 3 of the Convention) to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and lives in Volgograd.

A. Criminal proceedings against the applicant

6. On 23 March 2001 the applicant, a former police officer, was arrested, with two others, on suspicion of drug dealing.

7. On 26 March 2001 the applicant was detained pending investigation, and on 30 March 2001 charges were brought against him.

8. On 9 September 2003 the Volgograd Kirovskiy District Court convicted the applicant of drug dealing and sentenced him to ten years' imprisonment.

9. On 8 June 2004 the Volgograd Regional Court quashed the judgment on appeal and remitted the case for retrial.

10. On 29 June 2006 the Volgograd Kirovskiy District Court convicted the applicant of drug dealing and sentenced him to five years and four months' imprisonment. The judgment was not appealed against and became final.

11. On 22 July 2006 the applicant was released on completing his sentence.

B. Alleged ill-treatment

12. On 19 July 2002 officer P. of the Volgograd Regional remand prison IZ-34/4 (*ФБУ ИЗ № 34/4 ГУФСИН России по Волгоградской области*), where the applicant was detained at the material time, allegedly hit the applicant several times with a rubber truncheon on the lower back and buttocks. The applicant could hardly walk afterwards. In the evening he felt feverish. The doctor on duty was to examine the applicant. However, according to the applicant, despite his request the doctor was instructed not to record the injuries.

13. On 23 July 2002 the applicant was brought to Volgograd Kirovskiy District Court for trial. However, he felt unwell, and an ambulance team was called. The ambulance paramedic discovered bruises on the soft tissue of the applicant's buttocks. When he returned to the remand prison the applicant was examined by a medical assistant. The latter recorded multiple haematomas on the applicant's buttocks, measuring 1.5 x 1.5 cm. On the same day the applicant made a complaint about the beatings to the Volgograd City Prosecutor's Office.

14. On 16 August 2002 the chief assistant of the Volgograd City Prosecutor refused to institute criminal proceedings against officer P. The decision read as follows:

“[...] The inquiry conducted [into the applicant's allegations] established that at 11.15 a.m. on 19 July 2002 [officers P. and Podm. of the Volgograd Regional remand prison IZ-34/4] took [the applicant] out of cell no. 47 for a talk on the subject of compliance with the detention regime [...]

[Officer P.] invited officer K. by telephone to come to his office, no. 4, and bring [the applicant's] personal file. Approximately ten minutes later those present went to P.'s office, where K. informed [the applicant] of the material in the file. The latter threatened to have criminal proceedings instituted against K., and to make all others present regret everything, without offering any further explanation.

At about 12.30 p.m. [the applicant] was taken to a temporary isolation cell, from where, three hours later, he was escorted back to his cell.

No physical force or special means were applied to the [applicant]. According to the records on the use of special means, officers P., Podm. and K. were not given special means on 19 July 2002.

When he returned to his cell [the applicant] made no health-related complaints to his cellmates or to the medical unit of the [remand prison].

During the exercise period on 20 July 2002 [the applicant] was rubbing his buttocks against the wall of the exercise yard (explanations by detainees Sh., D., and others), deliberately causing himself harm.

At 12.12 p.m. on 23 July 2002, having been escorted to the Kirovskiy District Court, [the applicant] complained to convoy officers that he felt unwell, mentioning in particular pain in the area of his kidneys, for which reason an ambulance was called to the courthouse.

Medical assistant Sh. discovered haematomas on [the applicant's] buttocks [...].

[The applicant's] allegations of "blows to the kidneys and high blood pressure" were not confirmed. His health was assessed as relatively satisfactory.

It follows from submissions by detainees D., I., P., and Sh. that [the applicant] repeatedly expressed discontent with [officer P.] and was planning to make accusations against him...

In view of the foregoing, [the applicant's] allegations were not substantiated..."

15. On 8 September and 29 November 2002 the applicant obtained written statements from his cellmates P., I. and B., who stated that they had not seen the applicant causing himself injuries. They further stated that police officer P. had made them and other inmates sign statements to the contrary.

16. In the meantime, in October 2002 the applicant appealed against the decision of 16 August 2002 to the Prosecutor General of the Russian Federation.

17. In December 2002 the applicant was informed that his complaint had been referred to the Volgograd Regional Prosecutor's Office, which, in its turn, referred the complaint to the Volgograd Regional Prosecutor supervising the enforcement of legislation in correctional institutions.

18. Soon afterwards the applicant received a letter dated 15 December 2002 from the Volgograd Regional Prosecutor, informing him that his

complaint had been examined and that no grounds had been found to quash the decision of 16 August 2002. A copy of the relevant decision was not however made available to the applicant.

19. The applicant tried to challenge the refusal to institute criminal proceedings against officer P. before the court examining his criminal case in 2003, during the trial and in 2004 on appeal. However, neither of the domestic courts considered the applicant's arguments.

20. Since some considerable time had elapsed since the quashing of the applicant's conviction in 2004 and no new trial had yet started (see paragraphs 9 and 10 above), the applicant decided to challenge the refusal to institute criminal proceedings against police officer P. in separate proceedings.

21. On an unspecified date in June 2005 he challenged the refusal before the Volgograd Regional Prosecutor's Office and the Tsentralniy District Court of Volgograd.

22. On 4 July 2005 the Deputy Prosecutor of the Volgograd Region quashed the decision of 16 August 2002, because it had been taken by the wrong person and outside the procedural time-limits. The decision also referred to the results of the inspection of the case file material (*материалы служебной проверки*). An additional investigation was ordered.

23. On 7 July 2005 the Tsentralniy District Court of Volgograd dismissed the applicant's appeal against the decision of 4 July 2005.

24. However, on 14 July 2005 the Volgograd City Prosecutor refused to institute criminal proceedings against officer P. The decision read as follows:

"... Junior inspector [of facility IZ-34/4] Kush. explained that on 19 July 2002 ... [officers P. and Podm.] took [the applicant] from cell. 47 to the management and security office. [Officer K.] was already there. [They] spent about ten minutes in the office, after which [the applicant] was taken back to cell. 47. The [officers] had no special equipment on them. Neither P. nor Podm were issued with rubber truncheons. He had seen no injuries on [the applicant]; [the applicant's] behaviour was normal and, [the latter] made no health-related complaints.

Similar statements were made by junior inspector [of facility IZ-34/4] G., who confirmed that no physical force had been applied to [the applicant].

[Officer] K. submitted that on 19 July 2002 ... she had been showing [the applicant] the material in his personal file, explaining [to the latter] the lawfulness of his detention.. On that occasion no violence was used against [the applicant] by the officers of IZ-34/4.

[Officer Podm.] submitted that on 19 July 2002 together with [officers P. and K.] at about 11 a.m. he had [had a talk with the applicant]. [...] On that occasion none of [the officers] had used violence on [the applicant], beaten him or threatened him.

Medical staff from IZ-34/4 K. and T. submitted that [the applicant] had not sought medical assistance between 19 July and 24 July 2002.

A medical auxiliary from IZ-34/4 M. submitted that on 23 July 2002 he examined [the applicant] and discovered blue marks on his buttocks, the origin of which [the applicant] did not explain. [The applicant] did not seek medical assistance until 24 July 2002.

[Officer P.] [made statements similar to those made by officers K. and Podm.]...

[According to the IZ-34/4 records], Sh., P., I., D., R., B., M., A. [formerly detained with the applicant] were no longer being held in facility IZ-34/4 [...].

Shakh. confirmed that he had been detained in facility IZ-34/4 with [the applicant], but in a different cell [...]. Regarding the circumstances of the alleged beatings, he only knew what [the applicant] had told him, that he had filed a complaint about the beatings. [...]

The above-mentioned detainees had not confirmed the alleged beatings at the initial inquiry.

Therefore, it follows that the events outlined by [the applicant] in his complaint that he had been beaten up by [officer P.] had not taken place [...].”

25. The applicant challenged the above decision before the court.

26. On 2 December 2005 the Volgograd Tsentralniy District Court did not find grounds for quashing the decision of 14 July 2005. It concluded that the decision in question had been made following analysis of all the pertinent information and in full compliance with the requirements of the domestic law.

27. On 14 February 2006 the Volgograd Regional Court quashed the judgment of 2 December 2005 because it had been given in the applicant’s absence, without necessary measures having been taken to ensure that he was duly notified of the hearing and summons. The case was remitted for fresh examination, with an instruction to check more thoroughly the arguments set out in the complaint.

28. On 11 April 2006 the Volgograd Tsentralniy District Court held again that the decision of 14 July 2005 was lawful.

29. On 6 June 2006 the Volgograd Regional Court upheld the above decision on appeal.

C. Proceedings in connection with a flat

30. The applicant was involved in court proceedings over his tenancy rights to a flat, which ended, to the applicant’s detriment, with final decisions of the Volgograd Regional Court of 26 April and 12 July 2007.

D. Proceedings over salary arrears

31. The applicant brought proceedings against his former employer (the Volgograd police office) for salary arrears and non-pecuniary damage.

32. On 24 August 2005 the Volgograd Regional Court, as the final appeal court, dismissed the applicant's claims in full.

II. RELEVANT DOMESTIC LAW

A. Criminal Code

33. Abuse of position associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment (Article 286 § 3 of the Criminal Code).

B. Code of Criminal Procedure

34. The Russian Code of Criminal Procedure (Law no. 174-FZ of 18 December 2001, in force from 1 July 2002, the "CCrP") states that a criminal investigation may be initiated by an investigator or prosecutor on a complaint by an individual (Articles 140 and 146). Within three days of receipt of such a complaint the investigator or prosecutor must carry out a preliminary inquiry and make one of the following decisions: (1) to open criminal proceedings if there are reasons to believe that a crime has been committed; (2) to decline to open criminal proceedings if the inquiry reveals that there are no grounds to initiate a criminal investigation; or (3) to refer the complaint to the appropriate investigating authority. The complainant must be notified of any decision taken. The decision not to open criminal proceedings is amenable to appeal to a higher prosecutor or a court of general jurisdiction (Articles 144, 145 and 148).

35. The CCrP provides for judicial review of a decision or (in)action on the part of an inquirer, investigator or prosecutor which has affected constitutional rights or freedoms. The judge is empowered to verify the lawfulness and reasonableness of the decision/(in)action and to grant the following forms of relief: (1) to declare the impugned decision/(in)action unlawful or unreasonable and to order the respective authority to remedy the violation; or (2) to reject the complaint (Article 125).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

36. The applicant complained under Articles 3 and 13 of the Convention that he had been ill-treated on 19 July 2002 whilst in State custody and that the investigation into his complaint had not been effective. The Court will examine this complaint from the standpoint of the State's negative and positive obligations flowing from Article 3, which reads as follows:

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

A. Admissibility

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

B. Merits

1. Submissions by the parties

38. Reiterating the factual circumstances of the case, the general principles of Article 3 of the Convention as developed in the Court's case-law and the relevant domestic law, the Government submitted that the domestic investigating authorities had on two occasions carefully checked the applicant's arguments by questioning the applicant himself, the alleged perpetrator, the latter's colleagues and medical staff of Volgograd Region remand prison IZ-34/4, as well as other inmates, and had taken the decision to refuse to institute criminal proceedings in the absence of an indication that a crime had been committed. The domestic court reviewed the conclusions reached by the investigating authorities and found them lawful. In such circumstances, the Government concluded that there had been no breach of Article 3 of the Convention, under either the substantive or the procedural heads.

39. The applicant argued that he could not have caused himself the injuries in question by rubbing his buttocks against the walls of the exercise yard. Rubbing would only have left scratches, not multiple haematomas. The haematomas could only have originated from the impact of a blunt object, such as, in his case, the rubber truncheon used by police officer P. The applicant further drew the Court's attention to the fact that the Government had failed to make any comments on the written statements by

his cellmates P., I. and B. (see paragraph 15 above) to the effect that they had not seen the applicant harming himself during the exercise period on 20 July 2002, and that police officer P. had made them and other inmates sign statements to the contrary. He further alleged that the additional inquiry had been based on the material of the initial inquiry without additionally questioning those involved in the incident. The applicant concluded, therefore, that the Government's conclusion as to the compliance of the domestic authorities with their obligations under Article 3 of the Convention in his respect had been unsubstantiated.

2. The Court's assessment

(a) Alleged ill-treatment of the applicant

(i) General principles

40. The Court reiterates that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Gladyshev v. Russia*, no. 2807/04, § 51, 30 July 2009; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). 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 right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004; and *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336).

41. The Court further reiterates that to fall under Article 3 of the Convention ill-treatment must attain a minimum level of severity. The standard of proof relied upon by the Court is that "beyond reasonable doubt" (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted 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 within 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 *Gladyshev*, cited above, § 52; *Oleg Nikitin v. Russia*, no. 36410/02, § 45, 9 October 2008; and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

42. 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 the 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). The Court must apply a particularly thorough scrutiny where the applicant raises an arguable complaint of ill-treatment (see *Ribitsch*, cited above, § 32, and *Avşar*, cited above, § 283).

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

43. Turning to the facts of the present case, the Court notes that shortly after the alleged beatings, on 23 July 2002, the ambulance paramedic discovered bruises on the soft tissue of the applicant's buttocks. On the same day the applicant was examined by a medical auxiliary at the remand prison, who recorded multiple haematomas on the applicant's buttocks, measuring 1.5 x 1.5 cm (see paragraph 13 above).

44. The Court considers that the above medical evidence, together with the fact that the alleged beatings took place while the applicant was under the authorities' control in custody, created an unrebutted presumption of fact that the applicant was subjected to ill-treatment at the hands of State agents and required the Government to provide a satisfactory and convincing explanation as to how those injuries could have originated.

45. The Court observes that, having conducted a police inquiry, the investigating authorities arrived at the conclusion that the applicant had inflicted the injuries in question by rubbing his buttocks against the walls of the exercise yard during the exercise period on 20 July 2002 (see paragraph 14 above).

46. The Court notes that the above explanation as to the origin of the applicant's injuries was not supported by any forensic medical evidence which would answer the questions as to how and when the injuries on the applicant's body had been inflicted (see paragraph 57 below). Besides, the written statements by three of the applicant's former cellmates indicate that they did not see the applicant harming himself during the exercise period on 20 July 2002, and their previous statements to the contrary had been made under pressure from officer P. (see paragraph 15 above). No comment was made on the statements in question by the domestic authorities, either during the proceedings at domestic level or before the Court.

47. Regard being had to the absence of any consistent or indisputable proof supporting the account of events put forward by the domestic authorities, the Court finds it unconvincing and implausible that the applicant could have sustained multiple haematomas by rubbing himself against the walls of the remand prison's exercise yard. It therefore finds it established to the standard of proof required in Convention proceedings that

the injuries on the applicant's body were the result of the treatment about which he complained and for which the Government bore responsibility.

48. Accordingly, having regard to the nature and the extent of his injuries, the Court concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected on 19 July 2002 by police officer P. and that there has thus been a violation of that provision.

(b) Alleged inadequacy of the investigation

(i) General principles

49. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated 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 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

50. 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; *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III; and *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006).

51. The investigation of arguable 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 of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates capable of providing a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries. 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 (see *Mikheyev*, cited above, § 108, and *Nadrosov v. Russia*, no. 9297/02, § 38, 31 July 2008).

52. The investigation into the alleged ill-treatment must be prompt. There must be a sufficient element of public scrutiny of the investigation or

its results; in particular, in all cases, the complainant must be afforded effective access to the investigatory procedure (see *Mikheyev*, cited above, § 109; *Maksimov v. Russia*, no. 43233/02, § 83, 18 March 2010; and *Lopata v. Russia*, no. 72250/01, §§ 110, 13 July 2010).

53. Finally, the investigation into alleged ill-treatment by State agents should be independent (see *Öğür v. Turkey*, [GC], no. 21954/93, ECHR 1999-III, §§ 91-92; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004; *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III; and *Oleg Nikitin*, cited above, § 35).

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

54. Turning to the circumstances of the present case, the Court observes that on 23 July 2002 the applicant submitted to the Volgograd City Prosecutor's Office a clear and direct statement to the effect that on 19 July 2002, while he was in Volgograd Regional remand prison IZ-34/4, he had been beaten up by police officer P. He substantiated his complaint with medical documents attesting to a number of bruises on his body, specifically on the buttocks (see paragraph 13 above). The applicant's claim was, therefore, shown to be "arguable", and the domestic authorities were placed under an obligation to carry out "a thorough and effective investigation capable of leading to the identification and punishment of those responsible".

55. The Court further observes that on 16 August 2002 the chief assistant of the Volgograd City Prosecutor refused to institute criminal proceedings against officer P., finding that the applicant had inflicted the bruises on himself by rubbing his buttocks against the walls of the remand prison's exercise yard during the exercise period on 20 July 2002. That decision was subsequently quashed on 4 July 2005, essentially on procedural grounds, and an additional inquiry was ordered. Shortly afterwards, on 14 July 2005, the Volgograd City Prosecutor took a decision to refuse to institute criminal proceedings against officer P. It appears that the decision was based on the material of the previous inquiry (see paragraphs 24 and 39 above). Subsequently, the domestic court at two levels of jurisdiction reviewed the lawfulness of the decision of 14 July 2005 and found no grounds for quashing it. The issue is consequently not so much whether there was an investigation as whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible, and, accordingly, whether the investigation was effective (see *Oleg Nikitin*, cited above, § 39).

56. The Court notes that the decisions of 16 August 2002 and 14 July 2005 refusing the applicant's request for criminal proceedings against police officer P. were based on statements by the alleged perpetrator and his colleagues, on statements by the applicant's cellmates, and on the results of

the applicant's medical examination by the medical auxiliary at the remand prison on 23 July 2002.

57. The Court is concerned at the fact that no attempt whatsoever was made by the investigating authorities to establish the cause of the applicant's injuries and the time when they could have been inflicted. These failures alone, for which no explanation was provided to the Court, were sufficient to render all the subsequent investigation ineffective (see *Samoylov v. Russia*, no. 64398/01, § 37, 2 October 2008).

58. The Court further observes that the questioning of the applicant's cellmates was done by the alleged perpetrator himself. This inference is made on the basis of written statements by three of the applicant's cellmates dating shortly after the first refusal to institute criminal proceedings, in which they deny having seen the applicant harming himself, and convey that the statements to the contrary were extracted from them by police officer P. by means of intimidation (see paragraphs 15 and 39 above). The Court considers that entrusting the questioning of the witnesses in a case to a person who was implicated in the alleged ill-treatment undermines the requirement for an effective investigation to be independent and irretrievably undermines its capability of leading to the establishment of the true circumstances of the case.

59. In view of the foregoing, the Court concludes that the investigation carried out into the applicant's allegations of ill-treatment failed to meet the requirement of effectiveness, in that it had not been thorough and independent, and, for that reason, was not capable of leading to the establishment of the facts and to the identification and punishment of those responsible.

60. Accordingly, there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's allegations of ill-treatment.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. Finally, the applicant submitted a number of additional complaints under Articles 6, 8 and 13 of the Convention and under Article 1 of Protocol No. 1, relating to the applicant's trial and to the civil disputes to which he had been a party.

62. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court 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 manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 11,000 euros (EUR) in respect of non-pecuniary damage.

65. The Government submitted that if the Court were to find a violation, the finding of such a violation would constitute in itself sufficient just satisfaction.

66. The Court notes that it has found a violation under both the substantive and the procedural heads of Article 3 of the Convention on account of the applicant’s ill-treatment whilst in State custody and the failure to carry out an effective investigation into the matter. In these circumstances, the Court considers that the pain, humiliation and frustration caused to the applicant cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 11,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

67. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

68. 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. *Declares* admissible the complaints under Article 3 of the Convention and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's ill-treatment of 19 July 2002;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the fact that the domestic authorities failed to carry out an effective investigation;
4. *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, EUR 11,000 (eleven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

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