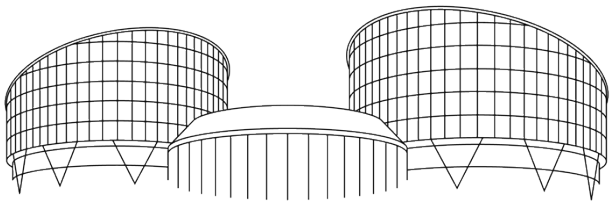

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MARYIN v. RUSSIA

(Application no. 1719/04)

JUDGMENT

STRASBOURG

21 October 2010

FINAL

21/01/2011

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

In the case of Maryin v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 30 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 1719/04) 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 Konstantin Sergeyevich Maryin ("the applicant"), on 3 December 2003.

2. The applicant was represented by Mr S. Maryin, his father. 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 on 30 July 2005 he had been beaten up by guards at the remand prison and that the authorities had failed to conduct a proper investigation into the incident.

4. On 18 November 2008 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Saransk, the Republic of Mordoviya.

A. Determination of the criminal charge against the applicant

1. The first set of criminal proceedings

6. On 12 October 2002 the applicant was arrested and charged with rape. He was released two days later on an undertaking not to leave town. On an unspecified date the applicant moved to Moscow. He was subsequently apprehended on a train going from Moscow to Saransk and remanded in custody pending investigation and trial on 21 August 2003.

7. The Insarskiy District Court of the Republic of Mordoviya opened the trial against the applicant on 10 September 2003 and appointed lay assessors P. and S. as members of the bench considering the criminal charge against the applicant on 17 September 2003. On 23 September 2003 the applicant unsuccessfully challenged the composition of the bench, alleging that the term of office of the lay assessors had expired.

8. The applicant was found guilty as charged and sentenced to five years' imprisonment. The District Court delivered the verdict on 2 October 2003. On 3 December 2003 the Supreme Court of the Republic of Mordoviya upheld it on appeal.

2. The second set of criminal proceedings

9. On 2 February 2004 the Supreme Court of the Republic of Mordoviya granted a request by the applicant for supervisory review. The court noted that the second-instance court had failed to address all the issues raised by the applicant in his points of appeal. The Presidium of the Supreme Court quashed the appeal judgment of 3 December 2003 and remitted the case for fresh consideration on 12 February 2004.

10. The Supreme Court suspended consideration of the applicant's appeal and assigned the President of the Supreme Court to verify the lawfulness of the lay assessors' participation in the applicant's trial on 10 March 2004. On 14 April 2004 the Supreme Court considered the applicant's appeal and upheld his conviction. The court noted that the trial had been conducted in accordance with the rules of criminal procedure.

11. Following the applicant's request for supervisory review, the Presidium of the Supreme Court quashed the judgment of 14 April 2004 and remitted the case for fresh consideration on 8 July 2004.

12. On 1 September 2004 the Supreme Court quashed the judgment of 2 October 2003 on appeal and remitted the matter for fresh consideration to the Proletarskiy District Court of Saransk.

13. The District Court found the applicant guilty as charged and sentenced him to five years' imprisonment on 20 December 2004. On 9 March 2005 the Supreme Court upheld the judgment of 20 December 2004 on appeal.

3. The third set of criminal proceedings

14. On 26 May 2005 the Presidium of the Supreme Court of the Republic of Mordoviya quashed the appeal judgment of 9 March 2005 by way of supervisory review and remitted the case for fresh consideration. The court noted that the appellate court had failed to assess the admissibility of the victim's testimonies.

15. A new consideration of the applicant's appeal by the Supreme Court on 29 June 2005 resulted in the quashing of the judgment of 20 December 2004. The matter was remitted to the lower court for fresh consideration.

16. On 25 October 2005 the District Court found the applicant guilty as charged and sentenced him to five years' imprisonment. The court based its findings on the witnesses' testimonies, including those provided by the victim, who testified in court, and on forensic evidence. The court further ordered the applicant to pay for the services provided by a legal-aid lawyer in the amount of 5,220 Russian roubles. On 15 March 2006 the Supreme Court upheld the applicant's conviction on appeal, but reduced his sentence to three years' imprisonment.

B. The applicant's detention

1. The applicant's detention in a correctional colony

17. From 30 December 2003 to August 2004 the applicant was detained in a correctional colony. Some of his belongings were allegedly stolen during his transport to the colony. On 17 August 2004 the administration of the colony refused to investigate the applicant's allegations.

18. On 3 February 2004 the applicant had an altercation with another inmate. According to the applicant, he was beaten up by the guards for refusing to explain in writing the reasons for the altercation.

19. According to the applicant, on 9 July 2004 the administration of the colony allegedly refused to allow the applicant to meet his father, who represented him during the trial.

2. The incident of 30 July 2005 and the ensuing investigation

20. In August 2004 the applicant was transported to remand prison no. IZ-13/1 in Saransk.

21. Following the applicant's failure to comply with internal regulations, on 26 July 2005 he was placed in a disciplinary cell for seven days.

22. On 30 July 2005 the warden, his deputy and two guards inspected the prison. They noticed an inter-cell communications device in the applicant's cell. The applicant tried to prevent them from entering the cell. He pushed them and swore at them. L., one of the guards, hit the applicant three times with a rubber truncheon. The applicant gave up his resistance.

He was then examined by a paramedic who noted four bruises on his shoulders, buttocks and left forearm which did not require medical treatment. The device was removed from the applicant's cell and destroyed.

23. In response to the complaint lodged by the applicant's father on 2 August 2005, on 5 August 2005 the prosecutor questioned the applicant in respect of the incident of 30 July 2005. The applicant was also examined by a paramedic who noted a yellowish bruise on his left shoulder.

24. On 12 August 2005 the prosecutor refused to institute criminal proceedings against the alleged perpetrators. He stated that the guard had used the rubber truncheon lawfully. The prosecutor based his findings on testimonies provided by the applicant and the guards. He studied the reports prepared by the guards to account for the use of force against the applicant and the medical documentation prepared by the paramedics who had examined the applicant. In particular, his findings were as follows:

> "On 30 July 2005 M., the warden of the remand prison..., G., the deputy warden of the remand prison..., and [officers] Mus. and L. inspected the disciplinary cells. In cell no. 3, where [the applicant] was held, they saw an inter-cell communications device. The [officers] tried to enter the cell to remove the ... device and to search the [applicant]. However, the latter resisted. He pushed them out of the cell and grabbed L. by the arms so that the latter could not search him. In addition to those unlawful actions, [the applicant] swore and ignored the officers' requests to stop his unlawful behaviour. Accordingly L. had to use force against [the applicant]: he hit [the applicant] three times with the rubber truncheon. He administered the blows to the back and the buttocks. He did not hit [the applicant] on the head ...
>
> The inquiry did not uncover any evidence to confirm [the applicant's allegations] that he had been beaten up by M., the warden of the remand prison, and the other officers.
>
> The use of the rubber truncheon against the applicant has been justified, in accordance with section 45 of the Federal Law on Detention of Suspects and Defendants charged with Criminal Offences."

25. The prosecutor's decision was upheld by the Leninskiy District Court of Saransk on 27 September 2005. The court found that the applicant had resisted the guards and that the latter had had to use force to restrain him. The applicant appealed. He argued that in the circumstances of the case, in which four officers had been involved, the use of the rubber truncheon against him was excessive. On 23 November 2005 the Supreme Court of the Republic of Mordoviya upheld the decision of 27 September 2005 on appeal.

3. Further allegations of ill-treatment

26. On 5 September 2005 the remand prison administration force-fed the applicant. The complaint lodged by the applicant's father with the prosecutor's office on 6 September 2005 was left without response.

27. On 12 October 2005 the applicant was allegedly handcuffed with his arms behind his back and hung from the railings by the guards. The applicant's feet did not touch the floor. He was kept in that position for two hours. The complaint lodged by the applicant's father was dismissed by the prosecutor's office on 17 January 2006. According to the prosecutor, the applicant had assaulted a guard and had to be restrained with handcuffs. At no point had the guards hung him from the railing.

28. It appears that in 2009 the prosecutor's office carried out an additional investigation into the incident of 12 October 2005 and on 11 January 2009 the applicant's complaint was dismissed anew. According to the applicant, the final decision on the matter was taken by the Supreme Court of the Mordoviya Republic on 26 February 2009.

4. Extension of the applicant's detention pending the third trial

29. The applicant remained in custody pending the third trial. On 24 August 2005 the Proletarskiy District Court of Saransk extended the applicant's detention for three months. The court noted that the applicant was charged with a serious crime and had tried to abscond during the investigation of the case. On 30 November 2005 the Supreme Court upheld the decision on appeal.

5. Detention at the courthouse

30. On 15 February and 15 March 2006 the applicant was transported to the Supreme Court of the Republic of Mordoviya for appeal hearings. He alleged that on those days he could not use his dry food ration because of the lack of facilities to boil water in the courthouse. On 4 April 2006 the Ministry of the Interior informed the applicant's father that the courthouse was indeed not equipped with a kettle and forwarded a copy of his complaint to the department responsible for the maintenance of courthouses.

6. The applicant's release

31. After having served a prison sentence, the applicant was released on 18 October 2006.

II. RELEVANT DOMESTIC LAW

Federal Law on Detention of Suspects and Defendants charged with Criminal Offences

32. Physical force in respect of detainees may be employed in order to put an end to their misconduct or resistance to legitimate orders of detention officers if non-forceful alternatives are not feasible (section 44).

33. Rubber truncheons may be used in respect of detainees in the following circumstances (section 45):

(1) to put an end to an assault by the detainee on detention officers;

(2) to suppress mass uprisings or collective breaches of public order;

(3) to put an end to misconduct by the detainee in resisting the legitimate orders of detention officers;

(4) to free hostages;

(5) to put an end to the detainee's attempt to escape; or

(6) to put an end to the detainee's attempt to cause harm to others.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained that on 30 July 2005 he was beaten up by the guards and that the ensuing investigation was not effective in contravention of Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

35. The Government contested that argument. They argued that the use of force against the applicant had been lawful and justified. On numerous occasions he had failed to comply with internal regulations. He had been involved in fights and altercations with other inmates and refused to follow lawful orders given by the personnel of the remand prison and correctional colony. As regards the incident of 30 July 2005, the applicant had failed to comply with the lawful demands of the warden and the guards and the latter had responded accordingly to put an end to his attack. The altercation had taken place in the narrow doorway of the disciplinary cell. The guard who had used the truncheon against the applicant had had to react promptly since the others had been unable to help him because of the limited space. The guard duly warned the applicant and only after that used the rubber truncheon to restrain him. The use of the rubber truncheon against the applicant had lasted only a few seconds and could not be considered to be "inhuman or degrading treatment". Furthermore, the guards had immediately taken the applicant to the doctor, who had examined him and documented the injuries inflicted. The injuries had not been serious and had not caused any health problems. The applicant's allegations of ill-treatment had been verified by the prosecutor and the courts at two levels of jurisdiction. The prosecutor had questioned the applicant, the guards and the medical personnel. He had not considered it necessary to inspect the alleged crime scene. The prosecutor's findings had been confirmed by the courts.

The investigation carried out by the authorities in response to the applicant's allegations of ill-treatment had been effective as required by the procedural limb of Article 3 of the Convention.

36. The applicant maintained his complaints. He denied that he had put up any resistance to the guards. Given his weight of less than 60 kg and his height of 1.65 m, it had been physically impossible for him to effectively resist four officers, one of whom had been more than two metres tall. Nor had the guards had any injuries. In his view, the use of the rubber truncheon against him had been excessive and unnecessary. It had been retaliatory in nature and amounted to torture. The applicant further contended that the ensuing inquiry had not been effective or thorough. Nor had it been complete. The prosecutor had not questioned the applicant's representative or commissioned an independent forensic medical examination of the applicant's injuries.

A. Admissibility

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

B. Merits

1. Alleged ill-treatment

38. 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).

39. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-... (extracts); *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, and *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336). The burden of proof rests on the Government to demonstrate with convincing arguments that the use of force, which resulted in the applicant's injuries, was not excessive (see, for example, *Dzwonkowski v. Poland*, no. 46702/99, § 51, 12 April 2007).

40. Turning to the circumstances of the present case, the Court observes that it is not disputed by the parties that on 30 July 2005 the applicant sustained the injuries as a result of the use of force against him by the remand prison personnel. The Court takes cognisance of the Government's argument that those injuries were not serious and did not cause any "health problem". However, this fact alone cannot rule out a possibility that the treatment was severe enough to be considered inhuman or degrading. The Court considers that the degree of bruising noted by the remand prison paramedics indicated that the applicant's injuries were, as such, sufficiently serious. Accordingly, the question before the Court in the instant case is whether the State should be held responsible under Article 3 in respect of these injuries.

41. Having regard to the material in its possession and to the parties' submissions before it, the Court answers this question in the negative. In the Court's view, the use of force against the applicant had been lawful and strictly necessary, in response to the applicant's unruly behaviour.

42. The Court accepts the Government's explanation that the altercation between the applicant and L., a prison guard who used the rubber truncheon to subdue the applicant, had taken place in a narrow doorway and that the other officers present could not have come to L.'s rescue.

43. Furthermore, the Court observes that the applicant was refusing to comply with the legitimate orders of the remand prison personnel. He swore at the officers, pushed them out of the cell and grabbed one of them by the arms. The Court accepts that in these circumstances the officers needed to resort to physical force in order to enter the cell and search the applicant.

44. In these circumstances, the Court cannot conclude that on 30 July 2005 the use of a rubber truncheon by a prison guard to restrain the applicant amounted to inhuman and degrading treatment contrary to Article 3 of the Convention. While the applicant experienced certain mental and physical suffering as a result of the altercation with the remand prison officers, the use of force against him cannot be held to have been excessive. It follows that there has been no violation of Article 3 of the Convention under its substantive limb.

2. Adequacy of the investigation

45. 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*, cited above, § 102).

46. 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).

47. 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 v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *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.

48. Furthermore, the investigation must be expeditious. In cases examined under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita*, 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).

49. Turning to the facts of the present case, the Court observes that, following the applicant's complaint lodged on 2 August 2005, the prosecutor's office carried out an inquiry into his allegations of ill-treatment. The inquiry was completed on 12 August 2005. The applicant's allegations were subsequently subjected to examination by domestic courts at two levels of jurisdiction. The final decision on the matter was taken on 23 November 2005. The Court accepts that the authorities promptly reacted to the applicant's complaint.

50. The Court further observes that the authorities took all the steps necessary to verify the applicant's accusations. They questioned the applicant and the prison officers involved in the incident and studied the reports prepared by them and the results of the applicant's medical examinations conducted by two paramedics. The judicial authorities reviewed the materials of the prosecutor's inquiry and ensured both the applicant's and his representative's presence in court. 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 basis in evidence.

51. 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

52. Lastly, the applicant referred to the violation of his rights set forth in Articles 3, 5, 6 and 8 of the Convention and Article 1 of Protocol No. 1 in the course of the criminal proceedings against him.

53. 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 being manifestly ill-founded pursuant to Articles 35 § 3 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 30 July 2005 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 21 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President