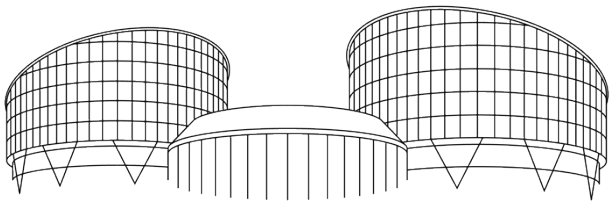

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MOGILAT v. RUSSIA

(Application no. 8461/03)

JUDGMENT

STRASBOURG

13 March 2012

FINAL

24/09/2012

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

In the case of Mogilat v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 21 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 8461/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Mr Ruslan Alekseyevich Mogilat ("the applicant"), on 13 February 2003.

2. The applicant, who had been granted legal aid, was represented by Ms M. Samorodkina, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, the then Representative of the Russian Federation at the European Court of Human Rights.

3. On 6 November 2007 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1971. The applicant's home address after his release from detention in 2003 was not provided.

A. Alleged ill-treatment in the police station

1. Arrest of the applicant

5. As established in the criminal case against the applicant (see paragraph 26 below), on 6 November 2001, at around 5 a.m., the applicant and an accomplice attempted to steal a car. A person residing in the neighbourhood called the police. Seeing that his accomplice had been apprehended by two officers, the applicant ran off and did not stop despite warnings from officer S., who was pursuing him. Later on, this officer stated under oath that after he had fired a warning shot in the air he saw the applicant fall into an opening for water drainage. Having been asked to stand up and move into a lighted area, the applicant, as perceived by S., adopted a threatening stance and moved forward to inflict a blow on S. To prevent resistance, the officer inflicted a blow to the applicant's chest and used martial arts. The applicant fell to the ground and was handcuffed. Officer S. subsequently confirmed his earlier description of the arrest during a confrontation with the applicant. Another officer, K., was interviewed and also confirmed S.'s description of the arrest.

6. According to the applicant, early in the morning of 6 November 2001, when he was about to answer the call of nature on the street, a car stopped nearby and he saw a gun being pointed at him from the car window. Fearing for his life, he started to run away. However, hearing a gun shot and "Stop, police!", he lay down on the ground and did not resist.

2. Detention in the police station

7. After the arrest the applicant was taken to the Kryukovo district police station in Moscow (*ОВД «Крюково» г. Москвы*). In the police station, field service officer Ma. interviewed the applicant from 11.30 a.m. to 11.40 a.m. The interview record indicates that the applicant was informed of his right under Article 51 of the Constitution and that "in addition to his earlier statement" the applicant also mentioned his previous convictions.

8. Investigator M. ordered field service officer G. to interview the applicant. Officer G. interviewed the applicant from 12.25 p.m. to 1 p.m. The applicant admitted that he had opened the door of the car with a screwdriver and had tried to start up the engine.

9. As can be seen from another interview record signed by investigator M., after the above-mentioned interviews the applicant requested legal assistance and named as his representatives the advocate Mr Koblev and Ms Chuvilova, who was not an advocate but worked for a non-governmental organisation. According to the applicant, the investigator refused permission to call his representatives or otherwise notify them of his arrest (see, however, paragraph 12 below).

10. According to the applicant, at the police station he was ill-treated by the operational officer who took his confession to the car theft. The applicant was handcuffed to a chair and punched and kicked. The officer put a gas mask on his face and blocked the air vent on it (see also paragraph 14 below).

11. At 3.15 p.m. the applicant was examined for alcohol intoxication at a Moscow clinic. According to the record, the applicant was not intoxicated and had no cuts or bruises but his clothing was dirty.

12. At 10 p.m. Ms Chuvilova arrived to see the applicant. On seeing injuries on his face and body, she called for an ambulance. It arrived and took the applicant to an emergency medical centre. The record of his admission there reads as follows:

> "Pain on the bridge of the nose, ribs X and XII on the right side, and especially in the right wrist in the area of I metacarpal bone I ... [illegible] ... Dark blue haematomas on the body (the left side of the chest) and nose."

The applicant's chest and right wrist were X-rayed. The X-rays disclosed no fractures. It was concluded in the discharge certificate that the applicant was fit to remain in police custody.

13. On 7 November 2001 investigator M. interviewed the applicant in the presence of his counsel Mr Koblev. The interview concerned the alleged ill-treatment of the applicant, and the interview record reads, in the relevant part, as follows:

> "Mr Koblev: During this interview I have observed haematomas on your right ear and your nose. I also see that your right hand is bandaged. Please explain when and where these injuries were caused.
>
> Answer by Mr Mogilat: These injuries were inflicted on me during an interview with an operational officer whom I can identify. This happened in office no. 213 of the Kryukovo police station. In addition to these injuries, I have bruises all over my body ...
>
> Question for Mr Mogilat: When you were arrested by police officers at 5 a.m. on 6 November 2001, did you attempt to flee or resist the arrest? Did the police officers use any special measures or means, martial arts or firearms?
>
> Answer by Mr Mogilat: During the arrest I attempted to escape, but after a police officer fired a shot in the air, I lay down and did not resist. They handcuffed me and took me to a police station ..."

The applicant's counsel requested an inquiry to be ordered without delay and that the applicant be immediately examined by a forensic medical expert.

14. During an interview with an assistant to the public prosecutor on 8 November 2001 the applicant described the operational officer in question in more detail:

> "On 6 November 2001, at or around 11 or 12 a.m., I was in office no. 213 of the Kryukovo police station together with the operational officer, who was 175 to 180 cm tall, had a round face and dark brown hair and was stocky. Following the beatings he must have had a bleeding abrasion on his hand. At first I was handcuffed to a chair. The officer told me to sign a statement which indicated that I had tried to hijack the car. I refused to sign and he started hitting and kicking me all over my body; I do not remember the details as I was in a state of shock. Then he put a dark brown gas mask on me and blocked the air vent, and I felt a sudden strong blow to my head ... I signed the interview record. The handcuffs had to be removed with the aid of a hammer ... I would be able to identify the officer who ill-treated me ... A blow from the hammer used to remove the handcuffs left traces on the office table ..."

The applicant's counsel, Mr Kovlev and Ms Chuvilova, were present at the interview and reiterated their request for an immediate expert examination of the applicant. Such an examination was carried out in December 2001 (see paragraph 16 below).

15. On 9 November 2001 investigator M. ordered the applicant's continued detention. The investigator referred to the "gravity of the crime committed by Mr Mogilat" and the risk that he would flee the investigation or trial. The prosecutor of the Zelenogradskiy district of Moscow countersigned the decision.

3. The inquiry into the allegation of ill-treatment and the applicant's criminal trial

16. On 4 December 2001 investigator Ts. from the Investigations Unit of the Kryukovo police station submitted the applicant's medical documents for a forensic examination in order to determine the extent and origin of the applicant's injuries. On 6 December 2001 the expert returned the following findings:

> "During the examination [the applicant] was aggressive. When asked to get undressed, he swore and threatened to complain to the Strasbourg court. He wanted to be assisted by counsel in answering the questions raised before the expert ...
>
> Having examined [the applicant], the medical hospital record and two X-rays, I have reached the following conclusions:
>
> Having examined [the applicant] on 4 December 2001 (that is, one month after the events) I have not detected any injuries or traces of injuries ... The medical record from the hospital referred to haematomas on the right hand, chest and face. I note in this connection that the medical record has insufficient information about the morphological characteristics of the injuries, such as quantity, form, size, and exact anatomic location. Thus it is difficult to provide answers to certain questions raised by the requesting authority.
>
> It follows that the following injuries were caused to Mr Mogilat: a haematoma on the right hand followed by oedema, a haematoma on the left side of the chest and a haematoma on the nose. These bodily injuries have no forensic qualification and their gravity cannot be determined because they did not entail temporary disability for up to 21 days ... The injuries could have been caused as a result of impact by a hard

object(s)... it is possible that they could have been caused on 6 November 2001 in the circumstances described in the file ..."

17. On 18 December 2001 the applicant read the expert report and requested that an alternative expert report be commissioned because he had not been informed of the investigator's decision of 4 December 2001 to request an expert report and he had thus not been able to suggest questions to be raised before the expert. This request for a new expert report was rejected.

18. It appears that on an unspecified date Ms Chuvilova was interviewed in relation to the applicant's complaint of ill-treatment. The applicant also confirmed his earlier allegations.

19. Several other persons were interviewed by unspecified officials during the inquiry. Arresting officers S. and K. claimed that the applicant had resisted arrest and that they had resorted to martial arts. Investigator M. stated that he had not seen any injuries on the applicant and that he had asked officer G. to conduct the interview. Officer G. denied that he had used force against the applicant in the police station. This officer also maintained that the applicant had confessed voluntarily.

20. On an unspecified date, the inquiry file into the allegation of ill-treatment was submitted to an assistant to the Zelenogradskiy district prosecutor.

21. On 26 December 2001 Ms Chuvilova filed a complaint with the Zelenogradskiy District Court of Moscow alleging violations of the applicant's rights on account of ill-treatment by the police, the conducting of interviews in the absence of counsel, the belated commissioning of a forensic examination, and the lack of an investigation into the allegations of ill-treatment.

22. On 29 December 2001 the assistant to the district prosecutor issued a decision refusing the institution of criminal proceedings in relation to the applicant's allegations of ill-treatment. On the basis of the testimony of above-mentioned witnesses, the medical report and the applicant's own statements, the assistant to the prosecutor found that the injuries could have been caused during the applicant's arrest and that there was no indication of abuse of power on the part of officer G. The Zelenogradskiy deputy prosecutor approved the assistant's decision not to prosecute. It appears that the applicant's counsel received a copy of that decision at the beginning of the trial in the applicant's own criminal case.

23. By a letter of 24 January 2002, a judge of the District Court forwarded Ms Chuvilova's complaint of 26 December 2001 to the Moscow city prosecutor. Ms Chuvilova complained to the Moscow City Court that the District Court had not taken any procedural decision on her complaint. She received no reply from the City Court. Instead, on 18 February 2002 the District Court issued a decision by which it declared itself not competent to

examine the complaint on the ground that such matters were not amenable to judicial review.

24. According to the Government, on 28 February 2002 another refusal to institute criminal proceedings was issued in relation to the applicant's allegation of ill-treatment. In the Government's submission, this document could not be submitted to the Court because of the destruction on an unspecified date of the inquiry file containing this document, due to the expiry of the retention period.

25. On an unspecified date, the criminal case against the applicant was set for trial before the District Court. The applicant pleaded not guilty. Ms Chuvilova was removed from the proceedings by a decision of 2 April 2002 with reference to her previous questioning as a witness in relation to the allegation of ill-treatment.

26. On 18 April 2002 the District Court convicted the applicant as charged and sentenced him to five years and three months' imprisonment. The District Court addressed the issue of the applicant's injuries in the following manner:

> "During the pre-trial investigation and the trial the applicant repeatedly claimed that he had been severely beaten by police/operational officers and that he had been taken to a trauma unit and been treated for injuries by the emergency squad. The court does not doubt the fact that the defendant sustained some injuries because his arrest, as it has been established, was accompanied by the use of force. Mr S. hit him in the stomach and used martial arts on him, which certainly does not preclude some bodily injury ... A forensic medical expert issued a report ... The district prosecutor's office carried out an inquiry into the applicant's complaint. The inquiry did not confirm the facts alleged by Mr Mogilat and the institution of criminal proceedings was refused."

27. On 22 April 2002 the City Court quashed the decision of 18 February 2002 (see paragraph 23 above) and remitted the matter for a new examination by the District Court (see also paragraph 30 below).

28. The applicant appealed against his conviction and sought leave to be represented by Ms Chuvilova, but the court refused his request, noting that the applicant already had two lawyers, Mr Koblev and Mr Kozlov. On 17 June 2002 the City Court upheld the conviction. Following an application for supervisory review lodged by the President of the City Court, the Presidium of the City Court quashed the appeal judgment on unspecified grounds and remitted the matter for a new appeal hearing.

29. On 26 July 2002 the City Court scheduled a new appeal hearing for 7 August 2002 and ordered that the applicant's lawyers be informed accordingly and that the applicant should participate in the hearing by way of a video link from his detention facility. On 7 August 2002 one of the lawyers asked the City Court to adjourn the hearing because the other lawyer was participating in other unrelated proceedings. The City Court granted his request and fixed a hearing for 13 August 2002. The text of the adjournment order indicates that the lawyer was to inform his absent colleague of the adjournment. The adjournment decision sets out the

lawyer's undertaking to this effect and bears his signature. It is also indicated in the order that on 8 August 2002 the presiding judge left a telephone message with the absent lawyer's office about the adjournment. On 13 August 2002 the appeal court held a hearing. On the same date, the appeal court issued an appeal decision upholding the conviction. The text of the decision indicates that the court heard the applicant and his lawyers.

30. In the meantime, on 10 July 2002 the District Court re-examined Ms Chuvilova's complaint about various violations of the applicant's rights at the pre-trial stage of the proceedings (see paragraphs 23 and 27 above). Referring to Article 125 of the Code of Criminal Procedure, in force since 1 July 2002, the District Court noted that the applicant had already been convicted at final instance and that Ms Chuvilova had been removed from the proceedings by a decision of 2 April 2002 which had not been appealed against. On the merits of the complaint, the District Court ruled as follows:

> "As regards the substance of Mrs Chuvilova's arguments, the court has established that all these arguments were examined by the court in the criminal proceedings against Mr Mogilat; certain pieces of evidence were declared inadmissible ... The trial court made an appropriate legal assessment of these arguments ... "

On 15 August 2002 the Moscow City Court summarily upheld that decision.

31. On 25 October 2002 Mr Kozlov sought supervisory review of the trial and appeal judgments in the criminal case against the applicant.

32. On 10 April 2003 the Presidium of the City Court upheld the judgment and reduced the applicant's sentence to four years' imprisonment. The applicant's arguments were summarised as follows in the Presidium's decision:

> "... The appeal decision does not comply with the requirements of law because it does not contain responses to the entirety of the defence's arguments as presented in the statements of appeal. Nor does it contain sufficient reasoning for rejecting certain points of appeal. Moreover, the appeal hearing did not remedy the shortcoming previously identified by the supervisory-review court."

As to the alleged ill-treatment, the Presidium held as follows:

> "The trial court found that [the applicant] had sustained injuries during his arrest; he had attempted to leave the crime scene. The police officers had had to use firearms and martial arts. As stated by the witness S., after his warning shot [the applicant] had fallen into an opening for water drainage ... his clothes were dirty."

33. The applicant was released in December 2003.

B. Conditions of detention

34. From 10 to 13 November 2001 the applicant was held in a temporary detention centre and was then transferred to Moscow remand centre no. 77/5.

35. Allegedly, the applicant was not given any food on the days of the court hearings between 28 March and 18 April 2002. He had to wake up at 5 a.m. and was taken back to his cell in the detention facility at 11 p.m. His cell was overcrowded and the material conditions were unsatisfactory.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. The RSFSR Code of Criminal Procedure of 1960 was, in its major part, in force until 1 July 2002. Article 113 of the Code provided that a prosecutor, an investigator or a court could issue a refusal to institute criminal proceedings. An appeal against such a refusal could be brought before a competent prosecutor or a higher court. In a ruling of 29 April 1998 the Constitutional Court of Russia held that judicial review of a refusal issued by a prosecutor or an investigator should be available.

37. Article 218 of the Code provided that a complaint against actions on the part of investigating authorities had to be brought before a prosecutor. In a ruling of 23 March 1999 the Constitutional Court considered that judicial review of actions or inaction on the part of investigating authorities or a prosecutor should be made available. The Constitutional Court considered that on receiving a criminal case with a bill of indictment, a trial court should be empowered to review procedural actions taken during the pre-trial stage of the proceedings. Such review should also concern decisions taken by investigating authorities which had resulted in a limitation of rights and freedoms. The availability of judicial review only after the closure of the preliminary investigation was not judged to be incompatible with the Constitution; however, it was noted in that connection that if pre-trial decisions seriously affected rights and freedoms beyond the scope of criminal procedure, judicial review even before the closure of the preliminary investigation should be made available. However, the Constitutional Court stated that in a judicial review procedure a court should not prejudge matters relating to the scope of a criminal trial in the main case.

THE LAW

I. THE ALLEGED ILL-TREATMENT AND SUBSEQUENT INVESTIGATION

38. The applicant complained under Articles 3, 6 and 13 of the Convention that he had been ill-treated and that there had been no effective

investigation into his complaint. The Court will examine these complaints 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. The parties' submissions

1. The Government

39. The Government submitted that since the applicant had resisted a lawful arrest, the officers had had to use physical force and handcuffs on him. The inquiry into his allegation of the excessive use of force, including the expert assessment of the bodily harm sustained, had been prejudiced by the belated introduction of the complaint by the applicant's lawyer.

40. Furthermore, the Government argued that the applicant had failed to seek judicial review of the refusal to institute criminal proceedings in relation to his allegation of ill-treatment. The applicant had been represented by a lawyer at the pre-trial stage of the proceedings and thus should have applied for judicial review. His raising this matter before the trial court had been irrelevant since he had only sought the exclusion of his confession statement.

2. The applicant

41. The applicant argued that the national authorities and the respondent Government had failed to provide a plausible explanation for his injuries. The authorities had not specified the details of the applicant's alleged resistance to the police during the arrest or the exact sequence of events and the nature of the force used against him. Nor had they compared the nature and location of the injuries with the force used. In any event, the applicant had not complained about the arresting officer's actions. Officer G. and investigator M. should have noticed injuries on the applicant's face and wrist.

42. The inquiry into the complaint of ill-treatment had not been thorough. The authorities had not taken any note of the details provided by the applicant (see paragraphs 13 and 14 above). Nor had they ordered a confrontation with or an identification parade to identify any officer. They had not carried out a search of the office in the police station where the applicant was interviewed, or an inspection of the place where the arrest was effected. Nor had they looked for a gas mask, a hammer or the damaged handcuffs. No investigative measures had been taken to remove inconsistencies between the testimony of the applicant and that of investigator M. and the arresting officers. Despite the immediate complaint of ill-treatment and reiterated requests for a forensic medical examination,

such an examination had been carried out only one month after the events so that certain injuries had healed or left no further traces. The applicant and his counsel had not been afforded an opportunity to suggest questions to be raised before the medical expert. The inquiry could not have been independent since the officials of the prosecutor's office had had the double task of prosecuting the applicant and supervising other public authorities. The applicant had obtained a copy of the refusal to institute criminal proceedings after a substantial delay and had not been given any subsequent related decisions.

B. The Court's assessment

1. Admissibility

43. The Government argued that the applicant should have sought judicial review of the refusal to institute criminal proceedings issued on 29 December 2001.

44. The Court reiterates that the purpose of Article 35 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see *Civet v. France* [GC], no. 29340/95, § 41, ECHR 1999-VI). Whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of effective remedies designed to challenge the decisions already given. It normally also requires that the complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200).

45. The Court considers that the question of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint concerning the procedural aspect of Article 3 of the Convention (see, for a similar approach, *Samoylov v. Russia*, no. 64398/01, § 27, 2 October 2008, and paragraphs 66-68 below).

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

2. Merits

(a) Alleged ill-treatment

(i) General principles

47. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. In order to fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among others, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

48. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons 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 *Zelilof v. Greece*, no. 17060/03, § 44, 24 May 2007, and *Polyakov v. Russia*, no. 77018/01, §§ 25 and 26, 29 January 2009).

49. The Court also reiterates that where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny.

50. 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; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

(ii) Application of the principles in the present case

51. It is undisputed that on 6 November 2001 the applicant sustained injuries to his face, chest, ribs and wrist. In the Court's view, those injuries were sufficiently serious to reach the "minimum level of severity" under Article 3 of the Convention. It remains to be considered whether the State should be held responsible under Article 3 for the injuries.

52. The applicant alleged at the domestic level and before the Court that at the police station he had been handcuffed to a chair, punched and kicked, and that an officer had put a gas mask on him and blocked the air vent (see paragraph 14 above). According to the national authorities and the Government, these injuries stemmed from the time of the applicant's arrest and were not inflicted during his subsequent stay in the police station.

53. The Court observes that on 6 November 2001 the applicant attempted to run away from the police and that he was apprehended soon thereafter. It must be accepted that the national authorities' task was rendered more difficult in such circumstances. The domestic findings indicate that on perceiving a physical threat from the applicant a police officer had to inflict a blow to the applicant's chest and to use martial arts. The applicant fell to the ground; handcuffs were used on him. The domestic findings also indicate that the applicant fell into the opening of a water drainage system.

54. In the applicant's submission, having heard a warning shot, he lay down on the ground and did not resist any further actions from the police. At the same time, the applicant did not seriously dispute the circumstances relating to his arrest. Nor did he complain about the use of force against him at that time. Although the Court was not provided with a copy of any reports which may have been made by the officers to their superiors in that connection, the applicant made no specific comment before this Court concerning the arresting officer's use of force against him. The Court finds it plausible that the injuries which were subsequently recorded (see paragraphs 11 and 12 above) were sustained during the arrest. The Court does not have sufficient reasons to disagree with the domestic assessment. Thus, it may be accepted that the final stage of the arrest was carried out in a way which did not offend the requirements of Article 3 of the Convention.

55. Moreover, the Court considers that there are insufficient elements in support of the applicant's allegation that he was subjected to inhuman or degrading treatment after his arrest. Thus, it has not been established that any inhuman or degrading treatment was inflicted on the applicant in the police station.

56. For these reasons, the Court concludes that no violation of Article 3 of the Convention has been established in relation to the injuries sustained by the applicant on 6 November 2001.

(b) Alleged inadequacy of the investigation

57. The Court reiterates that where an individual raises a credible claim that he has been seriously ill-treated by agents of the State in breach of Article 3, there should be a thorough and effective investigation (see, among others, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII, and *Gäfgen v. Germany* [GC], no. 22978/05, § 117, ECHR 2010).

58. Such an investigation 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).

59. The investigation into credible allegations of ill-treatment must be thorough. That means that the authorities must 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 eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104 et seq., ECHR 1999-IV, and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Also, the Court has often assessed whether the authorities have reacted promptly to the complaints at the relevant time, consideration being given to the date of commencement of investigations, delays in taking statements and the length of time taken to complete the investigation (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV, and *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001). Furthermore, the Court reiterates its finding made on a number of occasions that the "investigation" in terms of Article 2 or 3 of the Convention should be carried out by competent, qualified and impartial experts who are independent of the suspected perpetrators and the agency they serve (see *Oğur v. Turkey* [GC], no. 21594/93, §§ 91 and 92, ECHR 1999-III, and *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II). 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 the applicable standard.

60. Turning to the present case, the Court first observes that the applicant's injuries and his allegations against State agents were sufficiently serious and credible to require some form of investigation on the part of the national authorities.

61. In the Court's view, having been alerted at the latest by 7 November 2001 to the presence of injuries on the applicant's body and having learnt that they had probably been sustained and/or inflicted during and/or after his arrest, it was incumbent on the national authorities to verify that no

proscribed treatment had been inflicted on him. However, the respondent Government has not indicated the exact date on which an inquiry was launched.

62. In that connection, it should also be noted that the applicant's counsel twice, on 7 and 8 November 2001, insisted that the applicant should be subjected, without any further delay, to an examination by a medical expert. However, it does not appear that any investigative measures in relation to the alleged ill-treatment were carried out until 4 December 2001. On that date an investigator commissioned a medical report.

63. Regarding this report, first, it has not been convincingly shown that the investigator in question was entirely unrelated to the Kryukovo police station to which the officer accused by the applicant of ill-treatment was assigned. On a more general level, the Court observes that at least two investigators and two assistants to public prosecutors were involved in the preliminary inquiry which resulted in the decision not to institute criminal proceedings against any public officials. It appears that investigator M. was in charge of the criminal case against the applicant at least at the initial stage of the proceedings (see paragraphs 8, 9, 13 and 15 above). At the same time, he worked in direct contact with officer G. and also interviewed the applicant in relation to his allegation of ill-treatment. Moreover, it is unclear which of the above or other officials carried out the interviews in the inquiry. The Court has doubts as to whether the "investigation" within the meaning of Article 3 of the Convention was carried out in the present case by officials or authorities who were both impartial and independent of the suspected perpetrators and the agency they served.

64. As regards the quality of the expert examination carried out from 4-6 December 2001, the Court reiterates that proper medical examinations are an essential safeguard against ill-treatment (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000-X, and numerous cases concerning Russia, for instance, *Maksimov v. Russia*, no. 43233/02, § 88, 18 March 2010). In the present case, as noted by the applicant and the expert herself, the medical expert examination took place one month after the events and the medical record which was made available to the expert had insufficient information about the morphological characteristics of the injuries, such as quantity, form, size, and exact anatomic location. Thus, it was impracticable for the expert to provide adequate answers to the questions raised by the requesting authority. The previously recorded bodily injuries had no forensic qualification and their gravity could not be determined (see paragraph 16 above). While before this expert examination the applicant had been examined in a clinic and a hospital, the nature, purpose and scope of these earlier examinations were not such as to remedy the shortcomings arising from the belated recourse to a forensic expert in the present case.

65. Moreover, while the applicant's counsel and emergency doctors noted injuries, investigator M., officer G. and the clinic did not notice any. The domestic inquiry did not contain any comparative assessment of these apparently contradictory accounts. Nor did the authorities arrange for an identification parade or a confrontation between the applicant and officer G.

66. As to judicial review of a refusal to institute criminal proceedings, the Court reiterates that in the ordinary course of events such proceedings could be regarded as a possible remedy where the authorities have decided not to investigate the claims (see *Samoylov*, cited above, § 40). However, the Government have not contested that the refusal of 29 December 2001 was received by the defence at the beginning of the trial. It is noted that a court could not, in separate judicial review proceedings, prejudge matters relating to the scope of a criminal trial in the main case (see paragraph 37 above). Indeed, the matter of ill-treatment had received some attention on the part of the trial and appeal courts in the applicant's own criminal case before it was raised before this Court (see paragraph 26 above). Second, by the time the defence obtained a copy of the decision of 29 December 2001 counsel had already brought proceedings in which certain matters relating to the alleged ill-treatment were raised (see paragraphs 23 and 30 above).

67. Lastly, referring to the destruction of the inquiry file due to the expiry of the period for retention on an unspecified date, the Government submitted that a new refusal to prosecute had been issued in February 2002. In the absence of any indication to the contrary, the Court is prepared to assume that this new refusal replaced the refusal issued on 29 December 2001.

68. In such circumstances, the Court accepts that the present complaint cannot be rejected on account of the applicant's failure to seek judicial review in respect of the latter refusal (see, for comparison, *Medvedev v. Russia*, no. 9487/02, §§ 41-43, 15 July 2010). Thus, the Government's argument concerning non-exhaustion of domestic remedies should be dismissed in the circumstances of this case. Having reached this conclusion, the Court also considers that the domestic courts in the present case did not remedy any shortcomings in the preliminary inquiry carried out in relation to the allegation of ill-treatment.

69. For the reasons stated in paragraphs 61-65 above, the Court concludes that the investigation into the complaint of ill-treatment did not comply with the requirements of Article 3 of the Convention. There has therefore been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

70. The applicant complained that he had not been able to obtain a copy of the appeal judgment of 13 August 2002 in his criminal case. The Court

will examine this complaint under Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

71. The Government made no comment as regards the alleged unavailability of the copy of the appeal decision. Instead, the Government argued with reference to the text of the appeal judgment that the applicant and his two lawyers had been present at the appeal hearing. Had it been otherwise, the applicant could have referred in his application for supervisory review to the violation of his defence rights in the appeal proceedings.

72. The applicant maintained his complaint, noting the Government's omission to comment on the unavailability of the appeal decision. He subsequently added that the respondent Government had not furnished documentary proof of any proper notification or of the defence's presence at the appeal hearing.

73. As to access to the appeal decision, it follows from the defence's submissions to the supervisory-review court that the defence was aware of the contents of the appeal decision (see paragraph 32 above). Indeed, it does not appear that the matter at the heart of the present complaint was aired in the supervisory-review proceedings, which resulted in a partially favourable outcome for the applicant. Thus, it has not been substantiated that the defence did not obtain a copy of the appeal decision.

74. Furthermore, the Court observes that it has not been expressly argued that the applicant and/or his counsel were not notified of the appeal hearing and were not present at it. Instead, the main thrust of the applicant's reasoning related to the Government's omission to submit any documentary proof. However, it transpires that the defence were made aware of the appeal hearing and participated in it (see paragraph 29 above).

75. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

76. Lastly, the applicant complained about the conditions of detention in the temporary detention centre, about his arrest and detention in January 2002, and of certain other violations of his rights in the criminal proceedings against him.

77. The Court has examined these complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, it finds that they 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage in relation to the alleged ill-treatment and EUR 19,400 in relation to the other alleged violations of the Convention.

80. The Government contested the first sum as excessive and the second sum as unrelated to the subject-matter of the present application.

81. The Court has found a violation of Article 3 of the Convention as regards its procedural aspect. Thus, the second part of the applicant's claims should be dismissed as unrelated to this finding. Bearing in mind the nature of the violation and making an assessment on an equitable basis, the Court awards the applicant EUR 10,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

82. The applicant made no claim and thus no award is required.

C. Default interest

83. 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* the complaint concerning the alleged ill-treatment and ineffective investigation admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention in its substantive aspect;

3. *Holds* that there has been a violation of Article 3 of the Convention in its procedural aspect;

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 10,000 (ten 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;

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

Done in English, and notified in writing on 13 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President