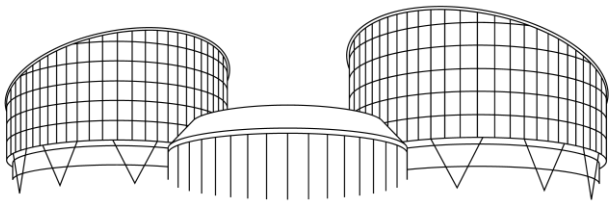

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF STEPANOV v. RUSSIA

(Application no. 33872/05)

JUDGMENT

STRASBOURG

25 September 2012

FINAL

25/12/2012

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

In the case of Stepanov v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 4 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 33872/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Ruslan Yuryevich Stepanov ("the applicant"), on 21 July 2005.

2. The applicant was represented by Mr A. Zakatov, a lawyer practising in Petrozavodsk. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human rights.

3. The applicant alleged, in particular, that he had been subjected to ill-treatment in custody and that the ensuing investigation had not been effective, that his pre-trial detention from 27 March to 10 May 2006 had not been in accordance with procedure prescribed by law, and that the criminal proceedings against him had not been fair.

4. On 8 April 2009 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

5. The applicant was born in 1979 and lived, prior to his arrest, in Petrozavodsk. He is a practising martial arts instructor specialising in kickboxing and Thai boxing.

A. The applicant's arrest and placement in custody on the charge of causing grievous bodily harm

6. On 30 October 2003 the applicant was arrested on suspicion of causing grievous bodily harm to an employee of a tyre shop. According to the prosecution, the crime had been committed on 17 June 2002 by the applicant, Va., Ku. and Pa., with intent to coerce the shop owner into accepting their "security services".

7. On the following day the Petrozavodsk Town Court authorised the applicant's remand in custody, citing the gravity of the charges against him and the risk that he would abscond or obstruct the course of justice. The applicant was placed in a temporary detention centre in Petrozavodsk. He remained in custody pending investigation and trial.

B. The alleged ill-treatment on 12 March 2004 and an inquiry into the events

8. On 12 March 2004 the applicant was transferred to a Petrozavodsk Town Police Department temporary detention centre to study the case file materials. He was placed in cell no. 11 together with eight other inmates. On the same day he had an altercation with officer N. The parties presented differing descriptions of the incident.

1. The version of the events provided by the applicant

9. According to the applicant, at approximately 11 a.m. officer N. opened the cell door and dragged him out of the cell into the hallway. The applicant did not resist in any way. Several police officers on duty and the head of the duty unit L., as well as the inmates of cell no. 11, witnessed the scene. N. threw the applicant on to the floor, leaned on him and squeezed his neck, applying force to the carotid artery and the Adam's apple. The policeman accompanied his actions with obscene language and threats. Only the intervention of the head of the duty unit stopped him and allowed the applicant to stand up. The applicant asked for a meeting with a prosecutor and for a medical examination. N. again approached the applicant,

threatening him. Afraid for his life and desperately trying to get back into his cell, the applicant raised his leg, apparently in a non-threatening manner. He did not hit anyone. However, the police officers, including N., immediately pinned him to the floor. N. again squeezed the applicant's neck with both hands. Officer M. stepped over the applicant's face. The applicant was dragged back to his cell. He again unsuccessfully repeated his requests for a medical examination and a meeting with a prosecutor or a higher-ranking police officer. The inmates refused to leave the cell and asked the police officers to call a doctor. However, their requests were to no avail.

10. Half an hour later the applicant and Ga., one of the inmates, were taken to see a deputy head of the Petrozavodsk Town Police Department. The applicant described the incident and showed the injuries on his neck and chest. Ga. corroborated his version of events. They were promised a thorough inquiry into the events in question.

11. The applicant repeated his allegations of ill-treatment during the subsequent interview with investigator I. After the interview the applicant was taken back to cell no. 11, where an emergency doctor was assisting another inmate. According to the applicant, his request for a medical examination was abruptly dismissed by N., who was present in the cell. In the evening of the same day the applicant was transported back to the remand prison in Petrozavodsk.

2. Official version of events

12. The official version of the events of 12 March 2004 was summarised in the judgment of 20 December 2004 (see paragraph 23 below) as follows:

> "The [applicant] ... and other inmates held in the same cell asked to be transferred to another cell. He shouted, knocked on the door of the cell and uttered profanities against the [guards] ... . The applicant and other inmates in cell no. 11 ignored numerous orders of the ... officers to stop the disturbance ... officer N. entered cell no. 11 in order to identify the instigator and to take him out of the cell ... the applicant ... put his arms around N. to restrain him. Then N. raised the applicant slightly off the floor and carried him out of the cell into the hallway. The applicant released N. In the hallway the applicant ... threatened N. and kicked him in the head. ... N. blocked the blow with his left arm. In order to stop the applicant's illegal actions ... , N. used physical force against him and threw him to the floor. While lying on the floor, the applicant continued kicking N. As a result of the applicant's actions, N. sustained the following injuries: a blunt injury to the head and concussion, a blunt injury to the left hand with a finger fracture coupled with tissue swelling and a bruise ..., as well as bruises on the left hand and the right arm ... . The applicant's illegal actions were stopped by the officers."

3. The ensuing inquiry

13. On 12 March 2004, the applicant was examined by a prison doctor, who made the following entry in the medical record:

"No complaints. Objectively: in the middle and third parts of the right side of the neck surface [there are] three bruises of an unidentifiable form, measuring from 2.5 by 1 centimetres to 5 by 2.5 centimetres ... , [there is] a bruise of a similar colour on the front surface of the right side of the chest situated ... closer to the second rib [and] measuring 3 by 2 centimetres. [There is] a linear abrasion on the back surface of the right hand, measuring 0.8 by 0.1 centimetres ... . According [to the applicant], he had an abrasion on the parietal region of the head; 'there was a small amount of blood on the abrasion'. No other visual injuries ... have been discovered."

14. On the same day N. consulted a neurologist, who diagnosed him with concussion and a closed fracture of the little finger on the left hand.

15. On 17 March 2004 the applicant's lawyer asked the town prosecutor's office to institute criminal proceedings against the police officers who had allegedly beaten up the applicant.

16. On 26 March 2004 the deputy head of the town police department completed an internal investigation into the incident of 12 March 2004. He concluded that the use of force against the applicant had been lawful. As regards, the events of 12 March 2004, the report stated as follows:

"... On 12 March 2004 at 11 a.m. [the police officers] heard loud knocking ... on the door of cell. [11]. ... When [the police officers] opened the viewing panel, ... inmate Sh. asked to be transferred to the cell ... where [his relative S.] was being held. It was explained to him that it was impossible to satisfy his request and the viewing panel was closed. Some thirty to forty seconds later, [someone] started knocking on the cell door again, uttering profanities.

Warden L. and officers F., N. and M. approached the cell, opened the viewing panel to hear Sh.'s demands for a transfer ... . The warden explained that it was impossible to transfer him. Then Sh. claimed that he was not feeling well, that the panel should remain open, that they should be given tea and that the smell in the cell was bad. In response, warden L. explained patiently that, in accordance with the centre's schedule and in compliance with sanitary standards the cell was to be cleaned in the evening ... . Then the warden ordered the door to cell 11 to be opened. Sh. was told to take his personal effects and move to another cell ... . [The applicant], who was, for no reason, uttering profanities, demonstrating his martial arts skills and making threats ... , was asked to prepare for a transfer too. The atmosphere in the cell was heated. Other inmates started making similar demands about tea, opening up the viewing panel and complaining about a bad smell in the cell. Sh. and [the applicant] refused to transfer to another cell.

In accordance with [relevant] regulations, ... the police officers informed [the police department] of the situation. When all the inmates, except for Sh., stepped away from the cell door, officer N. entered the cell and approached Sh. to take him out of the cell ... . At that moment [the applicant] assaulted N., trying to drag him further into the cell. N. put his arms around [the applicant] and carried him out into the hallway, put him face to the wall on the left and let go of him. The other inmates, led by Sh., tried to open the cell door while warden L., officers M. and F. were forcing it closed from the other side ... [The applicant], who was standing by the wall, continued making threats to N. and showing his martial arts skills. Then he assaulted N., locked N.'s neck with his left arm and pulled him towards himself, dragging him to the floor. N. got out of the applicant's lock, pinned [the applicant] to the floor and restrained him by pressing his arms against the applicant's chest. ... [The applicant] stopped resisting

> and said that he had calmed down and would behave in the cell. N. let go of him to let [the applicant] stand up, and stood up himself. At that moment ... [the applicant] kicked N. with his right foot ... in the lower jaw. Trying to cover his face, N. raised his arm. [The applicant] kicked him again, hitting the fingers on N.'s left hand ... . N. put his arms around [the applicant] and they both fell to the ground. N. still had his arms around [the applicant] trying to avoid [the latter's] kicks ... . Officer M. held [the applicant] by the feet. Then [the applicant] again claimed that he would not resist and would bring the cell back into order ... . The officers let go of [the applicant] and he was taken back into the cell."

17. On 8 April 2004 forensic medical expert U. completed a report concerning the applicant's injuries. In particular, he concluded as follows:

> "The applicant sustained the following injuries: a bruise on the ... back of the head, bruises on the right side of the neck surface and the front of the rib cage on the right, and an abrasion on the right hand. These injuries could have been caused on 12 March 2004. The bruises on the neck and the rib cage were caused by an impact from solid blunt objects. The bruises on the head and the right hand were caused by the impact of blunt objects."

18. On 12 April 2004 a senior investigator from the town prosecutor's office questioned three of the applicant's fellow inmates on 12 March 2004. Sh. confirmed the applicant's version of events. B. alleged that the applicant had not attacked N. in the cell. He further submitted that N. had dragged the applicant out of the cell in response to the inmates' demands to be transferred. He conceded that he could not see what was going on in the hallway after the applicant had been taken out of the cell. Ga. stated that N. had hit the applicant in the cell and had dragged him out. He could not see the rest as the police officers had tried to close the door to the cell.

19. On 13 April 2004 an investigator refused to institute criminal proceedings against police officers L., M., N. and F., finding that the use of physical force by the police officers against the applicant had been lawful. He relied on the statements made the police officers, several inmates of cell no. 11, and the forensic report on the applicant's injuries. The applicant did not appeal.

C. Criminal proceedings against the applicant

1. The proceedings on the charges of causing grievous bodily harm to an employee of a tyre shop and assault on a police officer

20. On 17 March 2004 a senior investigator with the town prosecutor's office instituted criminal proceedings against the applicant on a charge of assault on a police officer. Two days later the applicant was served with a copy of the relevant decision.

21. On 3 April 2004 the applicant was placed for fifteen days in a punishment cell. He was registered as "an inmate with violent tendencies and a propensity to abscond".

22. On 28 April 2004 the criminal proceedings against the applicant on the charges of causing grievous bodily harm to an employee of a tyre shop (see paragraph 6 above) and assault on the police officer were joined.

23. On 20 December 2004 the Petrozavodsk Town Court found the applicant guilty as charged and sentenced him to nine and a half years' imprisonment. As to the events of 12 March 2004, i.e., the alleged assault on the police officers, the Town Court relied on the statements given in court by N., warden L., and police officer P., who had been on duty at the temporary detention centre; on the reports prepared by police officers N., M. and F., and on the findings of the internal inquiry of 26 March 2004. The court viewed the video recording of the incident of 12 March 2004, which corroborated the police officer's account of the events. The court also heard inmates Sh. and B. and examined earlier statements made by inmates D., G. and Ga. The court dismissed their statements as untrue, noting in addition that B., D. and G. had admitted that they had not witnessed the altercation between N. and the applicant in the hallway. Lastly, the court assessed the injuries sustained by the applicant on 12 March 2004 and, with reference to the internal inquiry of 26 March 2004, concluded that they had not caused any permanent damage to his health and that the use of force against the applicant had been lawful.

24. As to the charge of causing grievous bodily harm to an employee of a tyre shop, the Town Court based its findings on the victim's statement and on the confession of one of the applicant's co-defendants K., which he made in court, records of identification parades during which the victim had identified the perpetrators of the criminal offence against him, statements by a number of witnesses made in open court, and physical evidence, including expert opinions, records of scene examinations, etc. The Town Court also relied on the statement made by Pa., another co-defendant, admitting that he had committed the criminal offence together with the applicant. Pa. had died before the trial started. According to the minutes of the trial hearing, the applicant and his lawyer did not object to the reading out of Pa.'s statement.

25. The applicant appealed maintaining his innocence. He claimed that his guilt had not been proven beyond reasonable doubt and that the Town Court's findings were based on inadmissible, inconclusive and contradictory evidence.

26. On 21 February 2005 the Supreme Court of the Kareliya Republic upheld the judgment of 20 December 2004 on appeal, endorsing the reasoning given by the Town Court.

27. On 20 December 2005 judge R. of the Supreme Court of the Russian Federation granted the application for the supervisory review of the appeal judgment of 21 February 2005 lodged by the Deputy Prosecutor General of the Russian Federation. The case was remitted to the Presidium of the Supreme Court of the Kareliya Republic.

28. On 25 January 2006 the Presidium of the Supreme Court of the Kareliya Republic noted that the applicant had not been provided with an opportunity to study the trial record, and quashed the appeal judgment of 20 December 2005 by way of supervisory review and remitted the matter for fresh consideration to the appeal court.

29. On 27 March 2006 the Supreme Court of the Kareliya Republic found that the trial court had erred when indicating the applicant's place of birth in the verdict, quashed the applicant's conviction and remitted the matter for fresh consideration to the Town Court.

30. However, on 17 May 2006 the Presidium of the Supreme Court of the Kareliya Republic quashed the judgment of 27 March 2006 by way of supervisory review and remitted the matter for fresh examination to the appeal court. The court noted that the trial court's erroneous indication of the applicant's place of birth had not affected the substance of the verdict.

31. In a new set of appeal proceedings, on 3 July 2006 the Supreme Court upheld the judgment of 20 December 2004.

2. Criminal proceedings on the charges of manslaughter and aggravated robbery

32. On an unspecified date the applicant was charged with manslaughter and aggravated robbery. According to the prosecution, (1) on 6 October 2002 the applicant and several other persons assaulted D. and beat him to death; (2) on 14 July 2002 the applicant and several other persons attacked Zh. and took RUB 126,000 from him.

33. On 16 November 2007 the Town Court found the applicant guilty of manslaughter and aggravated robbery and sentenced him to nine years' imprisonment. The Town Court based the conviction on statements by a number of witnesses, the instigator of the offence and one of the applicant's co-defendants given in court, statements made during the pre-trial investigation by witnesses Kyu., Pe. and Ma., and extensive material evidence. Kyu., Pe. and Ma. had confessed to committing the manslaughter together with the applicant. Kyu. had died during the pre-trial investigation. Pe. and Ma. had absconded and, despite the authorities' attempts, which included a nationwide search, were never found. Neither the applicant nor his lawyer objected to the reading out of Kyu.'s, Pe.'s and Ma.'s statements.

34. On 28 November 2007 a local newspaper published an article reporting on the criminal proceedings against the applicant and his co-defendants and naming the applicant among the perpetrators of the manslaughter and robbery.

35. On 21 January 2008 the Supreme Court of the Kareliya Republic upheld the judgment on appeal.

D. The applicant's detention pending the criminal proceedings against him

36. Following the applicant's arrest and placement in custody pending investigation and trial on the charges of causing a grievous bodily harm to an employee of a tyre shop and assault on the police officer, the applicant was found guilty as charged on 20 December 2004 as upheld on 21 February 2005 on appeal. Following the supervisory review of the appeal judgment, on 27 March 2006 the appeal court quashed the verdict and remitted the matter for a new trial (see paragraphs 23-29 above). The appeal court further ordered that the applicant should remain in custody pending trial.

37. On 31 March 2006 the Town Court received the case file.

38. On 10 May 2006 the Town Court reviewed the applicant's pre-trial detention. The applicant argued that he should be released. Relying on the gravity of the charges, the Town Court extended the applicant's detention until 10 August 2006. His argument regarding the alleged unlawfulness of his detention was dismissed as unsubstantiated. On 22 May 2006 the Supreme Court of the Kareliya Republic upheld the decision of 10 May 2006 on appeal.

II. RELEVANT DOMESTIC LAW

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

39. 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).

B. Legal provisions governing remand in custody

40. A defendant can be remanded in custody or his detention can be extended only on the basis of a judicial decision (Russian Constitution, Article 22). The court shall make the relevant decision upon a reasoned request by the prosecutor or the investigator supported by appropriate evidence (Code of Criminal Procedure, Article 108 § 3) or of its own motion (Code of Criminal Procedure, Article 108 § 10).

41. When considering an appeal lodged by one of the parties to criminal proceedings, the appeal court is required to decide whether or not a preventive measure, including placement in custody, should be applied pending a new hearing (Code of Criminal Procedure, Article 388 § 1).

42. When quashing the verdict on appeal and deciding to detain the defendant in custody pending new trial, the appeal court should indicate the reasonable time-limit of such detention period or, if the earlier extended detention period has not expired, indicate that such period should remain unchanged. In any event, the appeal court should set out the reasons for its decision to remand or to hold the defendant in custody (Resolution of the Supreme Court of the Russian Federation no. 28 of 23 December 2008, section 23).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicant complained that the police officers had subjected him to ill-treatment on 12 March 2004 and that the ensuing investigation had not been effective. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' submissions

44. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of his allegations concerning the ill-treatment in custody and the ensuing investigation. In particular, he had not appealed to a court against the investigator's refusal to open a criminal case against the alleged perpetrators. The fact that the applicant had raised the issue of ill-treatment in the course of the criminal proceedings against him was of no relevance, given that the task incumbent on the trial court was to determine whether or not the applicant was guilty of the offences with which he had been charged. It was not within the trial court's competence to hold the alleged perpetrators liable and/or to award compensation to the applicant for the alleged wrongdoing. Nor did the applicant plead before the trial court that the inquiry into his allegations had not been thorough or ask the trial court to conduct further inquiry. Lastly, the Government observed that the applicant had been represented by an experienced criminal lawyer and it would not have been excessively burdensome for him to lodge an appeal against the investigator's decision, which would be a normal avenue of

exhaustion of remedies in respect of his complaint. Nevertheless, he had failed to explain why he had chosen not to do so.

45. The applicant considered that an appeal against the investigator's decision would have been to no avail.

2. The Court's assessment

46. In the instant case, the Court observes that, instead of pursuing a normal avenue of appeal against the investigator's decision of 13 April 2004 by submitting his complaint about it to a district court in a separate set of proceedings, the applicant raised the ill-treatment issue before the same court during the criminal proceedings against him for assault on a police officer. It was his line of defence against the charge of assault that he had been ill-treated rather than having assaulted the police officer. The court took cognisance of the merits of the applicant's complaint, reviewed the investigator's findings summed up in his decision of 13 April 2004, questioned the applicant, the inmates detained together with him on 12 March 2004 and the police officers involved, and ruled that there was no case to answer against the latter. Its findings were upheld by the court at second level of jurisdiction on appeal.

47. The Court has earlier held, as has been pointed out by the Government, that in respect of complaints of ill-treatment in police custody it is normally incumbent on an applicant to appeal against a refusal by the investigating authorities to institute criminal proceedings against alleged perpetrators, given that in the Russian legal system the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003).

48. In this respect, the Court reiterates that non-exhaustion of domestic remedies cannot be held against the applicant if, in spite of the latter's failure to observe the formalities prescribed by law, the competent authority has nevertheless examined the substance of the claim (see, *mutatis mutandis, Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007; *Skałka v. Poland* (dec.), no. 43425/98, 3 October 2002; *Metropolitan Church of Bessarabia and Others v. Moldova* (dec.), no. 45701/99, 7 June 2001; and *Edelmayer v. Austria* (dec.), no. 33979/96, 21 March 2000).

49. The Court finds in the particular circumstances of the present case that, by raising before the trial and appeal courts the defence of ill-treatment and the inadequacy of its investigation against the accusations brought against him, the applicant provided the domestic authorities with the opportunity to put right the alleged violation and thus cannot be said to have failed to exhaust domestic remedies. Besides, in the Court's view, it was indispensable for the proper administration of justice that the trial court assessed the applicant's allegations of ill-treatment in the context of determining the criminal charges against him on the count of assault on the

police officer. The Court is not convinced, accordingly, that a challenge to the investigator's decision through the avenue of a separate set of proceedings before the same courts would have served any purpose.

50. Having regard to the above, the Court considers that the applicant cannot be said, in the particular circumstances, to have failed to exhaust domestic remedies because he did not lodge a separate judicial complaint against the investigator's decision of 13 April 2004. Thus, the Government's objection as to the non-exhaustion of domestic remedies should, in the present case, be dismissed.

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

B. Merits

1. The parties' submissions

52. The Government submitted that the applicant's rights set out in Article 3 of the Convention had not been violated by the actions of the national authorities. The use of force against the applicant was strictly necessary and was called for by the applicant's unruly and threatening behaviour. The injuries he had sustained had not been serious. His allegations of ill-treatment had been subjected to prompt, thorough and comprehensive investigation.

53. The applicant maintained his complaint. He considered that his allegations of ill-treatment had been completely ignored by the authorities, resulting in his wrongful conviction.

2. The Court's assessment

(a) Alleged ill-treatment

54. 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).

55. In the context of detainees, the Court has emphasised that those 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).

56. Turning to the circumstances of the present case, the Court observes that it is not disputed by the parties that on 12 March 2004 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. However, this alone cannot rule out the possibility that the treatment was severe enough to be considered inhuman or degrading. The Court considers that the abrasions and bruises noted by the prison doctor 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.

57. Having regard to the material in its possession and to the parties' submissions before it, the Court considers that the use of force against the applicant did not go beyond what could be considered necessary in the circumstances of the case in response to the applicant's unruly and threatening behaviour.

58. The Court accepts the national authorities' assessment of the incident of 12 March 2004 and their conclusion that the police officers had used force against the applicant to subdue him and to put a stop to his attack on officer N. The Court notes that the police officers outnumbered the applicant. However, it does not lose sight of the fact that the applicant was a practising martial arts instructor and that he had effectively resisted the legitimate actions of the police officers by refusing to comply with their verbal demands to stop the unruly behaviour, and by assaulting one of them (see, by contrast, *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII).

59. Thus, the Court concludes that on 12 March 2004 the police officers' actions aimed at putting an end to the applicant's unruly behaviour and assault on officer N. did not amount 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 officers, the use of force against him cannot be held to have been excessive.

60. Accordingly, there has been no violation of Article 3 of the Convention with regard to the alleged ill-treatment by the police on 12 March 2004.

(b) Adequacy of the investigation

61. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by 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).

62. 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).

63. 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 those responsible for them will risk falling foul of this standard.

64. 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).

65. Turning to the facts of the present case, the Court observes that, in order to elucidate the circumstances of the altercation between the applicant and the police officers, the authorities promptly conducted an internal investigation and an inquiry in response to the applicant's complaint lodged on 17 March 2004. 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 3 July 2006. The Court accepts that the authorities' response to the incident was prompt and expeditious.

66. The Court further observes that the authorities took all the steps necessary to look into the applicant's accusations. They questioned the applicant, other inmates detained together with him and the police officers involved in the incident, and studied the reports prepared by them and the results of the forensic medical examinations. The judicial authorities reviewed the materials of the inquiries, questioned the witnesses both for the prosecution and the defence. The Court discerns nothing in the materials in its possession to suggest that the domestic authorities' findings in respect of the applicant's allegations were unreasonable or lacking a basis in evidence.

67. The foregoing considerations are sufficient to enable the Court to conclude that the investigation of 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. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

68. The applicant complained that his pre-trial detention from 27 March to 10 May 2006 had been incompatible with the requirements set forth in Article 5 § 1 (c) of the Convention which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

69. The Government contested that argument. They submitted that on 27 March 2006 the appeal court, when quashing the applicant's conviction and remitting the matter for a new trial, had extended the applicant's pre-trial detention "in accordance with a procedure prescribed by law" and full compliance with Article 5 § 1 (c) of the Convention.

70. The applicant maintained his complaint.

A. Admissibility

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

B. Merits

72. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While, in the first place, it is normal for the national authorities, notably the courts, to interpret and apply domestic law, it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (see, among other authorities, *Douiyeb v. the Netherlands* [GC], no. 31464/96, §§ 44-45, 4 August 1999). Furthermore, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent people from being deprived of their liberty in an arbitrary fashion (see, among other recent authorities, *Bakhmutskiy v. Russia*, no. 36932/02, § 109, 25 June 2009).

73. The Court further reiterates that a court's decision to maintain a custodial measure would not breach Article 5 § 1 provided that the trial court "had acted within its jurisdiction ... [and] had the power to make an appropriate order". However, "the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time may be incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see *Khudoyorov v. Russia*, no. 6847/02, § 135 *in fine*, ECHR 2005-X (extracts)).

74. Turning to the circumstances of the present case, the Court observes that on 27 March 2006 the Supreme Court of the Kareliya Republic quashed the applicant's conviction on appeal and remitted the matter for a new trial. The Supreme Court also noted that the applicant should remain in custody pending a new consideration of the criminal charges against him.

75. The Court accepts that on 27 March 2006 the Supreme Court of the Kareliya Republic acted within its powers in deciding to maintain the applicant's detention pending trial. However, the Court cannot but notice that the Supreme Court failed to indicate the time-limit for the applicant's detention or provide any reason for ordering that detention.

76. In this connection the Court takes cognisance of the interpretation of the relevant provisions of the Russian Code of Criminal Procedure provided by the Supreme Court of the Russian Federation wherein the latter unequivocally stated that the law required that, when deciding on the extension of a defendant's detention, the court should specify its time-limit and cite grounds for it (see paragraph 42 above).

77. Having regard to the above, the Court rejects the Government's argument that the applicant's detention during the period in question was "in accordance with a procedure prescribed by law". It therefore considers that the applicant's detention from 27 March to 10 May 2006 has been incompatible with the requirements set forth in Article 5 § 1 (c) of the Convention. Accordingly there has been a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

78. The applicant further complained that the criminal proceedings against him on the charges of causing grievous bodily harm to an employee of a tyre shop and assault on the police officer had been unfair. He relied on Article 6 of the Convention which, in so far as relevant, reads as follows:

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

79. The Government contested that argument. They considered that the applicant had been dissatisfied with the outcome of the criminal proceedings against him and that his complaint had been of a fourth-instance nature. There was nothing in the materials of the case file to disclose any unfairness in the way the national courts had taken and assessed the evidence.

80. The applicant maintained his complaint. He insisted that the domestic courts had erred in assessing the evidence and wrongly convicted him.

81. The Court notes that it is not its task to act as a court of appeal or, as is sometimes stated, as a court of fourth instance, in respect of the decisions taken by domestic courts. It is the role of the domestic courts to interpret and apply the relevant rules of procedural or substantive law. It is the domestic courts which are best placed to assess the credibility of witnesses and the relevance of evidence to the issues in the case. It is also for the domestic courts to exclude evidence which is considered to be irrelevant (see, among many other authorities, *Vidal v. Belgium,* 22 April 1992, § 32, Series A no. 235-B and *Edwards v. the United Kingdom,* 16 December 1992, § 34, Series A no. 247-B).

82. To that end, the Court observes that the applicant's conviction on the charges of causing grievous bodily harm to an employee of a tyre shop and assault on the police officer was based on extensive documentary, witness and forensic evidence. The trial court's findings were subject to

examination by the appeal court which found them well-reasoned and upheld them. The Court also observes that the applicant was duly represented throughout the proceedings and was, therefore, afforded ample opportunity, which he took, to state his case before the domestic courts and to challenge the admissibility and use of the evidence.

83. In sum, the Court considers that the applicant's complaints relating to the "fairness" of his trial are manifestly ill-founded. It follows that this part of the application must be rejected in accordance with Article 35 §§ 1, 3 (a) and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

84. Lastly, the applicant raised a number of complaints concerning a placement in a disciplinary cell, an inability to confront certain witnesses and the alleged unfairness of the criminal proceedings against him concerning the charges of manslaughter and robbery.

85. However, having regard to all the material in its possession, the Court finds that the events complained of do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed a sum ranging between 187,019 and 235,027 euros (EUR) in respect of pecuniary damage covering his and his parents' lost earnings and other losses sustained by his family as a result of the criminal prosecution against him. He also claimed EUR 150,000 in respect of non-pecuniary damage.

88. The Government considered the applicant's claim excessive and unsubstantiated. They further proposed that the finding of a violation would constitute sufficient just satisfaction.

89. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. As

regards the non-pecuniary damage sustained by the applicant, the Court considers that it cannot be sufficiently compensated for by the finding of a violation. Making its assessment on an equitable basis and having regard to the particular circumstances of the case, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

B. Costs and expenses

90. The applicant also claimed compensation in the amount of EUR 1,519 for the services of the lawyers who represented him in the domestic criminal proceedings. He further submitted copies of receipts for the amount of 12,851 Russian roubles in respect of postal and translation costs incurred before the Court.

91. The Government considered that the applicant's claim should be rejected.

92. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court considers it reasonable to award the sum of EUR 300 for postal and translation costs.

C. Default interest rate

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged ill-treatment in police custody and the ensuing investigation and the alleged unlawfulness of his pre-trial detention from 27 March to 10 May 2006 admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been no violation of Article 3 of the Convention under its procedural limb;

4. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention in respect of the applicant's pre-trial detention from 27 March to 10 May 2006;

5. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 5000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 300 (three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 25 September 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President