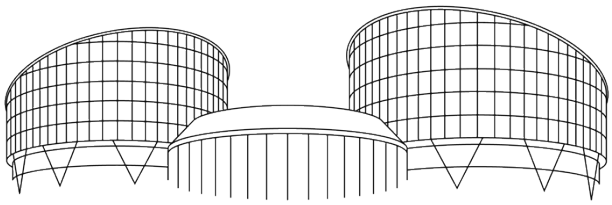

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ABLYAZOV v. RUSSIA

(Application no. 22867/05)

JUDGMENT

STRASBOURG

30 October 2012

FINAL

18/03/2013

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

In the case of Ablyazov 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,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 9 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 22867/05) 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 Fuat Nailyevich Ablyazov ("the applicant"), on 14 May 2005.

2. The applicant was represented by Mr S. Kiryukhin, a lawyer practising in Orsk. 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 police custody and that the subsequent investigation into these allegations had not been effective.

4. On 12 February 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

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lived, prior to his arrest, in Orsk, Orenburg Region.

A. The applicant's arrest and the investigation into the alleged ill-treatment

6. At 1 p.m. on 23 July 2003 the applicant was arrested on suspicion of manslaughter. According to the applicant, a certain investigator, K., and officers from the police department of the Oktyabrskiy District of Orsk beat him severely in order to obtain a confession. K. hit the applicant in the jaw whereupon he fell down onto the floor. A police officer then hit him on the head with an object which appeared to be a mobile phone. Other officers kicked him many times. A plastic bag was placed over his head and the applicant then lost consciousness. After an ambulance had been summoned by the police officers and medical help had arrived, the beatings ceased.

7. On 24 July 2003 the applicant's lawyer submitted a request for the applicant to be examined by a forensic medical expert. The examination took place on the same day. According to the Government, it was conducted some time after 11.30 a.m. The expert established that the applicant had a bruise on his left jaw, caused by the impact of a hard blunt object approximately twenty-four hours beforehand. The expert also noted that the applicant complained of pain in the parietal region of his head as well as sickness and dizziness. In the expert's opinion, the applicant did not sustain any serious physical damage .

8. On 25 July 2003 the applicant was transferred to remand prison no. IZ 56/2 in Orsk. Upon arrival, he was examined by a doctor, who recorded in the registration log that the applicant had no visible injuries.

9. On 12 August 2003 the applicant filed a complaint about ill-treatment with the district prosecutor's office.

10. On 15 August 2003 the deputy district prosecutor Ch. dismissed the applicant's complaint. In his decision, he stated as follows:

> "In response to the complaint, [the prosecutor's office] ... studied the materials from the criminal case file [against the applicant].
>
> It has been established that ... the investigation in respect of [the applicant] has been in compliance with the rules of criminal procedure and that the [applicant's] allegations of ill-treatment have not been confirmed. This finding is based, *inter alia*, on the results of the forensic medical examination undergone by [the applicant]."

11. On 1 October 2003 the applicant filed another complaint with the district prosecutor's office about the beatings he had allegedly received in police custody. On 3 October 2003 the investigator K.- who was also in charge of the criminal investigation against the applicant - dismissed his allegations as unsubstantiated based on the statements made by three policemen. On 10 October 2003 the deputy district prosecutor dismissed the applicant's complaint once again.

12. On 20 December 2003 the deputy district prosecutor upheld the decision of 3 October 2003 on appeal.

13. On 29 August 2005 the acting district prosecutor set aside the decision of 3 October 2003 noting that the inquiry into the applicant's allegations of ill-treatment had been incomplete. In particular, the investigator had failed to question the applicant and the alleged perpetrators of the ill-treatment and to identify and question other possible witnesses.

14. At the beginning of September 2005 the Oktyabrskiy district prosecutor questioned the applicant, who gave a description of the police officer who had allegedly hit him with "an object looking like a mobile phone". The prosecutor then questioned police officer Z. who denied beating the applicant and further claimed that none of the police officers of the Oktyabrskiy district police station matched the description given by the applicant. He did not remember whether the applicant had sustained any visible injuries immediately after the arrest. The prosecutor also questioned the head of the temporary detention centre where the applicant had been held on 23 and 24 July 2003 and the doctor who had admitted the applicant to the remand prison on 25 July 2003. They both stated that the applicant had not had any visible injuries and that there were no complaints of ill-treatment by him recorded in the registration logs of their respective detention facilities.

15. On 8 September 2005 investigator T. refused to open criminal proceedings, finding that there was no evidence of ill-treatment. On 7 November 2005 the district prosecutor set that decision aside and ordered an additional inquiry.

16. On 10 November 2005 the investigator T. again refused to open a criminal investigation into the applicant's allegations. In order to obtain further evidence, the investigator questioned the applicant's neighbours who had seen him prior to the arrest on 23 July 2003. S. confirmed that the applicant had had no visible injuries on that day. D. did not remember if the applicant had evidence of any injuries prior to the arrest. Sosh. submitted that the applicant's girlfriend had asked her specifically to say, if questioned, that the applicant had no injuries.

17. On 18 January 2006 the Oktyabrskiy District Court found the decision of 10 November 2005 to be unlawful. The court considered that the prosecutor's office had not established when, where and under what circumstances the applicant had received the injury noted by the forensic expert on 24 July 2003. On 30 January 2006 the district prosecutor quashed the decision of 10 November 2005 and ordered a further inquiry.

18. On 2 February 2006 the investigator G. issued a fourth decision refusing to initiate criminal proceedings. He reiterated the findings of the previous inquiries, concluding, in particular, as follows:

> "... the evidence collected disproves the [applicant's] allegations that the investigator K. and [the police officers] put any physical or psychological pressure on [him]. It follows that [the investigator and the police officers] acted in compliance with the law, they did not abuse their authority and did not infringe the [applicant's]

> rights and interests. These conclusions are confirmed by the evidence collected and numerous witness statements. There is no sufficient ground to believe that the injuries [the applicant] had when examined on 24 July 2003 were sustained by him after he was taken into custody. Furthermore, there is sufficient information ... showing that no physical or psychological pressure was put on [the applicant] by the investigator K. and [the police officers]."

19. On 15 February 2006 the deputy district prosecutor set the decision of 2 February 2006 aside finding that the investigator had failed to comply with the decision of 18 January 2006. In particular, he had not established when, where and under what circumstances the applicant had sustained the injuries.

20. On 7 March 2006 the investigator G. issued a fifth decision refusing to initiate criminal proceedings, finding that the existing evidence refuted the applicant's allegations of ill-treatment.

21. On 10 October 2007 the District Court partly upheld a complaint by the applicant and found the decision of 7 March 2006 unlawful and unsubstantiated. The court noted that the investigator had failed to conduct a further inquiry and to clarify the circumstances of the matter. On 19 December 2007 the head of the town (Orsk) investigating committee quashed the decision of 7 March 2006 and ordered a further inquiry.

22. On 29 December 2007 the investigator N. issued a sixth decision refusing to open criminal proceedings. As regards the applicant's injuries, the investigator stated as follows:

> "The fact that the applicant had certain injuries detected in the course of the examination conducted on 24 July 2003 does not signify that they were inflicted by [the policemen or the investigator]. There is no causal link and it is not required to establish when, where and how the applicant had sustained them."

23. On 29 January 2008 the District Court found the investigator's decision of 29 December 2007 not to open criminal proceedings unlawful as he had failed to discover the reasons for the applicant's injuries. On 22 February 2008 the deputy head of the investigating committee attached to the regional prosecutor's office quashed the decision of 29 December 2007 and referred the matter back for a further inquiry.

24. On 3 March 2008 a senior investigator, G., issued a seventh decision refusing to open criminal proceedings. The investigator reiterated practically verbatim the reasoning set out in the previous decision.

25. On 31 March 2008 the District Court found the decision of 3 March 2008 unlawful on the grounds that the investigator had not provided a plausible and convincing explanation of how the applicant's injury had been caused. On 15 May 2008 the Orenburg Regional Court upheld the decision of 31 March 2008 on appeal.

26. On 11 April 2008 the deputy head of the investigating committee attached to the regional prosecutor's office quashed the decision of 3 March 2008 and ordered a further inquiry.

27. Subsequently, the investigators attached to the regional prosecutor's office refused to open a criminal investigation into the applicant's allegations on five further occasions. The relevant decisions, providing identical reasoning to that underlying the earlier decisions, were taken on 23 April, 28 June, 8 and 18 July and 20 August 2008. All these decisions were subsequently quashed by the investigators' superiors on 18 and 28 June, 8 July and 11 and 20 August 2008 on account of their failure to clarify the circumstances of the case.

28. On 30 September 2008 the investigator F. issued the thirteenth decision refusing to open a criminal investigation. Although he found no evidence supporting the applicant's allegations of ill-treatment in police custody he allowed that the applicant's injuries could have been caused by his having been beaten and that a criminal investigation should be opened on charges of battery but this was not within the jurisdiction of his office. The materials were transmitted to a district police unit. The applicant's complaint against the decision of 30 September 2008 was subsequently dismissed by the District and Regional Courts on 16 October and 20 November 2008 respectively.

29. On 13 October 2008 the police investigator refused again to open a criminal investigation because the statutory time-limit for criminal liability on the charge of battery had expired. On 18 March 2009 the District Court dismissed a complaint by the applicant against that decision.

B. Criminal proceedings against the applicant

30. On an unspecified date the applicant was committed for trial on a charge of manslaughter before the Oktyabrskiy District Court of Orsk.

31. The applicant complained to the trial court about his ill-treatment. On 17 March 2004 the Oktyabrskiy District Court ordered an inquiry. On 24 March 2004 the Oktyabrskiy district prosecutor found that there was no evidence of ill-treatment and refused to open criminal proceedings.

32. On 15 June 2004 the Oktyabrskiy District Court convicted the applicant as charged and sentenced him to eight years' imprisonment. On 31 August 2004 the Orenburg Regional Court upheld the judgment on appeal.

C. Civil proceedings

33. On 11 August 2004 the applicant sued the Orsk Town police department, the Orenburg regional prosecutor's office and the Ministry of Finance of the Russian Federation for compensation. He claimed 5,000,000 Russian roubles (RUB) in respect of non-pecuniary damage sustained as a result of his ill-treatment, unlawful arrest and conviction.

34. On 22 April 2005 the Leninskiy District Court of Orsk dismissed his claim. It referred, in particular, to the results of the prosecutor's inquiry into the applicant's allegations of ill-treatment; the investigator K.'s decision of 3 October 2003 refusing to open criminal proceedings against the police officers; and the applicant's conviction. It also observed that the applicant's complaint that the police officers had beaten him to obtain a confession was unconvincing, given that he had never confessed to the crime. There was no evidence that the bruise on the applicant's face had been the result of ill-treatment by the police officers.

35. On 16 June 2005 the Orenburg Regional Court quashed the decision and remitted the matter to the Leninskiy District Court for fresh consideration.

36. On 25 August 2006 the District Court granted the applicant's claims in part. The court dismissed the applicant's allegations of torture as unsupported by any evidence. At the same time, the court noted that the applicant had been taken into custody in good health and that he had received an injury while in detention. The respondent parties failed to provide any explanation as to how that injury had been caused. The court found that the applicant had been subjected to degrading treatment in police custody on 23 July 2005 and awarded him RUB 1,000.

37. On 11 October 2006 the Regional Court upheld the judgment of 25 August 2005 on appeal.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained that he had been subjected to ill-treatment while in police custody and that the ensuing investigation had been ineffective in contravention of Article 3 of the Convention, which reads as follows:

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

39. The Government contested that argument. They submitted, in view of the judicial award in the applicant's favour, that he had lost his victim status, even though such an award did not signify that his rights set out in Article 3 of the Convention had been infringed. The amount of the award had been commensurate with the severity of his injury. In the alternative, the Government asserted that the applicant could have sustained the injuries prior to his arrest, a fact which had been confirmed in the course of the effective investigation conducted by the authorities in response to the

applicant's complaint about the alleged ill-treatment in custody. The investigating authorities had taken all the steps necessary to verify the applicant's allegations. They had questioned the witnesses and studied the medical documents. Both the investigating authorities and the courts had repeatedly looked into the matter. Accordingly, the national authorities had complied with their obligation to conduct a thorough and effective investigation.

40. The applicant maintained his complaint.

A. Admissibility

41. In so far as the Government argue that the applicant has lost his victim status in respect of the allegations of ill-treatment, the Court reiterates that an applicant is deprived of his or her victim status if the national authorities have acknowledged it either expressly or in substance and then afforded appropriate and sufficient redress for it (see, for example, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 178-93, ECHR 2006-V).

42. As regards the first condition, the Court observes that the Leninskiy District Court did find that the applicant had been subjected to degrading treatment while in police custody. The relevant judgment of 25 August 2006 was upheld on appeal by the Regional Court and became final on 11 October 2006. Accordingly, the Court accepts that the Russian authorities acknowledged a violation of the applicant's rights as set out in Article 3 of the Convention.

43. As regards the second condition, namely appropriate and sufficient redress, the Court observes that the applicant was granted compensation for the breach of his rights set out in Article 3 of the Convention. The Court does not consider it necessary, in the circumstances of the case, to delve into the issue whether the amount of the compensation received by the applicant constituted sufficient redress. In this connection the Court reiterates that in cases of wilful ill-treatment by State agents a breach of Article 3 of the Convention cannot be remedied exclusively through an award of compensation to the victim. The State authorities are also under an obligation to conduct an investigation capable of leading to the identification and punishment of those responsible (see, *mutatis mutandis, Vladimir Romanov v. Russia*, no. 41461/02, §§ 78 and 79 *in fine*, 24 July 2008). This issue, however, is closely linked to the merits of the complaint about the alleged lack of an effective investigation into the allegations of ill-treatment in police custody. Accordingly, the Court finds it necessary to join it to the merits of the complaint and will address it subsequently.

44. 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. Alleged ill-treatment

45. 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).

46. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Labita*, cited above, § 120).

47. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities have a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-XV; *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; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

48. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof " beyond reasonable doubt " but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25). Furthermore, where allegations are made under Article 3 of the Convention, the Court must employ a particularly thorough scrutiny (see *Ribitsch*, cited above, § 32).

49. Turning to the circumstances of the present case, the Court observes that the applicant provided a clear account of the events (see paragraph 6 above). Furthermore, the Court takes into account the findings of the domestic judicial authorities (see paragraph 36 above) that the applicant had sustained his injury while in police custody and accepts that the applicant made out a *prima facie* case in support of his complaint of ill-treatment. The

burden therefore rests on the Government to provide a plausible explanation of how the injury was caused.

50. The Court notes that the Government did no more than suggest that the applicant might have sustained an injury prior to his arrest. In the absence of any evidentiary basis for this conjecture, the Court considers that the Government failed to rebut the presumption of their responsibility for the injuries inflicted on the applicant while he was in the charge of the State. Accordingly, the responsibility for the ill-treatment lay with the domestic authorities.

51. The Court further notes that the degree of bruising found by the forensic expert who examined the applicant and the subsequent decision by the authorities to conduct a formal inquiry into the applicant's allegations of ill-treatment indicate that the injury was sufficiently serious to come within the scope of Article 3.

52. In such circumstances, the Court concludes that there has been a violation of Article 3 of the Convention under its substantive limb on account of the inhuman and degrading treatment the applicant was subjected to while in police custody.

2. Adequacy of the investigation

53. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, Reports of Judgments and Decisions 1998-VIII).

54. 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).

55. An investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the

incident, including, inter alia, eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

56. Furthermore, the investigation must be expeditious. In cases examined under Articles 2 and 3 of the Convention, where the effectiveness of an 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).

57. Lastly, the Court reiterates that, in a number of cases concerning alleged ill-treatment in custody where the prosecution of the alleged perpetrators has been time-barred following lengthy proceedings, it has noted that the criminal-law system has proved to be far from rigorous in ensuring the effective prevention of unlawful acts such as those complained of by the applicants (see, among other authorities, *Müdet Kömürcü v. Turkey (no. 2)*, no. 40160/05, § 30, 21 July 2009; *Salmanoğlu and Polattaş v. Turkey*, no. 15828/03, § 101; 17 March 2009; and *Erdoğan Yılmaz and Others v. Turkey*, no. 19374/03, § 57, 14 October 2008).

58. Turning to the facts of the present case, the Court observes that the Russian criminal-law system was similarly ineffective in dealing with the applicant's complaints. The initial complaints lodged by the applicant with the prosecuting authorities did not receive due attention or consideration. The first complaint was dismissed three days after it was lodged on 12 August 2003. According to the decision which followed, the deputy prosecutor merely reviewed the material in the applicant's case file and then concluded that his allegations of ill-treatment were unfounded. The applicant's second complaint of 1 October 2003 was also dismissed after a three-day inquiry. The Court finds it striking that the complaint was assigned by the prosecutor's office to the investigator whom the applicant named as being among the alleged perpetrators of the ill-treatment. Such deficiencies and the slack attitude on the part of the prosecutor's office caused, in the Court's view, a loss of precious time and complicated the investigation of the applicant's allegations.

59. The Court accepts that in the course of the ensuing inquiries, the prosecutor's office did take certain measures to clarify the circumstances of the applicant's arrest and detention in police custody. The applicant, the

alleged perpetrators and potential witnesses were all questioned. Nevertheless, having regard to the material in its possession, the Court cannot but note that the efforts of the prosecutor's office were focused rather on the dismissal of the applicant's complaint than on a thorough verification of the substance of his allegations. In the course of over seven years, the applicant's complaint was dismissed on thirteen separate occasions. Each time, the applicant appealed and a supervising prosecutor or a court quashed the relevant decision and ordered a further inquiry noting the relevant investigator's failure to fully determine the circumstances of the case. The Court considers that such remittals of the case for re-examination disclose a serious deficiency in the criminal investigation which irreparably protracted the proceedings and resulted in a situation when the prosecution of the alleged perpetrators became impossible because it was time-barred.

60. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the applicant's complaint of ill-treatment in police custody failed to provide appropriate redress. The applicant may therefore still claim to be a victim within the meaning of Article 34 of the Convention. The Court accordingly dismisses the Government's objection under this head and finds that there has been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

61. The applicant complained that the investigation into his allegations of ill-treatment had been ineffective, contrary to Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

62. The Court observes that this complaint concerns the same issues as those examined above under the procedural limb of Article 3 of the Convention (see paragraphs 53-60 above) and should accordingly be declared admissible. However, having regard to its conclusion above as regards Article 3, the Court considers it unnecessary to examine those issues separately under Article 13.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. Lastly, the applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair, and that the judgment of 16 June 2005 had not been enforced. He complained under Article 34 of the Convention about the arrest and detention of his

representative and under Article 3 of Protocol No. 7 about the authorities' refusal to have him examined both mentally and physically.

64. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that 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 Articles 35 § 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed 70,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

67. The Government considered the applicant's claims excessive and unreasonable. They suggested, in the alternative, that the finding of a violation would constitute sufficient just satisfaction.

68. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, the applicant was a victim of police brutality and the ensuing investigation of his allegations was ineffective. In these circumstances, the Court considers that the applicant's suffering and anguish cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

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

C. Default interest

70. 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. *Joins to the merits* the Government's objection concerning the victim status of the applicant and *dismisses* it;

2. *Declares* the complaints under Article 3 of the Convention concerning the alleged ill-treatment of the applicant in custody and the ineffectiveness of the ensuing investigation and under Article 13 of the Convention about the lack of an effective remedy in respect of the alleged violations admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;

4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

5. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen 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 at 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;

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

Done in English, and notified in writing on 30 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President