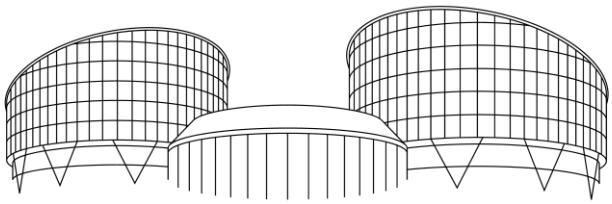

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BORODIN v. RUSSIA

(Application no. 41867/04)

JUDGMENT

STRASBOURG

6 November 2012

FINAL

06/02/2013

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

In the case of Borodin 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 16 October 2012,

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

PROCEDURE

1. The case originated in an application (no. 41867/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Pavel Aleksandrovich Borodin ("the applicant"), on 23 September 2004.

2. 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, that the ensuing investigation had been ineffective, that he had been detained in solitary confinement in the absence of medical assistance; that the length of the first set of criminal proceedings against him had been unreasonable and that the domestic courts had failed to ensure his attendance at a detention hearing.

4. On 30 January 2009 notice of the application was given to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and is serving a prison sentence in Norilsk, Krasnoyarsk Region.

A. Criminal proceedings against the applicant

1. Manslaughter charges

6. On 13 September 1999 the Angarsk Town Prosecutor opened a criminal investigation into K.'s death. According to the prosecution, K. had died after having been severely beaten by the applicant, M. and S. On the same day the alleged perpetrators were arrested and taken to the police station for questioning.

7. According to the applicant, he was taken to the police station at approximately 8 a.m. The police officers punched and kicked him and hit him with the butt of a gun in the face in order to make him confess to beating K. The applicant refused to answer questions, invoking his constitutional right to remain silent.

8. On 14 September 1999 a forensic medical expert examined the applicant, finding that he had a lip injury which could have been caused by a firm blunt object, such as a fist. No other injuries were detected.

9. Three days after the arrest the applicant was allowed to have a meeting with counsel.

10. On 23 September 1999 the town prosecutor authorised the applicant's detention pending trial relying on the seriousness of the charges against him. The applicant remained in custody until 21 November 2003 when he was released on his own recognisance.

11. On 29 June 2000 the Town Court received the case file. On 13 July 2000 it was assigned to the trial judge, who fixed the first trial hearing for 21 November 2000. According to the Government, the judge's schedule had been full before that date.

12. As regards the course of the trial proceedings, the Government provided the following information:

Date of hearing/event	Reasons for adjournment
21-23 November 2000	M.'s counsel asked for forensic psychiatric evaluation of his client. The trial was adjourned pending such evaluation, which was completed on 29 August 2001.
From August 2001 to 29 September 2001	The trial judge was on leave.
From September to 10 December 2001	The trial judge was waiting for the extension of her appointment.
29 January 2002	The applicant's counsel failed to appear. He was unable to take part in the trial until 9 July 2002.

Date of hearing/event	Reasons for adjournment
9-12 July 2002	The case file was returned to the prosecutor's office in order to obtain a translation of the bill of indictment into S.'s mother tongue.
26 September 2002	The Regional Court quashed the trial court's decision of 12 July 2002 and remitted the matter to the trial court.
3 December 2002	M.'s counsel could not attend the hearing due to his participation in another set of criminal proceedings.
24 December 2002 and 28 January 2003	The applicant's counsel did not appear due to participation in another set of criminal proceedings.
29 January 2003	The applicant's counsel failed to appear.
6-7 February 2003	The applicant asked for an adjournment for health reasons.
12 and 13 February 2003	The applicant's counsel failed to appear.
1 April 2003	The applicant's counsel asked for the questioning of two forensic experts.
3 April 2003	Forensic expert S. failed to appear for health reasons.
7-8, 13 and 15 May 2003	Regular court hearings.
20, 27 May and 3 June 2003	The applicant's counsel failed to appear.
4 June 2003	The applicant's counsel asked for additional forensic biological research.
26 May – 4 August 2003	The judge was on leave.
6 October 2003	The applicant retained a new lawyer.
9 December 2003	The trial court received the forensic biological research results and fixed the hearing for 6 January 2004.
6 January 2004	One of the witnesses failed to appear.
15 January 2004	One of the defence counsel failed to appear.
20 January 2004	The court appointed a new lawyer to represent S. and granted the latter's request for an adjournment for case-file study.
29 January 2004	The applicant's counsel asked for questioning of new witnesses.
3 February 2004	The court interpreter failed to appear.
17 February 2004	Regular court hearing.
20 February 2004	The applicant's mother failed to appear.

13. On 17 March 2004 the Town Court found the applicant guilty of manslaughter and sentenced him to ten years' imprisonment. The applicant was taken into custody on the same day.

14. On 27 December 2004 the Irkutsk Regional Court upheld the conviction on appeal, but reduced the applicant's sentence to seven years.

2. Murder charges

15. On 9 June 2004 G., an inmate detained in the same cell as the applicant, was found dead in the cell. According to the official version of the events, the applicant gave a note to the guard Lig., when she was making a prison round, asking her to take him out of the cell where he had strangled G.

16. On the same date the district prosecutor's office instituted criminal proceedings against the applicant in this connection. The investigator in charge commissioned a forensic autopsy of G.'s body. On 10 June 2004 the investigator informed the applicant accordingly. The autopsy was completed on the same day. According to the forensic expert, G. had died of strangulation at least ten hours prior to the time of the autopsy (3.30 p.m., 10 June 2004).

17. On 11 June 2004 the Kuibyshevskiy District Court authorised the applicant's pre-trial detention. On 6 July 2004 the detention order was upheld by the Irkutsk Regional Court. The applicant's pre-trial detention was subsequently extended several times.

18. On 3 September 2004 the investigator commissioned a forensic examination of the note the applicant had allegedly given to Lig. The applicant was informed of the investigator's decision on 9 September 2004. The examination took place from 15 to 27 September 2004. The expert confirmed that the note had been written by the applicant.

19. On 14 April 2005 the District Court again extended the applicant's pre-trial detention until 21 July 2005. Both the applicant's counsel and his mother, acting as his representative, appealed.

20. On 19 May 2005, having heard a representative of the prosecutor's office, the Regional Court varied the decision of 14 April 2005 and extended the detention until 12 July 2005. Neither the applicant's lawyer nor the applicant or his mother were present.

21. On 29 June 2005 the District Court found the applicant guilty of murder and sentenced him to twelve years' imprisonment. During the trial the applicant refused to testify, maintaining his innocence. The court based its findings on witness testimony and forensic evidence. The two inmates who had been detained with the applicant submitted that he had had prior altercations with G. and that they had been asleep at the time of the murder so had not witnessed it. The court further questioned Lig. and other officers who had been present in the remand prison on the night of G.'s murder.

Three of them testified that the applicant had confessed to them that he had strangled G.

22. On 10 March 2006 the Irkutsk Regional Court upheld the applicant's conviction on appeal, reducing his sentence to eleven years' imprisonment.

B. Alleged ill-treatment in custody

1. Investigation into the incident of 13 September 1999

23. On 20 January 2000 the applicant's mother filed a complaint alleging that the applicant had been beaten up by police officers on 13 September 1999.

24. On 17 February 2000 the Angarsk Town assistant prosecutor dismissed the complaint, finding no *prima facie* case of ill-treatment. The assistant prosecutor concluded that the applicant had already had injuries prior to his arrest and that those injuries had resulted from his fight with K. The assistant prosecutor based his decision on the applicant's forensic medical examination of 14 September 1999, the statements by two police officers who had discovered K.'s body and had arrested the applicant, and those of several police officers and prosecution investigators who had seen the applicant after the arrest. The police officers denied having used force and insisted that the applicant could have sustained a lip injury during the fight with K. In his decision to dismiss the ill-treatment complaint the assistant prosecutor also relied on the record of M.'s questioning during which the latter had admitted having a fight with K. and had acknowledged the applicant's participation in it.

25. On 2 October 2003 the Town Court quashed the decision of 17 February 2000 and ordered a further investigation into the applicant's allegations of ill-treatment. The court noted that the investigator had failed to question the applicant and certain witnesses, including the employees of the shop where the applicant had met K. and a number of policemen who could have testified as to whether the applicant had injuries prior to the arrest.

26. On 2 December 2003 the town prosecutor's office received the case file from the Town Court. On 12 December 2003 the prosecutor's office again dismissed the applicant's allegations of ill-treatment as unsubstantiated and refused to institute criminal proceedings against the police officers.

27. On 31 March 2005 the decision of 12 December 2003 was quashed and a new round of enquiries into the ill-treatment complaints was ordered.

28. On 9 April 2005 an investigator with the town prosecutor's office issued a decision, finding no evidence of criminal conduct. The relevant part of the decision read as follows:

"Policeman Kul. explained that on the morning of 13 September 1999 the South-Western police department received information that [a man] had been beaten up near a 'Laguna' bar. He and police officer Ts. ran from the police station and examined the area near the bar. They saw a man lying [on the ground] and showing no signs of life. A police officer Z. notified [them] that the murdered person had been drinking in the square near the bar in the company of three men. They arrested M., S. and [the applicant] ... He saw blood on the [applicant's] hands ... . He had seen [the applicant] before; [the latter] had been a regular in the 'Laguna' bar and had been known for his aggressive behaviour. He took [the applicant] to the police station. In his view, [the applicant] was moderately drunk. [He] behaved aggressively. After the arrestees had been taken [to the police station], they were placed in a cell. M. and [the applicant] had scratches and swellings on their faces. ...

Police officer Z. explained that in the morning of 13 September 1999 police officers Kul. and Ts. had approached the 'Laguna' bar, which was some 200 metres away from the police station. They examined the area near the bar [and] discovered a man with no sign of life. Three men were arrested near the bar because they had been drinking alcohol with the deceased. The [applicant's] clothes were covered with blood stains.

An officer on duty ... B. stated that on 13 September 1999, at 7.30 a.m., M., S. and [the applicant] had been taken to the police station on suspicion of having committed a murder. The arrestees had traces of beatings on them. [They] were aggressive and used obscene language. In his presence no force was used against them in the police station.

Officer Ts. explained that he had worked ... at the South-Western police department from 1990 to 2001. He did not recall the circumstances of [the applicant's] arrest. He had trouble remembering the discovery of a body near the 'Laguna' bar and could not provide any details. He did not exert physical or psychological pressure on the arrestees, including [the applicant]. In general, none of the policemen from his unit used physical force against arrestees in his presence, ...

It was impossible to find and question police officer M.

Police officers of the South-Western police department, who work in a group for investigation of serious offences, Kh., Kyc., and G. submitted the following. G. had been on annual leave from 28 July to 27 September 1999; Kh. had been on duty, and had been present when persons suspected of murdering K. had been brought in. He remembered that M. had injuries on his face. He worked with a suspect, S. He did not work with the other suspects. Kyc. talked to all three [suspects]. One of them, either [the applicant] or M., explained that he had hit ... K., several times. He could not indicate who exactly had said that because a lot of time had passed. He did not collect written statements [from the arrestees], because an investigator had already started working [with them]. He did not use physical force against the arrestees. He remembered that one of the arrestees had a bruise and a swollen cheek...

...

A senior investigator of the town prosecutor's office, B. stated that on 13 September 1999 he had instituted criminal proceedings in connection with K.'s murder. S., M. and [the applicant] were arrested on suspicion of having committed that murder.

Neither during the arrest nor after it had [the applicant] complained orally or in writing that physical force had been used against him ...

A senior investigator of the town prosecutor's office ... N., submitted that on 14 September 1999 a case concerning K.'s murder had been assigned to him. On the same day he questioned M. in the presence of a lawyer. M. stated that he had participated in a fight with K., S. and [the applicant]. During the fight K. had kicked him in the face. [The applicant] refused to give a statement during the investigation; [he] did not give any explanations and did not make any written statements. [The applicant] did not complain to him that he had been beaten up in the police station ...

...

According to report no. 2594 issued on 14 September 1999 by a forensic medical expert, [the applicant] had bloodletting into the mucous membrane accompanied by an injury to the lower lip, which was caused by a blunt firm object, such as a fist or a foot in a boot. [It] appeared approximately twenty-four hours before and did not cause health damage. When M. was examined (expert report no. 2599 of 14 September 1999), he had a haematoma and an abrasion on his face, and injuries to the soft tissue of his face and to his right hand. Those injuries could have been caused by blunt firm objects, such as a fist or a foot in a boot. [They] were caused no later than twenty-four hours before and did not cause any health damage.

The case file contains a report of M.'s questioning during which he stated that on the night of 13 September 1999 he, K., S. and [the applicant] had a fight in the course of which they had hit each other several times. He also said that [the applicant] had hit K. several times. M. was questioned in the presence of a lawyer. He was advised of the provisions of Article 51 of the Constitution of the Russian Federation, namely that he had a right not to incriminate himself. However, M. made a handwritten note in the record that he wanted to give a statement. As to his injuries, he said that he had sustained them during the fight. During the interrogation he did not complain that police officers had used physical force against him or that he had [confessed] under duress.

It was established in the course of the investigation that M. and [the applicant] had already had injuries prior to their arrival at the police station. The injuries recorded in the forensic medical expert reports were not caused by the police officers of the South-Western police department.

In view of the above, the complaint lodged by the [applicant's] mother that the police officers ... had abused their official powers was not corroborated by the results of the investigation."

29. On 21 April 2005 the decision of 9 April 2005 was quashed and an additional investigation was ordered.

30. On 2 May 2005 the same investigator of the town prosecutor's office, who had issued the decision of 9 April 2005, dismissed the complaint, refusing to institute criminal proceedings. The text of the decision of 2 May 2005 was practically identical to that of 9 April 2005.

31. It appears that the decision of 2 May 2005 was annulled by a higher-ranking prosecutor and a new round of enquiries commenced.

32. On 24 March 2006 the senior investigator of the town prosecutor's office refused to institute criminal proceedings against the police officers. The decision reproduced in part the text of the decision of 9 April 2005. The senior investigator also questioned the applicant and Mar. and Iv., the two women who had worked in the 'Laguna' bar in 1999. M. could not recollect whether the applicant had had injuries on 13 September 1999 and Iv. stated that she had seen blood on the hand of one of the suspects.

33. On 23 June 2006 the Town Court dismissed the complaint lodged by the applicant's mother in respect of the incident of 13 September 1999. The court noted that the applicant's allegations of ill-treatment in police custody had been examined and assessed in the course of his trial. According to the verdict, the applicant had sustained the injuries as a result of the fight with K.

34. On 24 July 2006 the town prosecutor's office again dismissed the applicant's allegations of ill-treatment for the same reasons as before.

35. On 13 October 2006 the Irkutsk Regional Court quashed the decision of 23 June 2006 and discontinued the proceedings. The court noted that the applicant's allegations of ill-treatment had been subject to review in the course of the criminal proceedings against him and that the Town Court had not been competent to address this issue anew.

2. Incident of 12 April 2002 and the ensuing investigation

36. The applicant provided the following account of an incident that occurred on 12 April 2002 while he was detained on remand on the manslaughter charge. A group of guards headed by captain Al. and major Mak. entered cell no. 40 where the applicant was held. The guards, kicking the inmates and hitting them with rubber truncheons, forced them to leave the cell. In the hallway the applicant saw two rows of some twenty to twenty-five guards. The inmates were told to run between them down the hallway. While the applicant was running, he received several blows to his back and head with rubber truncheons. The inmates then had to walk up the stairs where guards continued to hit them with truncheons. On the next floor the applicant again saw rows of guards between which he was forced to run. At the end of the corridor the inmates were told to squat down and remain in that position, with their faces turned to the wall. The beatings continued. The guards also searched the inmates one by one. They searched the cell and seized the inmates' personal belongings, documents related to criminal proceedings, letters, photos and money. On 14 April 2002 a prison doctor allegedly visited cell no. 40, but refused to record the inmates' injuries.

37. On 18 April 2002 a prison doctor examined the applicant and did not detect any injuries. Prosecutor Sh. was present during the examination.

38. On 24 May 2002 a prosecutor refused to institute criminal proceedings against the guards, finding no *prima facie* evidence of ill-treatment. The relevant part of the decision read as follows:

"[The applicant] and other inmates detained in cell no. 40 (Mal., Kuz., Sm., and Ag.) confirmed that on 12 April 2002 the guards had beaten them up with rubber truncheons and that S. had blood coming out of his throat. [According to them], after the search of the cell, certain personal belongings had disappeared. The medical personnel had refused to record injuries; the complaints had gone unanswered.

It was established during the investigation that on 10 April 2002 twelve inmates, including [the applicant], had been placed in cell no. 40 after [the cell] had been refurbished. On 11 April 2002, during a survey of the cell, a hole, leading to cell no. 41, was discovered in the wall. On 12 April 2002, during the search in cell no. 40, forbidden objects were found and seized.

According to a certificate issued by the remand prison administration [rubber truncheons] were not used against [the applicant] and other inmates on 12 April 2002.

The remand prison officers Mak., Al., L., whom [the applicant] had identified as individuals who had used [the rubber truncheons], explained that on 12 April 2002 they had not used [rubber truncheons] against [the applicant] or other persons.

... Mak. explained that on 11 April 2002 during a survey of cell no. 40 a hole leading to cell no. 41 was discovered in the wall. Enquiries were made ... and it was established that the hole in the wall had been made by Kuz. On 12 April 2002, during his visit to the cell, he explained to the inmates the procedure for obtaining compensation for damage. [Rubber truncheons] were not used in the remand prison on that day.

... Al. submitted that on 12 April 2002 during the inspection of the cells, [he] together with Mak. had entered cell no. 40, where, in violation of the internal regulations, bed sheets and blankets had been hung over sleeping places and on the walls. On [their] order the sheets were removed, and Mak., [having discovered] a hole in the wall, explained that an inmate on duty would be held responsible for damaging the property. During that day, when he was passing through the main building, [he] saw that officers of the detention unit were performing searches in the cells, including cell no. 40. The inmates detained in that cell were asked to go out ... , and they were subjected to a partial bodily search. [Rubber truncheons] were not used against anyone. Personal belongings allowed by the internal regulations were not seized.

... L. noted that neither he nor other guards had used [rubber truncheons] against the inmates on 12 April 2002.

... G. explained that on 12 April 2002 he, together with a group [of officers], had performed a search in cell no. 40. The inmate on duty was present in the cell during the search. Prohibited items, listed in the report, were seized during the search. Personal belongings were not seized.

According to the report on the seizure of prohibited items issued on 12 April 2002, a sharpened metal piece, cards, and other illegal objects were seized from cell no. 40. The inmate on duty Mal. refused to sign the report.

... Doctor Zh., who had been on duty from 4 p.m. on 12 April 2002 to 8 a.m. on 13 April 2002, explained that, at the request of the remand prison administration, she had examined three inmates, who had asked for an examination pertaining to possible injuries. In the absence of any injuries, she did not make an entry in the ... register; she

does not remember those inmates' last names ... No medical assistance was provided to inmate S. ...

As shown by an extract from the ... register, no entries were made in the register between 12 and 14 April 2004.

... Doctor Sp. and paramedic Sid. submitted that ... from 14 to 15 April 2002, no requests had been received from the inmates detained in cell no. 40, and they had not talked to [the inmates].

The above statements do not corroborate [the applicant's] assertion that on 14 April 2002 .... a doctor on duty had come to their cell and had seen the injuries, but had refused to record them.

Following the order of the supervising prosecutor, on 18 April 2002 [the applicant] was examined at the medical unit of the remand prison. No injuries were discovered..."

39. On 4 December 2003 the Kirovskiy District Court of Irkutsk found that the initial investigation into the applicant's ill-treatment complaints had been incomplete, quashed the decision of 24 May 2002 and authorised further investigation. In particular, the District Court pointed out that the prosecution authorities had failed to question all inmates detained in cell no. 40 and all guards who had been present during the search. On 24 March 2004 the Regional Court upheld the decision of 4 December 2003 on appeal.

40. On 6 May 2004 a deputy regional prosecutor dismissed the applicant's ill-treatment complaints again. The decision of the deputy prosecutor was based on the same evidence as the decision of 24 May 2002. In addition the deputy prosecutor referred to the statements made by two inmates, one of whom had confirmed that the beatings had taken place, whilst the other had not been present during the search. He also noted that it was impossible to establish the identity of all the inmates who had been held on 12 April 2002 in cells nos. 40 and 41.

41. On 2 August 2004 the Kirovskiy District Court upheld the decision of 6 May 2004, finding that the prosecution authorities had conducted a comprehensive investigation in response to the applicant's allegations, had eliminated the errors which the District Court had pointed out in its decision of 4 December 2003 and had correctly assessed the evidence collected. Both the applicant and his mother, acting as his representative, attended the hearing. On 29 December 2004 the Irkutsk Regional Court upheld the decision of 2 August 2004 on appeal.

3. Incident of 14 October 2002 and the ensuing investigation

42. On 14 October 2002 officer V. was to escort the applicant to a meeting with his lawyer. According to the report subsequently prepared by V., when he wanted to search the applicant, the latter refused and "started

swinging his arms and shouting". V. warned the applicant that he would use a rubber truncheon to subdue him. The applicant ignored V.'s warning and continued "swinging his arms and shouting". V. hit the applicant once on the back. The applicant consented to the search. V. summoned the doctor, who examined the applicant and noted a bruise near his left shoulder-blade.

43. On 16 October 2002 the applicant was examined by a prison doctor, who found him in good health.

44. On 21 October 2002 the warden ordered the applicant's confinement for five days in a disciplinary cell for failure to comply with the prison guard's order to undergo a personal search on 14 October 2002.

45. The applicant and his mother complained to a supervising prosecutor about the beatings.

46. On 19 November 2002 the supervising prosecutor sent a letter to the applicant, informing him that his complaints had been looked into and had been dismissed as unsubstantiated.

47. On 22 November 2002 the applicant was examined by a doctor, Sl., a coordinator with Medecins Sans Frontières in Russia, a private international humanitarian organisation, in the presence of the applicant's mother and remand prison doctor Mak. The applicant's preliminary diagnosis comprised, *inter alia*, a fracture of the fifth and six cervical vertebrae, osteochondrosis of the cervical spine, and an injury of the lumbar spine with a possible injury of organs of the retroperitoneal space. The expert noted that additional medical procedures, including X-ray examinations and examinations by other specialists, were necessary to confirm the preliminary diagnosis. The expert also recommended that the applicant remain in bed and wear a corset and an orthopaedic collar.

48. On 25, 26 and 28 November 2002 the remand prison's general practitioners examined the applicant. On 28 November 2002 the applicant consulted a surgeon, a neurologist and an X-ray specialist at the remand prison. The neurologist diagnosed him as having vertebrogenic cervicalgia. According to the X-ray, no disorder was discovered in the cervical spine and osteochondrosis of an incipient character was found in the lumbar spine. The applicant was not allowed to see the X-rays.

49. On 3 December 2002 an emergency doctor was called to see the applicant during a trial hearing, in response to his complaints about severe back and neck pain. The emergency doctor diagnosed the applicant as having "a closed fracture of the fifth and six cervical vertebrae [and] a closed injury of the lumbar spine ([caused] in 1999, 2000, 2002)" and gave him a painkilling injection.

50. On 4 December 2002 the applicant was admitted to the remand prison hospital where he underwent examination and treatment. The preliminary diagnosis of the vertebrae fracture was not confirmed. The surgeon diagnosed him with osteochondrosis, and the neurologist confirmed the diagnosis of vertebrogenic cervicalgia. The applicant was also suffering

from bronchitis and caries. He was released from hospital on an unspecified date and prescribed outpatient treatment.

51. On the same day the Kirovskiy District Court found that the prosecutor had failed to issue a formal decision summarising his findings in response to the applicant's complaint and ordered an official investigation into the ill-treatment complaints.

52. On 16 January 2003 a private doctor examined the applicant and issued a certificate, noting that the applicant needed to be treated by a chiropractor in relation to "a suspicion [the he had] a healed fracture of a spinous process". The doctor concluded that the applicant was suffering from a post-traumatic pain in the cervical spine.

53. From 21 to 24 January 2003 the applicant underwent further examination in a neurological department of the municipal hospital, where he was diagnosed with osteochondrosis in the cervical and lumbar areas.

54. On 6 May 2004 a deputy regional prosecutor refused to institute criminal proceedings against V., finding that the use of force against the applicant had been lawful. The relevant part of the deputy prosecutor's decision read as follows:

> "On 14 October 2002, at approximately 11.50 a.m., in compliance with paragraph 2 of section 29 of the Internal Regulations, officer V. asked [the applicant] to submit his personal belongings for a search before he was taken to a meeting with his counsel ... [The applicant] refused to comply with the officer's lawful orders [and] started shouting and swinging his arms to prevent the search. [The applicant] did not respond to V.'s repeated orders to stop unlawful actions and warnings that [a rubber truncheon] would be used if [the applicant] refused to be searched. In order to put an end to the refusal to comply with the lawful orders, officer V. used a rubber truncheon against [the applicant] in accordance with paragraph 3 of Article 45 of the Federal Law... - [he] hit [the applicant] once on the back. Subsequently [the applicant] stopped his unlawful actions; he was examined by a prison doctor, K., who recorded that [the applicant] had a pale pink bruise 5 centimetres long, in the left shoulder-blade area, which did not cause any health damage. The remand prison administration conducted an official investigation in response to that incident; the use of the [rubber truncheon] by officer V. was found to be lawful. ...
>
> [V's superior] Mok. explained that... on 14 October 2002 ... V. had reported to him about the use of [the rubber truncheon] against [the applicant] for his refusal to comply with the lawful orders ... An official investigation was conducted into the incident ...
>
> ... V. explained that when he had been on duty on 14 October 2002, in the first half of the day, [the applicant] had been brought ... for a meeting with counsel; he asked [the applicant] to submit his personal belongings for a search, which the latter had refused to do and had started at the same to swing his arms. [The applicant] had not responded to repeated warnings that a rubber truncheon would be used. After having given [the applicant] sufficient time to comply with lawful orders, V. had hit him once in the back with a rubber truncheon to stop his unruly actions, in accordance with paragraph 5 of section 45 of the Federal Law; ... [the applicant] had been examined by a doctor and taken to meet counsel. During the examination doctor K. had recorded a

bruise on [the applicant's] shoulder-blade area, and had issued a certificate to that effect.

According to ... K.'s report, on 14 October 2002, at approximately 12.30 p.m. he had examined [the applicant] after [the rubber truncheon] had been used against him and recorded a pale pink bruise, measuring 5 centimetres, on the left side of the shoulder-blade area, which had not led to health damage.

As shown by a medical report prepared by a medical coordinator of Medecins Sans Frontières, S., following an examination of [the applicant] on 22 November 2002, and submitted by [the applicant's mother], [the applicant] had a fracture of the spinous processes of the fifth and six cervical vertebrae, and an injury of the lumbar spine. Referring to those [injuries], [the applicant and his mother] claimed that [the applicant] had been beaten by the prison guards. However, according to a report issued by a forensic medical expert on 29 April 2004 on the basis of documents submitted [for the expert examination] (the certificate and report issued by doctor K., [the applicant's] medical record, the report by [the medical coordinator] S., a medical certificate of 3 December 2002 and a certificate of 24 December 2002 issued by the traumatological department of the Angarsk Town hospital), [the applicant] had a bruise on the left shoulder-blade. The injury was caused by a firm blunt object, possibly on 14 October 2002 and did not cause damage to the health. The medical documents submitted [for the expert examination] did not contain any information confirming that [the applicant had sustained] an injury to the cervical spine ([the applicant] refused to undergo an additional X-ray examination), which is in conformity with the conclusions of the investigation."

55. On 2 August 2004 the Kirovskiy District Court upheld the decision of 6 May 2004, holding as follows:

"The arguments put forward by [the applicant and his mother] were refuted by materials gathered in the course of the investigation. While it is true that the conclusions ... were based on the statements by remand prison guards, it transpires from the decision [of 6 May 2004] and the materials of the investigation that those statements were corroborated by records, reports, acts and other documents. The court finds accordingly that [the applicant's] allegations about the ineffectiveness of the investigation are unsubstantiated."

56. The Regional Court upheld the decision of 2 August 2004 on appeal.

4 Incident of 5 August 2003 and the ensuing investigation

57. On 5 August 2003 the applicant had an altercation with guard L. According to the applicant, L. beat him up in retaliation for his complaints against prison guards. Guard St. allegedly witnessed the beatings.

58. In response to the applicant's complaint about the beatings, the regional prosecutor conducted an investigation. On 8 August 2003 he refused to institute criminal proceedings against L. noting that there was no *prima facie* evidence of ill-treatment. The relevant part of the decision read as follows:

"According to the [applicant's] complaint, on 5 August 2003, after his meeting with [his mother], a prison officer had taken him to a temporary detention cell where he was to wait for his transfer to his own cell. At about 11 a.m. ... L. came and took [the

applicant] to an office ... L. criticised [the applicant] for his complaints against the prison guards saying that he could do anything ... He punched [the applicant] three times in the chest and kicked him ... At that time officer St. came into the office and saw L. beating [the applicant]. ... L. said that he would find a reason to hold [the applicant] responsible [for the incident] and started drafting the report alleging that he had to use force against [the applicant] for the latter's refusal to comply with lawful orders of the prison administration. The report was attested to by officers St. and T. After that [the applicant] was taken to his cell. He was examined by a doctor at 3 p.m. ...

The investigation conducted did not confirm the applicant's allegations.

... Officer I. submitted that, on 5 August 2003 ... after the [applicant's] meeting with [his mother], he had taken [the applicant] to a temporary detention cell in order to search him to ensure his safe transfer to his own cell. However, [the applicant] refused to be searched claiming that the search should be conducted in front of his cell ... When I. was talking to [the applicant] another prison officer showed up. I. did not know his name. The officer wanted to know the reason for their dispute. Then he told I. to take the applicant to an office. I. did so and left...

... L. submitted that ... I. had told him about the [applicant's] refusal to be searched ... Together with I. he took [the applicant] to an office where he asked [the applicant] to undergo the search. [The applicant] refused ... He advised [the applicant] that, in accordance with the order of the Ministry of Justice, all detainees were to be searched after a meeting with a representative. After that L. asked [the applicant] to undo his jacket and prepare himself for the search. The applicant refused to do so. Then L. came closer to [the applicant] and started unbuttoning his jacket ... [The applicant] grabbed L.'s right arm, ripping off one of the buttons on L.'s shirt in order to prevent the search. L. ... held [the applicant] by the arm, twisted it behind his back and pinned [the applicant] to the floor. Then he searched [the applicant] and found [some] letters on him in a plastic bag. Immediately after that a doctor was invited into the office to examine [the applicant] ... However, upon the doctor's arrival, [the applicant] refused to be examined, claiming that everything was fine and that he had no complaints against the remand prison administration. At approximately 3.20 p.m. [the applicant] was examined by [a paramedic]. L. was not present.

Officers St. and T. made similar statements.

According to the medical report of 6 August 2003, [the applicant] was examined in [his mother's] presence. He had a bruise on his left forearm measuring 3 cm by 1.5 cm. No other injuries were detected. According to the [applicant's] medical history file ..., from 6 to 7 August 2003 [the applicant] was placed in hospital where he was examined by a neurologist. [The applicant] complained of nausea and headache. It was decided that the applicant did not need further inpatient treatment. He was discharged ...

Paramedic Ch. submitted that on 5 August 2003 at 3.20 p.m. ... she had examined [the applicant] ... She did not see any bruises ... on him. He did not make any complaints about his condition.

Inmate Ter. submitted that he was detained ... together with [the applicant] in cell no. 207. On 5 August 2003 [the applicant] was taken out of the cell before and after lunch. [Ter.] did not see any injuries on [the applicant]. On 6 August 2003 he saw the

applicant scratch his left forearm intensively. After that it became red. After lunch [the applicant] was taken out of the cell for 1-2 hours. Then he came back, packed his things and said that he was to be admitted to hospital.

Inmates Luk. and G. made similar statements.

According to the report prepared by paramedic Er., on 5 August 2003 she was summoned to office no. 2 to examine [the applicant]. However, the applicant did not consent to the examination. He also said that he did not have any complaints against the administration of the remand prison."

59. On 4 December 2003 the Kirovskiy District Court of Irkutsk upheld the decision of 8 August 2003. The court found the use of force against the applicant to be lawful. It further upheld the earlier prosecutor's finding that the applicant himself had caused the bruising on his left forearm. On 24 March 2004 the Irkutsk Regional Court, on appeal, upheld the decision of 4 December 2003.

C. Conditions of detention

1. Detention in remand prison no. IZ-38/1 in Irkutsk from 26 September 1999 to 21 November 2003

60. The applicant was detained in remand prison no. IZ-38/1 in Irkutsk from 26 September 1999 to 21 November 2003. According to him, the cells in the remand prison were overcrowded. The number of beds was insufficient and the inmates had to take turns to sleep. No medical assistance was available. His relevant complaints to the prison administration and prosecutor's office were to no avail.

61. In January 2003 the applicant was transferred to hospital no. 2 of the Angarsk Town correctional colony, where he allegedly stayed for several days in a cell for HIV-positive detainees. He was subsequently transferred to another cell where he was detained with an inmate suffering from syphilis.

62. On 27 January 2003 the applicant was transferred back to the remand prison. During the transport he was allegedly not allowed to wear warm clothes.

2. Solitary confinement

63. Following G.'s murder, on 18 June 2004 inmates B., N. and V. complained to the remand prison administration that the applicant's presence in the cell posed a threat to their life and limb. They alleged that the applicant had told them that he might kill someone else "for his collection".

64. On the same day, the prison governor ordered the applicant's placement in solitary confinement, where the applicant was held until 22 March 2006.

65. According to the Government, the applicant was detained in satisfactory conditions. The personal space available to him exceeded the domestic standards by 1.5-2 times. He was provided with a sleeping place. The applicant could see a neurologist, on a regular basis, in respect of his cervical vertebrae problems and osteochondrosis. The applicant also received treatment for bronchitis and his condition was monitored during the periods when he was on hunger strike. He consulted a psychiatrist once. During the relevant period he had 111 meetings with his lawyer and his mother.

66. According to the applicant, his solitary confinement was ordered with an intention to humiliate and debase him. A prison guard allegedly told the applicant that it was easier to kill a man detained alone. The applicant's health seriously deteriorated during the detention. He had several nervous breakdowns; however, no medical assistance was provided. The applicant unsuccessfully complained about his solitary confinement to various authorities.

D. Complaints against officials

67. On a number of occasions the applicant's mother unsuccessfully applied to a prosecutor's office asking for criminal proceedings to be instituted against various officials, including prosecutors, investigators, experts and judges, alleging that they had failed to fulfil their obligations.

68. In 2007 the applicant's mother lodged a complaint with a district court about inaction on the part of the prosecutors in punishing persons who had abused their powers. On 11 January 2007 the Irkutsk Regional Court, at last instance, discontinued the examination of the complaint, finding that it had been examined previously and dismissed by a final judicial decision.

II. RELEVANT DOMESTIC LAW

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

1. Solitary confinement

69. A detainee may be placed in solitary confinement for a period exceeding one day subject to the reasoned decision of the warden to be approved by the prosecutor. In the event a detainee is believed to pose a

threat to the safety of others, the warden may make take such decision without the subsequent prosecutor's approval (section 32).

2. Use of force

70. 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).

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

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

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

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

(4) to free hostages;

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

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

B. Investigation of criminal offences

72. In response to a complaint alleging a criminal offence, the investigator is under an obligation to verify the complainant's allegations (Article 144 of the new Code of Criminal Procedure).

73. Should there be sufficient grounds to believe that a crime has been committed, the investigator initiates a criminal investigation (Article 145 of the new Code of Criminal Procedure).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT IN CUSTODY

74. The applicant complained that on 13 September 1999, 12 April and 14 October 2002 and 5 August 2003 he had been subjected to ill-treatment in custody and that the ensuing investigation had not been effective, in contravention of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

75. The Court notes that this part of the application 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. General principles

(a) Alleged ill-treatment

76. 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).

77. The Court further 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 *Labita*, cited above, § 121).

78. Where an individual claims to have been injured as a result of ill-treatment in custody, the Government are under an obligation to provide a complete and sufficient explanation as to how the injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

79. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-XV (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*, cited above, § 38). 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).

(b) Adequacy of the investigation

80. 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 [its] 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).

81. 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).

82. 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.

83. 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).

2. Application of the principles to the present case

(a) Incident of 13 September 1999

(i) The parties' submissions

84. The Government submitted that the applicant's allegations of ill-treatment had been thoroughly examined by the authorities and dismissed as unsubstantiated. The investigation conducted by the authorities had been prompt and comprehensive. The prosecutor's office questioned numerous witnesses and obtained and examined forensic evidence. The applicant's allegations that he had been beaten up by five or six police officers (who had punched and kicked him) had been refuted by forensic evidence which showed only a small injury on the applicant's lower lip, being minor in nature and not entailing any health problems for him.

85. The applicant maintained his complaint.

(ii) The Court's assessment

(α) Alleged ill-treatment

86. As regards the applicant's allegations that, following his arrest on 13 September 1999, he had been severely beaten by policemen (see paragraphs 7 and 23-35 above), the Court observes that the medical evidence submitted by the parties conclusively demonstrates that the applicant sustained an injury on the day of the arrest. The Court considers that the injury was, 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 that connection.

87. Having regard to the material in its possession and to the parties' submissions before it, the Court will answer this question in the negative. In the Court's view, the Government have discharged their obligation to provide a satisfactory and convincing explanation as regards the applicant's injury.

88. The Court accepts the Government's explanation that the applicant sustained an injury in the course of a fight with K. Their argument is supported by the evidence collected and analysed by the domestic authorities in the course of the ensuing investigation and trial. In this connection, the Court 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 disregard 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 particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, § 32).

89. The Court notes that no material has been adduced in the course of the Strasbourg proceedings which could call into question the findings of the domestic authorities and add weight to the applicant's allegations. The Court discerns no cogent elements in his submissions which could lead it to disregard the findings of fact of the domestic authorities.

90. Accordingly, there has been no violation of Article 3 of the Convention with regard to the alleged ill-treatment by the police on 13 September 1999.

(β) Adequacy of the investigation

91. The Court does, however, consider that the medical evidence and the fact that the applicant sustained the injury on the day of his arrest raise a reasonable suspicion that the injuries he sustained might have been caused by the police. Accordingly, the Court is satisfied that the applicant raised an arguable claim concerning the alleged ill-treatment and it was incumbent on the domestic authorities to conduct an effective official investigation.

92. The Court further observes that the prosecutor's office promptly responded to the complaint lodged by the applicant's mother on 20 January 2000 and conducted an investigation in response to her allegations that her son had been beaten up immediately after his arrest.

93. The Court can also accept that the authorities have carried out all the measures necessary to elucidate the circumstances of the applicant's arrest and the events leading to it. They collected forensic evidence and questioned the applicant, the alleged perpetrators and the witnesses. Nevertheless, the Court is not convinced that the length of the investigation conducted by the authorities is compatible with the standards set forth in the Court's case-law concerning the effectiveness of an investigation under Article 3 of the Convention.

94. In the present case it took the domestic authorities almost six years and nine months to complete the investigation. During that time the refusal by the prosecutor's office to institute criminal proceedings against police officers was repeatedly quashed by the higher prosecutor or the court for the failure on the part of the prosecutor's office to take all the measures necessary to complete the investigation. 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.

95. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities failed to respond to the applicant's complaint about alleged ill-treatment with the level of diligence required by Article 3 of the Convention. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

(b) Incident of 12 April 2002

(i) The parties' submissions

96. The Government contested the veracity of the applicant's allegations. The domestic authorities had duly conducted an investigation in response to the applicant's complaint, in compliance with the standards set forth in the Convention. The investigation had not confirmed the applicant's allegations of ill-treatment.

97. The applicant persisted in his allegations that on 12 April 2002 the prison guards had beaten him and other inmates with rubber truncheons or had subjected them to any ill-treatment (see paragraphs 36-41 above).

(ii) The Court's assessment

(α) Alleged ill-treatment

98. The Court observes that the parties presented different versions of the events that occurred on 12 April 2002. The applicant asserted that, at the time of the search of the cell in which he was held, he and other inmates had been beaten up by the remand-prison guards with rubber truncheons. The Government denied the applicant's allegations with reference to the medical evidence showing a lack of any injuries on his body. Despite the fact that the applicant provided a rather detailed account of the events of 12 April 2002, the Court is unable, on the basis of the materials submitted, to find *prima facie* that the applicant was subjected to the alleged ill-treatment.

99. The remand-prison doctors did not document any injuries in respect of the applicant or other inmates. The applicant did not submit any other evidence, such as statements made by his lawyer, his mother or other inmates, to corroborate his version of the events. Nor does the Court discern anything in the materials in its possession to suggest that the domestic authorities' findings in respect of the applicant's allegations were unreasonable or lacking in evidential basis.

100. It follows that there has been no violation of Article 3 of the Convention under its substantive limb.

(β) Adequacy of investigation

101. The Court notes that in response to the applicant's complaint of ill-treatment which allegedly took place on 12 April 2002, the domestic

authorities carried out an official inquiry. The applicant's allegations were subjected to examination by the prosecutor's office and subsequently by courts at two levels of jurisdiction. The final decision on the matter was taken on 29 December 2004.

102. The Court further observes that the authorities took all the steps necessary to verify the applicant's accusations. They questioned the applicant, the inmates who had been detained with him, the prison officers and medical personnel and studied the official reports prepared and the results of the applicant's medical examinations conducted by two paramedics. The judicial authorities reviewed the materials of the prosecutor's inquiry and ensured both the applicant's and his representative's presence in court. The Court discerns nothing in the materials in its possession to suggest that the domestic authorities' approach in the present case lacked promptness, expeditiousness or thoroughness.

103. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the applicant's complaint of ill-treatment in police custody was "effective". There has therefore been no violation of Article 3 of the Convention under its procedural limb.

(c) Incident of 14 October 2002

(i) The parties' submissions

104. The Government argued that the use of force against the applicant had been lawful and justified. The applicant had failed to comply with the lawful demands of the guard and the latter had responded accordingly. The guard had duly warned the applicant and only after that had he used a rubber truncheon to restrain him. The investigation carried out by the authorities in response to the applicant's allegations of ill-treatment had been effective as required by the procedural limb of Article 3 of the Convention.

105. The applicant maintained his complaint in that on 14 October 2002 officer V. had hit him with a rubber truncheon and that such use of force against him had been excessive (see paragraphs 42-56 above).

(ii) The Court's assessment

(α) Alleged ill-treatment

106. The Court observes that it is not disputed by the parties that on 14 October 2002 the applicant had an altercation with a remand-prison guard resulting in the use of force against him. In particular, guard V. hit the applicant once with a rubber truncheon. The Government, however, asserted that the use of force against the applicant had been lawful and necessary, in response to the applicant's unruly behaviour.

107. While the Court may accept that the applicant had behaved aggressively towards the guard, it is not convinced that the applicant's conduct was such as to justify recourse to the use of a rubber truncheon against him.

108. The Court notes that, in relation to the incident of 14 October 2002, the Government did not furnish any evidence that the applicant had been particularly dangerous. Nor did the Government allege that the applicant had caused or could have caused injuries to the guard. As can be seen from the domestic authorities' decisions, the applicant refused to subject himself to a search and started "swinging his arms and shouting". The Court accepts that in these circumstances the guard may have needed to resort to physical force in order conduct a search. However, it is obvious that hitting a detainee with a truncheon was not conducive to the desired result, that is, to facilitate the search. In the Court's view, in that situation the blows with the truncheon were merely a form of reprisal or corporal punishment (see *Dedovskiy and Others v. Russia*, no. 7178/03, § 83, 15 May 2008).

109. In these circumstances, it remains for the Court to ascertain whether the treatment complained of by the applicant attained a minimum level of severity, such as to fall within the scope of Article 3. The Court takes cognisance of the medical documentation submitted by the parties describing the applicant's injury as causing no "health damage". However, this fact alone cannot rule out a possibility that the treatment was severe enough to be considered inhuman or degrading. The Court concludes that the degree of bruising indicated that his injuries were sufficiently serious to amount to ill-treatment within the scope of Article 3 (compare *Assenov and Others*, cited above, § 95).

110. Having regard to the above, the Court finds that on 14 October 2002 the use of a rubber truncheon by a prison guard to restrain the applicant for the purposes of a search amounted to inhuman and degrading treatment contrary to Article 3 of the Convention. It follows that there has been a violation of Article 3 of the Convention under its substantive limb.

(β) Adequacy of the investigation

111. The Court observes that, following the applicant's complaint lodged in October 2002, the authorities carried out an investigation into his allegations of ill-treatment. The investigation was completed on 29 December 2004. Whilst the Court accepts that the authorities promptly reacted to the applicant's complaint, it is not convinced, however, that the investigation was sufficiently thorough to meet the requirements of Article 3.

112. Admittedly, the prosecutor took certain steps to verify the applicant's accusations. He questioned the applicant and the prison officers involved in the incident. He studied the reports prepared by them and the results of the applicant's medical examinations conducted by the

remand-prison doctors and independent medical professionals. He then concluded that the officer's actions had been lawful.

113. The Court, however, cannot subscribe to the prosecutor's findings. It observes that the domestic law in question permits recourse to physical force in respect of detainees only if non-forceful alternatives are not feasible (see paragraph 70 above). At no point in the course of the investigation did the prosecutor look into the issue of whether the use of a rubber truncheon was actually necessary to stop the applicant's unruly behaviour. On the contrary, it appears that the prosecutor unconditionally accepted that the use of a rubber truncheon was legitimate and dismissed the applicant's complaint on that ground.

114. The Court further observes that the prosecutor relied in his findings on statements made by the alleged perpetrator. He did not, however, take into account the fact that the latter obviously had an interest in the outcome of the case and in exonerating himself.

115. The Court further notes that the applicant's allegations were subsequently subjected to examination by domestic courts at two levels of jurisdiction. In this respect the Court observes that the national courts merely upheld the prosecutor's findings. They did not summon the applicant or the alleged perpetrator to question them in person and to present the applicant with an opportunity to confront officer V.

116. 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 cannot be considered "effective". There has therefore been a violation of Article 3 of the Convention under its procedural limb.

(d) Incident of 5 August 2003

(i) The parties' submissions

117. As regards the altercation between the applicant and guard L. which occurred on 5 August 2003 (see paragraphs 57-59 above), the Government submitted that the use of force against the applicant was strictly necessary and, in any event, did not reach the threshold of severity required by Article 3 of the Convention. The applicant's allegations had been subjected to thorough examination by the authorities, which had no case to answer on behalf of the alleged perpetrator.

118. The applicant maintained his complaint.

(ii) The Court's assessment

(α) The alleged ill-treatment

119. The Court observes that the parties presented different versions of the events of 5 August 2003. The applicant asserted that he had been beaten up by guard L. The Government, however, submitted that the use of force against the applicant had been in compliance with the law. Guard L. had had to subdue the applicant to carry out a search. According to the medical documents, a day after the altercation the applicant had a bruise on his left forearm. While the Court does not exclude that this injury could have resulted from the use of force against the applicant, it is nevertheless not persuaded that, in the circumstances of the case, the use of force by guard L. was excessive and that it reached the level of severity required under Article 3 of the Convention.

120. The Court accepts the Government's explanation that the applicant was refusing to comply with the legitimate orders of the prison guard and that, because of the applicant's threatening behaviour, the prison guard needed to resort to physical force in order to subdue the applicant and search him.

121. In these circumstances, the Court cannot conclude that on 5 August 2003 the use of force by a prison guard to restrain the applicant amounted to inhuman and degrading treatment contrary to Article 3 of the Convention. While the applicant might have experienced certain mental and physical suffering as a result of the altercation, the use of force against him cannot be held to have been excessive. It follows that there has been no violation of Article 3 of the Convention under its substantive limb.

(β) The adequacy of investigation

122. The Court notes that the domestic authorities took all the necessary steps to verify the applicant's accusations. They questioned the applicant and the prison officers involved and studied the documentary evidence, including the medical evidence. The judicial authorities reviewed the materials of the prosecutor's investigation. Both the applicant and his representative attended the hearings. 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 in evidential basis.

123. It follows that there has been no violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S SOLITARY CONFINEMENT

124. The applicant complained that his placement in solitary confinement from 18 June 2004 to 22 March 2006 had been in contravention of Article 3 of the Convention. He further alleged that during that period he had not received proper medical assistance (see paragraphs 63-66 above).

A. Admissibility

125. Without raising an objection as to non-exhaustion of domestic remedies, the Government contested that argument. They asserted that the applicant had been isolated from other inmates for security reasons after he had strangled an inmate detained in his cell and threatened the others. As regards the medical assistance provided to the applicant during the period in question, they maintained that it was in accordance with applicable standards. The applicant had had regular access to medical specialists and had received the necessary treatment.

126. The applicant maintained his complaint.

127. The Court notes that this part of the application 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

128. The Court has previously summarised its findings in respect of cases concerning persons placed in solitary confinement as follows (see *Onoufriou v. Cyprus*, no. 24407/04, 7 January 2010):

> "69. The Court has previously indicated that complete sensory isolation, coupled with total social isolation can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason (see *Öcalan v. Turkey* [GC], no. 46221/99, § 191, ECHR 2005-IV; and *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 243, ECHR 2004-VII). While prolonged removal from association with others is undesirable, whether such a measure falls within the ambit of Article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned (see *inter alia*, *X v. the United Kingdom*, cited above; and *Rohde*, cited above, § 93).
>
> 70. Finally, in order to avoid any risk of arbitrariness resulting from a decision to place a prisoner in solitary confinement, the decision must be accompanied by procedural safeguards guaranteeing the prisoner's welfare and the proportionality of the measure. First, solitary confinement measures should be ordered only

> exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the European Prison Rules. Second, the decision imposing solitary confinement must be based on genuine grounds both *ab initio* as well as when its duration is extended. Third, the authorities' decisions should make it possible to establish that they have carried out an assessment of the situation that takes into account the prisoner's circumstances, situation and behaviour and must provide substantive reasons in their support. The statement of reasons should be increasingly detailed and compelling as time goes by. Finally, a system of regular monitoring of the prisoner's physical and mental condition should also be put in place in order to ensure that the solitary confinement measures remain appropriate in the circumstances (see *Ramirez Sanchez*, cited above, § 139)."

129. Turning to the circumstances of the present case, the Court observes that the applicant was placed in solitary confinement on 18 June 2004 and was held there until 22 March 2006. Accordingly, his solitary confinement lasted over one year and nine months. The Court notes that a period of such length may give rise to concern *per se* because of the risk of harmful effects upon mental health. However, when assessing whether the length was excessive under Article 3 the Court must also take into account the conditions of the detention, including the extent of the social isolation (see *Rohde v. Denmark*, no. 69332/01, § 97, 21 July 2005).

130. Admittedly, the domestic authorities had valid reasons for the applicant's isolation. The Court notes that the applicant was placed in solitary confinement upon an order issued by the prison governor after the applicant had strangled inmate G. in the same cell as him and threatened the other three inmates. The order indicated that the applicant was placed in solitary confinement pending the investigation into G.'s murder. In this connection the Court observes that the criminal investigation was completed and the applicant's case was transferred to the trial court on 12 October 2004. However, neither at that point in the proceedings nor at any time thereafter did the domestic authorities review the issue of the applicant's solitary confinement. Furthermore, there is nothing in the Government's submissions to suggest that there was a reliable system in place to ensure that the applicant was not confined beyond the authorised period and to provide him with an opportunity to express his views or to challenge, if he so wished, the decision to place him in solitary confinement or to extend its duration.

131. Accordingly, the Court concludes that the applicant's solitary confinement was not attended by procedural safeguards in order to protect against the arbitrary application of excessively restrictive conditions of detention.

132. As regards the conditions of the applicant's solitary confinement, the Court notes the scarcity of the information provided by the parties. The Government merely stated that the applicant had been detained in satisfactory conditions and that the personal space available to him exceeded the domestic standards by 1.5-2 times. Even assuming in the

absence of allegations to the contrary, that this was the case, the Court nevertheless considers that the applicant's solitary confinement fell short of the standards enshrined in Article 3.

133. In this connection the Court notes that the authorities failed to duly monitor the applicant's mental health during the period in question. The fact that the applicant was allowed to consult a psychiatrist only once in almost two years reflects the lack of proper monitoring.

134. The Court does not lose sight of the fact that the applicant was able to meet his lawyer and his mother on a regular basis. Nevertheless, this fact alone is insufficient for the Court to conclude that the applicant's solitary confinement was in compliance with the Convention provisions.

135. There has accordingly been a violation of Article 3 of the Convention on account of the applicant's solitary confinement in remand prison no. IZ-38/1 in Irkutsk from 18 June 2004 to 22 March 2006.

136. In view of the above finding, the Court does not consider it necessary to examine the remainder of the applicant's grievances concerning the alleged failure by the authorities to provide him with adequate medical assistance.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

137. The applicant complained that neither he nor his lawyer were provided with an opportunity to attend an appeal hearing concerning the extension of his pre-trial detention on 19 May 2005 (see paragraph 20 above). The Court will examine this complaint under Article 5 § 4 of the Convention, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

138. The Government submitted that the applicant, his counsel and his mother, acting as his representative, had been duly informed of the date and time of the appeal hearing of 19 May 2005. Furthermore, the applicant, his counsel and his mother had attended a trial hearing of 19 May 2005, at which they did not ask the court to adjourn the hearing to allow them to take part in the appeal proceedings concerning the extension of the applicant's pre-trial detention. As there had been no such request by the applicant, the appeal hearing had been held in the absence of the applicant and his defence; in the Government's submission, this was not in contravention of the requirements of Article 5 § 4.

139. The applicant maintained his complaint.

140. The Court notes from the outset that the applicant's situation was very specific. He was detained within the framework of two different sets of criminal proceedings. On 17 March 2004 he was found guilty of

manslaughter and sentenced to ten years' imprisonment, subsequently reduced to seven years. While serving a prison sentence, the applicant was charged with murder and his pre-trial detention was ordered. It was repeatedly extended until his conviction on 29 June 2005.

141. Accordingly, the applicant's detention at the relevant time was covered both by Article 5 § 1 (a) and Article 5 § 1 (c) of the Convention. His complaint, however, concerned only the authorities' failure to ensure his presence at the appeal hearing concerning the review of his pre-trial detention.

142. In the circumstances of the case, and without looking into the issue whether the review of the applicant's pre-trial detention served any practical purpose given that the applicant continued serving a prison sentence and would not have been released, even if his pre-trial detention could have hypothetically been found unlawful, the Court discerns nothing in the materials before it to find that the applicant's rights set out in Article 5 § 4 of the Convention have been infringed. The applicant and his representatives, as claimed by the Government and not disputed by the applicant, were notified of the date and the time of the appeal hearing. The applicant did not ask the judicial authorities to ensure his presence at the appeal hearing. In such circumstances, the fact that the appeal court held the hearing in the absence of the applicant and/or his representatives does not disclose the violation alleged.

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

IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF LENGTH OF THE FIRST SET OF CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

144. The applicant complained that the length of the first set of criminal proceedings against him had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. Admissibility

145. The Court considers that this part of the application 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

146. The Government submitted that the length of the first set of criminal proceedings against the applicant had been reasonable. The matter was rather complex and called for the collection and assessment of substantial forensic evidence. Furthermore, most of the delays during the trial were attributable to the applicant. His lawyers had failed to appear on numerous occasions.

147. The applicant maintained his complaint.

148. The Court reiterates that the reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II). In addition, only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 49, ECHR 2004-XI).

149. The Court observes that the applicant was arrested on 13 September 1999. It takes this date as the starting point of the criminal proceedings. The final judgment in his case was rendered on 27 December 2004. Accordingly, the proceedings against the applicant lasted five years and three and a half months, a period which spanned an investigation stage and the judicial proceedings, in which the case was reviewed by courts at two levels of jurisdiction.

150. The Court considers that the proceedings at issue were of a certain complexity owing to the number of defendants and the authorities' task of collecting and examining substantial forensic evidence. However, the Court finds that the complexity of the case, on its own, cannot justify the overall length of the trial.

151. The Court notes, however, that considerable delays in the proceedings were attributable to the applicant. From 29 January to 9 July 2002 his lawyer was unable to take part in the proceedings. From December 2002 to June 2003 eight hearings out of eighteen were adjourned owing to a failure by the applicant's counsel or his mother to appear, and on one occasion the applicant asked for an adjournment for health reasons.

152. As regards the conduct of the authorities, the Court is satisfied that they demonstrated sufficient diligence in handling the proceedings. The investigation and appeal stages lasted approximately nine months each, and such duration does not appear unreasonable. The hearings at the trial stage were held regularly and the adjournments, owing to the trial judge's conflicting schedule and while the confirmation of the judge's appointment was pending, did not have a significantly adverse effect on the length of the proceedings as a whole.

153. Making an overall assessment of the complexity of the case and the conduct of the parties to the proceedings, the Court considers that the length of the latter did not go beyond what may be considered reasonable in this particular case.

154. There has accordingly been no violation of Article 6 § 1 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE LACK OF OPPORTUNITY TO QUESTION WITNESSES

155. The applicant complained about a failure by judicial authorities to provide him with an opportunity to question the expert witnesses in the course of the second set of criminal proceedings against him. He referred to Article 6 of the Convention, the relevant parts of which read as follows:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ... .
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ..."

A. Admissibility

156. The Government submitted that the applicant's rights in relation to the taking and assessment of forensic evidence had not been infringed. The applicant and his lawyer had been duly informed of the investigator's decision to commission expert reports and had had ample opportunity to put questions to the experts. They had been presented with the experts' reports prior to the trial. Should they have considered the expert's findings incomplete or contradictory, it had been open to them to ask for an additional or new forensic examination.

157. The applicant did not comment.

158. The Court reiterates that is not for it to act as a court of appeal, or, as is sometimes said, as a court of fourth instance. It is for the domestic court to assess the credibility of witnesses and the relevance of evidence to the issues in the case (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).

159. The Court has nevertheless to ascertain whether the way in which the evidence was taken was fair (see *Mantovanelli v. France*, 18 March 1997, § 34, *Reports* 1997-II; and, *mutatis mutandis*, *Schenk v. Switzerland*, 12 July 1988, § 46, Series A no. 140). Thus, the "fairness" principle requires that all evidence must normally be produced in the presence of the accused at a public hearing with a view to adversarial argument.

160. Turning to the circumstances of the present case, the Court observes that the applicant was presented with an opportunity to become acquainted with the investigator's decision to commission the forensic expert reports, to put questions to the experts and subsequently to challenge the experts' findings by asking the investigative and/or judicial authorities to commission additional or new expert research, if he had deemed it necessary. The matter was subject to close scrutiny by the appeal court. In such circumstances, the Court accepts that the trial court's refusal to call the expert witnesses did not violate the applicant's right to mount a defence and that the fairness of the trial did not suffer as a result of their absence.

161. It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

162. Lastly, the applicant made a number of complaints under Articles 3, 5, 6, 13 and 34 of the Convention relating to his detention and the criminal proceedings against him. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the provisions invoked. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

163. 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."

164. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

165. On 4 June 2009 the Court invited the applicant to submit a claim for just satisfaction by 6 August 2009. It reiterated the request on 9 October 2009. The applicant did not submit any such claim.

166. In such circumstances the Court would usually make no award. In the present case, however, the Court has found a violation of the applicant's right not to be subjected to inhuman and degrading treatment. This right is of an absolute character and the Court exceptionally finds it possible to award the applicant 7,500 euros (EUR) in respect of non-pecuniary damage (see *Chember v. Russia*, no. 7188/03, § 77, ECHR 2008, and *Chudun v. Russia*, no. 20641/04, § 129, 21 June 2011, with further references), plus any tax that may be chargeable to the applicant.

167. 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 complaints concerning the alleged ill-treatment of the applicant in custody, his solitary confinement and the length of the first set of criminal proceedings against him admissible and the remainder of the application inadmissible;

2. *Holds* there has been no violation of Article 3 of the Convention under its substantive limb on account of the applicant's allegations of ill-treatment in police custody on 13 September 1999;

3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the authorities' failure to carry out an effective and thorough investigation into the applicant's allegations of ill-treatment in police custody on 13 September 1999;

4. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb on account of the applicant's allegations of ill-treatment in the remand prison on 12 April 2002;

5. *Holds* that there has been no violation of Article 3 of the Convention under its procedural limb on account of the authorities' alleged failure to carry out an effective and thorough investigation into the applicant's allegations of ill-treatment in the remand prison on 12 April 2002;

6. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb on account of the excessive use of force against the applicant on 14 October 2002;

7. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the authorities' alleged failure to carry out an effective and thorough investigation into the applicant's allegations that the use of force against him on 14 October 2002 was excessive;

8. *Holds* that there has been no violation of Article 3 of the Convention under its substantive limb on account of the applicant's allegations that the use of force against him on 5 August 2003 was excessive;

9. *Holds* that there has been no violation of Article 3 of the Convention under its procedural limb on account of the authorities' alleged failure to carry out an effective and thorough investigation into the applicant's allegations that the use of force against him on 5 August 2003 was excessive;

10. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's solitary confinement from 18 June 2004 to 22 March 2006;

11. *Holds* that there has been no violation of Article 6 § 1 of the Convention on account of the excessive length of the first set of criminal proceedings against the applicant.

12. *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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement:

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 6 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President