



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

FIRST SECTION

**CASE OF MARKARYAN v. RUSSIA**

*(Application no. 12102/05)*

JUDGMENT

STRASBOURG

4 April 2013

**FINAL**

**09/09/2013**

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



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

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

Isabelle Berro-Lefèvre, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 March 2013,

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

**PROCEDURE**

1. The case originated in an application (no. 12102/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vladimir Sumbatovich Markaryan (“the applicant”), on 25 February 2005.

2. The applicant was represented by Mr A. Kiryanov, a lawyer practising in Taganrog. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been subjected to ill-treatment in police custody.

4. On 1 April 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

**THE FACTS****I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1976 and lived, prior to his arrest, in Shakhty, Rostov Region.

### **A. The applicant's arrest and alleged ill-treatment**

6. The applicant was suspected of the organisation of a criminal gang and of S.'s robbery and murder.

7. On 16 May 2003 a group of six police officers were keeping the applicant under surveillance. When the applicant at some point drove to a bus stop, stopped his car and O. got into it, the policemen blocked the applicant's car and ordered him and O. to get out. O. did so.

8. According to the applicant, the police officers dragged him out of the car, punching and hitting him with their guns, and threw him to the ground. They continued punching and kicking him although he offered no resistance to the arrest.

9. Both O. and the applicant were taken to police station no. 2 in the town of Shakhty. The police verified O.'s ID and let him go.

10. The police officers proceeded with questioning the applicant as regards S.'s murder. According to the applicant, seven to eight police officers took part in the questioning and they beat him to make him confess to the murder. At some point the beatings stopped. The applicant was taken to the cell where Sh. was detained. The police officers repeatedly took the applicant out of the cell for questioning. The beatings continued.

11. On 17 May 2003, at 1 a.m., the applicant's girlfriend, Saak., was brought to the police station. According to the log, she was suspected of having committed a criminal offence. The officers continued beating the applicant in her presence. In order to put an end to the police brutality, the applicant confessed. At 3 a.m. Saak. was released.

12. It appears that at some point Saak.'s brother was also taken to the police station, where he witnessed the police officers beating the applicant. He was eventually released.

### **B. Preliminary inquiry into the applicant's allegations of ill-treatment**

13. On 19 May 2003 the Shakhty Town Court authorised the applicant's remand in custody pending the investigation. The applicant complained about the beatings by the police officers and showed his bruises and injuries to the judge. The Town Court asked the prosecutor's office to conduct an inquiry into the applicant's allegations.

14. On 20 May 2003 a forensic medical expert examined the applicant and issued a report recording the following injuries: abrasions and bruises on the back of the head, on the right side of the temporal region of the head, the right cheekbone, the nasal arch, the mucous membrane of the upper lip, the left arm, the left shoulder blade, the left shoulder, the right wrist joint, the left leg, and the inguinal region. The expert concluded that those injuries

had resulted from the impact of blunt objects no later than four days before the examination.

15. On 23 May 2003 the assistant town prosecutor dismissed the applicant's allegations of ill-treatment in police custody as unsubstantiated. In particular, the assistant prosecutor stated as follows:

“The materials of the preliminary inquiry indicate that [on 16 May 200] [the applicant], on seeing the police officers, ignored their orders to get out of the car. He actively resisted their attempts to pull him out of the car and tried to flee. As a result, [the police officers] had to use physical force and special means against him, causing him injuries. [The police officers] acted in accordance [with law]. [They] suspected that [the applicant] had committed a criminal offence and that a risk existed that the perpetrator could, in order to evade criminal responsibility, use a gun. The use of force was necessary and proportionate to the nature and gravity of the offences committed by [the applicant].”

16. The assistant prosecutor based his findings on the identical statements made by the six police officers, who submitted that the applicant, being an ex commando, was dangerous and that their use of force had been lawful in the circumstances of the case. They alleged that the applicant had resisted arrest. They had pulled him out of the car, pinned him to the ground and handcuffed him. They further denied having beaten the applicant during his questioning at the police station. The assistant prosecutor also questioned the applicant and disputed his version of the events as an attempt to exculpate himself. The applicant did not receive a copy of the relevant decision.

17. On 30 July 2003 the town prosecutor's office dismissed another complaint lodged by the applicant about the alleged ill-treatment in police custody, restating the reasoning of the decision of 23 May 2003.

### **C. Criminal proceedings against the applicant**

18. On an unspecified date the applicant was charged with S.'s murder, several counts of robbery, the unlawful manufacturing and possession of firearms, and the organisation of and participation in a criminal gang.

19. The applicant was committed to stand trial before the Rostov Regional Court. Before the trial court, the applicant alleged that the police officers had severely beaten him during and after his arrest.

20. On 15 April 2004 the Rostov Regional Court acquitted the applicant of one count of attempted robbery and of the manufacturing of firearms, and found him guilty on the remaining charges. It sentenced him to twenty years' imprisonment. The Regional Court based the conviction on, *inter alia*, statements by a number of witnesses heard in open court, expert reports and material evidence. The Regional Court also quoted from statements by a witness, Ms Se., given during the pre-trial investigation.

According to the records of the court hearings, neither the applicant nor his lawyer objected to the reading out of Ms Se.'s statements.

21. As regards the applicant's allegations of ill-treatment, the Regional Court, referring to the inquiries conducted by the prosecutor's office, dismissed them as unsubstantiated. Furthermore, it noted that at the trial hearings it had heard the police officers and the prosecution investigator, Mr Sa., who had denied that force had been used against the applicant. The Regional Court found that in making accusations against the police officers the applicant had been attempting to pervert the course of justice.

22. The applicant and his lawyer appealed, maintaining their complaints about, among other things, the ill-treatment in police custody.

23. On 8 September 2004 the Supreme Court of the Russian Federation upheld the judgment of 15 April 2004, endorsing the reasons given by the Regional Court.

#### **D. Ensuing inquiry into the applicant's allegations of ill-treatment**

24. On 16 November 2005, in response to a further complaint by the applicant, the regional prosecutor's office ordered the town prosecutor to conduct an inquiry into the applicant's allegations of ill-treatment.

25. On 25 November 2005 the senior investigator at the town prosecutor's office dismissed the applicant's complaint, stating that the actions of the police during the applicant's arrest and ensuing detention in police custody had been in compliance with the law.

26. On 7 December 2005 the applicant lodged another complaint, which prompted the quashing of the decision of 25 November 2005 and a further inquiry into his allegations on 8 December 2005.

27. On 18 December 2005 the town prosecutor's office again dismissed the applicant's complaint. The applicant appealed.

28. On 17 April 2006 the town prosecutor's office quashed its own decision of 18 December 2005 and conducted a further inquiry. On 27 April 2006 the applicant's allegations were dismissed.

29. On 23 May 2006 the deputy town prosecutor quashed the decision of 27 April 2006 and ordered a further inquiry.

30. On 24 May 2006 the Town Court dismissed the applicant's complaint against the decision of 27 April 2006, noting that the latter had already been quashed by the superior prosecutor. On 25 July 2006 the Regional Court upheld the decision of 24 May 2006 on appeal.

31. In the course of the further inquiry, the senior investigator at the town prosecutor's office questioned the applicant's father, police officers B., G., L., M., R. and Ts., and the applicant. The applicant's father corroborated the applicant's versions of the events and the police officers denied his allegations.

32. On 23 June 2006 the senior investigator dismissed the applicant's complaint, finding no case to answer against the police officers. The applicant appealed.

33. On 31 July 2006 the Shakhty Town Court disallowed the applicant's appeal, noting that his allegations of ill-treatment had been thoroughly examined by the domestic courts in the criminal proceedings against him and had been found to be unsubstantiated. The Town Court held that it did not have jurisdiction to re-examine the final and enforceable judgments of the Rostov Regional Court and the Supreme Court of the Russian Federation given in the criminal case against the applicant.

34. In 2007 the Regional Department of the Interior conducted an inquiry in response to complaints lodged by the applicant's family. According to the relevant report, dated 11 December 2007, Sh., Saak. and her brother were questioned in the course of that inquiry. Sh., who had been detained with the applicant in the same cell from 16-17 May 2003, submitted that he had heard the applicant screaming during his questioning and that after that questioning the applicant had been covered with blood and had other signs of beatings on his face and body. Saak. and her brother also stated that the police officers had beaten the applicant in their presence. As regards the applicant's injuries, the report referred to the earlier findings of the prosecutor's inquiry that the applicant had sustained them as a result of the use of force against him during his arrest. The parties did not inform the court if there was any follow-up to the inquiry.

35. Following the communication of the application to the respondent Government in April 2009, the internal affairs division of the Regional Department of the Interior conducted another inquiry into the applicant's allegations.

36. On 16 June 2009 the inquiry was completed. According to the findings of the report, it had been impossible for the authorities to question Sh., Saak. and her brother because their whereabouts were unknown.

37. The internal affairs officers questioned the police officer who had arrested and questioned the applicant in 2003. B., M., R. and Ts. reiterated, in substance, their previous statements. G. and L. refused to make any submissions on the matter. All the police officers refused to take a polygraph test.

38. In their report they summarised their findings as follows:

"... , in view of the contradictions in the statements made by the persons involved, a further inquiry, which is within the competence of the [prosecutor's] office, into the [applicant's] allegations that on 16-17 May 2003 [the police officers] beat him up to make him confess to V.'s murder is necessary.

Furthermore, the materials acquired in the course of the present inquiry show that on 16 and 17 May 2003 [the applicant] was detained for over three hours at [the police station] in the absence of any legal basis. The relevant actions of the unidentified police officers might give rise to their criminal liability in accordance with

Article 286 § 3 (abuse of power) and Article 301 § 2 (unlawful detention) of the Criminal Code of the Russian Federation.

However, due to the expiration of the time-limits set forth in [applicable regulations on police service] in respect of the disciplinary liability, ... it is impossible to subject [the police officers] who detained [the applicant] at [the police station] for over three hours in contravention of [the rules of criminal procedure] ... to disciplinary liability.”

39. The Government did not inform if there was any follow-up to the inquiry.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained that he had been subjected to ill-treatment in police 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

41. The Government submitted that the applicant had failed to exhaust domestic remedies in that he had not applied to a court to challenge the prosecutor’s refusal to open a criminal case. In their view, the applicant, who had been represented by a lawyer, had chosen not to appeal against the assistant prosecutor’s decision in question; instead he had raised the issue of ill-treatment before the trial court, challenging the admissibility of his confession, which he alleged had been given under duress. He had not asked the court to order a further inquiry into his allegations. Nor had he complained about any shortcomings in the inquiry conducted. The trial court’s findings had focused on the admissibility of evidence and it had not delved into the issue of ill-treatment. Accordingly, the Government considered that the fact that the applicant had raised the issue of alleged ill-treatment before the trial court was insufficient for the Court to conclude that the applicant had had due recourse to the effective domestic remedies in respect of his complaint. They conceded that the applicant had been in a stressful situation and under pressure; however, he had not proffered any explanation as to why he had not appealed against the prosecutor’s refusal to institute criminal proceedings against the alleged perpetrators. The fact that the applicant’s lawyer had lodged a complaint with the national judicial



authorities in 2006 was of no relevance. The decision the lawyer had appealed against had no longer been valid at that time. Nor could the complaint lodged by the applicant's parents be regarded as a proper avenue of exhaustion.

42. The applicant asserted that he had brought his grievances to the attention of the prosecutor's office and courts competent to examine them at two levels of jurisdiction.

43. The Court reiterates its finding in earlier cases that in the Russian legal system the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003).

44. The Court further observes that the applicant, as the Government pointed out, did not appeal against the prosecutor's decisions of 23 May and 30 July 2003. The Court also notes that subsequently the applicant brought his allegations of ill-treatment to the attention of the trial and appeal courts. The judicial authorities examined the merits of the applicant's complaint, reviewed the prosecutor's findings, questioned the applicant and the alleged perpetrators, and ruled that there was no case to answer against them. In the course of the subsequent inquiries, the courts, when addressing the applicant's repeated complaints about ill-treatment in police custody, noted that his allegations had been subject to thorough examination, in particular by the courts in the course of the criminal proceedings against him (see paragraph 33 above).

45. In this connection, the Court reiterates that non-exhaustion of domestic remedies cannot be held against an applicant if, in spite of his failure to observe the formalities prescribed by law, the competent authority has nevertheless examined the substance of the claim (see, *mutatis mutandis*, *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007; *Skalka v. Poland* (dec.), no. 43425/98, 3 October 2002; *Metropolitan Church of Bessarabia and Others v. Moldova* (dec.), no. 45701/99, 7 June 2001; and *Edelmayer v. Austria* (dec.), no. 33979/96, 21 March 2000). The Court finds, in the particular circumstances of the present case, that by raising before the trial and appeal courts a complaint concerning ill-treatment and the inadequacy of the investigation into it, the applicant provided the domestic authorities with the opportunity to put right the alleged violation. The Court notes that the national judicial authorities reached a similar conclusion when dismissing the applicant's repeated complaints in 2006.

46. It follows that the applicant cannot be said to have failed to exhaust domestic remedies because he did not lodge a separate judicial complaint against the prosecutors' decisions of 23 May and 30 July 2003. Thus, the Government's objection as to the non-exhaustion of domestic remedies must be dismissed.

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

## **B. Merits**

### *1. The parties' submissions*

48. The Government submitted that the applicant had sustained injuries as a result of the use of force against him during his arrest. The police officers had not caused any damage to his health. The applicant had refused to get out of the car; the four police officers had had to overcome his resistance and pull him out. When they had managed to pull the applicant out, he had continued resisting. The police officers had had to pin him to the ground and handcuff him. The scuffle had lasted two minutes.

49. The applicant maintained his complaint. He submitted that the Government had failed to provide a satisfactory explanation as to the causes of his multiple injuries. According to the Government, all that the police officers had done was to pull the applicant out of the car, pin him to the ground and handcuff him. The Government's version of the events did not account for the injuries the applicant had sustained to the temples, right cheekbone, nose, upper lip, left shoulder blade and the groin. Lastly, he pointed out that upon his arrival at the police station, the officer who had registered him had not noted any injuries.

### *2. The Court's assessment*

#### **(a) General principles**

##### *(i) Alleged ill-treatment*

50. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

51. Where an individual claims to have been injured by 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).

52. The ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is

relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, 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 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 94, *Reports of Judgments and Decisions* 1998-VIII).

(ii) *Investigation into the allegations of ill-treatment*

53. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [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*, cited above, § 102).

54. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

55. An investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrikulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

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

**(b) Application of the principles to the present case**

*(i) Alleged ill-treatment*

57. Turning to the circumstances of the present case, the Court observes that the parties did not dispute that the applicant had sustained the injuries while he was entirely under the control of the police. Accordingly, the Government were under an obligation to provide a plausible explanation of how those injuries were caused.

58. In this connection, the Court notes that the Government, without providing details, reiterated the domestic authorities' findings that the applicant had sustained the injuries in the course of his arrest and that the police officers had had to use force against him to put an end to his resistance.

59. The Court finds such an explanation unconvincing. In its view, the domestic authorities' findings lack any specific details and contain no explanation as to how and why, in the course of the applicant's arrest, which was a rapid operation lasting merely two minutes, the police officers could have injured the applicant on the head, in the groin and all over his body if their actions had been limited to pulling him out of the car, pinning him to the ground and handcuffing him.

60. By contrast, the applicant presented a consistent and detailed description of the ill-treatment which corresponds to the nature and location of the injuries recorded. The Court notes, in this connection, that the Government did not proffer any explanation as to why the applicant's version of events, supported by the statements of eye-witnesses, was not, in their opinion, plausible.

61. In these circumstances the Court considers that, even if the applicant did resist arrest, the Government's account provided only a very incomplete, and therefore insufficient, explanation of the injuries sustained by him. Nor can the Court conclude that the Government have satisfactorily established that the applicant's injuries were caused otherwise than – entirely, mainly, or partly – by the treatment he underwent while in police custody. It therefore finds it to be established to the standard of proof required in the Convention proceedings that the applicant was subjected to the treatment he complained of.

62. The Court considers that the degree and amount of bruising found by the forensic medical expert who examined the applicant (see paragraph 14

above) indicate that his injuries were sufficiently serious as to amount to ill-treatment within the scope of Article 3 (compare *Assenov*, cited above, § 95).

63. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb in that the applicant was subjected to inhuman and degrading treatment by the police on 16 and 17 May 2003.

*(ii) Adequacy of the investigation*

64. Turning to the facts of the present case, the Court observes that following the applicant's complaint to the court on 19 May 2003, the prosecutor's office carried out an inquiry into his allegations of ill-treatment. Subsequently, the authorities conducted three more inquiries, in 2005-2006, 2007 and 2009. The Court accepts that the authorities reacted promptly to the applicant's complaint; it is not, however, convinced that their response to the applicant's allegations was sufficiently thorough to meet the requirements of Article 3.

65. As regards the first inquiry, the Court takes into account that the prosecutor took certain steps to verify the applicant's accusations. He commissioned a forensic medical examination of the applicant, and questioned the applicant and the police officers involved in the incident. He then concluded that the officers' actions had been lawful and necessary. The prosecutor's findings were verified and accepted in the course of the criminal proceedings against the applicant and by subsequent inquiries conducted by the prosecutor's office and the internal affairs division of the Regional Department of the Interior.

66. The Court further observes that the authorities relied in their findings predominantly on the statements made by the alleged perpetrators. In dismissing the applicant's version of the events, the authorities viewed it as an attempt to pervert the course of justice and to evade criminal liability; they did not take into account that the police officers obviously had an interest in the outcome of the case and in exonerating themselves.

67. The Court further observes that the three persons who had allegedly witnessed the applicant's beatings were not questioned until 2007, that is, more than four years after the events in question. Nor was any attempt made to assess the credibility of those witnesses in order to accept or reject their statements.

68. In this connection, the Court notes that even the 2009 report containing the findings of the last inquiry into the applicant's allegations referred to certain contradictions in the statements made by the witnesses and the police officers and indicated that a further inquiry was necessary in order to elucidate them (see paragraph 38 above). No such action has been taken by the Russian authorities to date and the omissions of the prosecutor's inquiry have not been remedied.

69. 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.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

70. Lastly, the applicant complained about certain irregularities in the conduct of the criminal proceedings against him.

71. Having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

### A. Damage

73. The applicant claimed 2,000,000 euros (EUR) in respect of non-pecuniary damage.

74. The Government considered the applicant's claims to be excessive.

75. The Court observes that the applicant was subjected to ill-treatment in police custody. The investigation into his allegations of ill-treatment was ineffective. In such circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. However, the Court accepts the Government's argument that the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

76. The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

### C. Default interest

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

### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 of the Convention concerning the ill-treatment of the applicant in police custody and the effectiveness of the ensuing investigation admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 April 2013 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Isabelle Berro-Lefèvre  
President