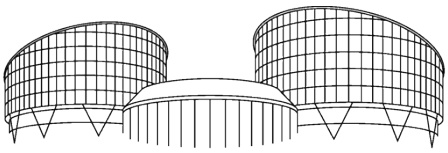

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF RYABTSEV v. RUSSIA

(Application no. 13642/06)

JUDGMENT

STRASBOURG

14 November 2013

FINAL

24/03/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Ryabtsev v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 13642/06) 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 Oleg Anatolyevich Ryabtsev ("the applicant"), on 26 February 2006.

2. The applicant was represented by Perm Regional Human Rights Centre («*Пермский региональный правозащитный центр*»). 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 that he had been ill-treated by police officers during his arrest and while in police custody. He stated that no adequate investigation had been carried out into the matter. He also claimed that the criminal proceedings against him had been unfair because his conviction had been based on a forced confession.

4. On 6 December 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in the town of Perm, the Perm Region.

A. The applicant's arrest

6. On 27 February 2004 the criminal investigation unit of the Perm Leninskiy District Department of the Interior ("the criminal investigation unit") received information about a planned robbery of a shop in Perm.

7. The next day at least nine police officers, including the Head of the criminal investigation unit, M., senior investigator L., officer A. and a number of other officers belonging to the Perm Regional Department of the Interior's organised crime squad set up a sting operation in the shop.

8. On 29 February 2004 at around 1 a.m. the applicant, along with four other individuals, one of whom was carrying a sawn-off shotgun, entered the shop with a view to robbing it. They were immediately stopped by the police. A. ordered them to put down the shotgun. He fired warning shots into the air. Thereafter he shot at the applicant's armed accomplice.

9. The applicant was pushed down a flight of stairs by M. and hit his head. Subsequently the police officers immobilised and handcuffed all of the participants in the robbery.

10. According to the applicant, the police officers then began beating him, with a view to obtaining a confession. The applicant eventually confessed.

11. Shortly after his arrest the police officers made a video recording of the applicant at the place of the incident. On the recording the applicant introduced himself, explained the reasons for his arrest and fully admitted his guilt.

B. The applicant's detention in police custody

12. At approximately 3 a.m. the applicant was taken to the organised crime squad's headquarters ("the police station").

13. According to the applicant, the interrogating officers ordered him to confess and inflicted a number of blows to his head and body. One of the officers stepped on the applicant's wrist with his shoes on, fracturing the applicant's left middle finger and scraping his left wrist. As a result of the ill-treatment, the applicant made a confession about the robbery.

14. At the police station the applicant fully admitted his guilt and gave written statements of confession which read as follows:

> "On the night of 28 February I committed a [robbery in a shop] in the following circumstances ... We rang a doorbell. The door was opened and we went down the stairs. Thereafter the police arrested us. One of us had a sawn-off shotgun. I do not remember who it was. I had black gloves on my hands. The robbery was aimed at [getting hold of] a cash box with RUB 170,000 [around 4,500 euros] [in it]. The other [robbers] had scarves and black gloves to prevent their identification.
>
> The present statements were written [by me] in the absence of physical or psychological pressure."

15. Thereafter at about 11 a.m. the applicant was provided with first aid. The doctor who came from the first-aid station to examine the applicant issued the following medical certificate:

> "[The present document], given to [the applicant], certifies that on 29 February 2004 at 11.20 a.m. [the applicant] consulted a doctor in connection with a contused wound on his scalp, a bruise, scrapes on the third and fourth fingers of his left hand, a fracture of the third finger of the left hand and a fracture of his nose...".

C. Inquiry into the applicant's allegations of ill-treatment

1. The first round of investigation

16. On an unspecified date the applicant asked the Prosecutor for the Perm Region to institute criminal proceedings in respect of the alleged ill-treatment by the police officers. On 17 June 2004 his request was transmitted to the Perm Sverdlovskiy District Prosecutor's Office ("the prosecutor's office").

17. In response to the applicant's request the prosecutor's office questioned K., one of the police officers who had taken part in the police operation of 29 February 2004.

18. On the same date, 17 June 2004, the prosecutor's office refused to institute criminal proceedings, having found as follows:

> "... The results of the investigation [performed in connection with the applicant's request] show no evidence which would allow a finding that officer K. from the organised crime squad abused his power. K. stated that on 29 February 2004 he and his colleagues had arrested [the applicant] and other individuals involved in [the robbery]. During the arrest they had to make use of a service gun, because [the applicant] had a sawn-off shotgun. In this connection the prosecutor's office performed a preliminary check under Articles 144-5 of the Code of Criminal Procedure of Russia ("CCrP"). It refused to institute criminal proceedings.
>
> After the robbery, [the investigative authorities] instituted criminal proceedings against [the applicant] on suspicion of him having committed the crime specified in Article 162 of the Criminal Code of Russia ("CC"). K. was the police officer in

charge of the investigation. He had a number of exchanges with the applicant. However no psychological pressure or physical force was used by K. against him.

The above leads to the conclusion that [the applicant] misinterpreted the situation. There is no evidence which would support his accusation...”

19. The applicant sought judicial review of that decision, stating that he had not been questioned in connection with the alleged ill-treatment. He also noted that the investigating authorities had failed to join medical documents related to his injuries to the case file and had failed to identify the police officers who had beaten him.

20. On 29 July 2004 the Perm Sverdlovskiy District Court (“the district court”) quashed the decision of 17 June 2004 on appeal. It held that the investigation had been superficial. In particular, the district court noted that the investigative authorities had failed to question the applicant and the police officers who arrested him, or to examine medical records relating to the applicant’s injuries.

2. The second round of investigation

21. On 28 August 2004, in the course of a new round of investigation, the prosecutor’s office refused to institute criminal proceedings against the police officers. In its relevant part, that decision reads as follows:

“... The investigation, performed between 25 and 28 August 2004, did not lead to a finding that the police officers had abused their power.

Thus I., the senior police investigator in charge of the [applicant’s] case, noted that... the applicant had been arrested by the police at the scene [of the crime] while committing the robbery of a shop. During his arrest the police had used force and a service gun in respect of the [applicant] and his accomplice because [the applicant] had been carrying a sawn-off shotgun. In this connection the prosecutor’s office performed a preliminary investigation under Articles 144-5 of the CCrP. It refused to institute criminal proceedings.

The investigative authorities have added to the case file written statements of the police officers in connection with [the events of 29 February 2004]. It was not possible to examine [all of the officers involved], since several of them were stationed in the Chechen Republic.

When questioned, investigator I. noted that during the preliminary investigation the police officers had not used psychological pressure or physical force against [the applicant]. She insisted that [the applicant] had attempted to avoid criminal liability ...”

22. On 5 October 2004 the court granted the applicant’s appeal and quashed the prosecutor’s decision. The court used the same reasoning as before (see paragraphs 19 and 20). It held that the investigation had not been through.

3. The third round of investigation

23. In line with the recommendations given in the court decision, the investigative authorities carried out additional investigative actions. They questioned the applicant and M., Head of the criminal investigation unit. They also examined medical records relating to the applicant's injuries.

24. On 26 October 2004 the prosecutor's office again rejected the applicant's request that it institute criminal proceedings, resorting, in the main, to the same arguments as before. The reasons for the refusal read as follows:

> "... During the additional investigation the [prosecutor's office] questioned [the applicant,] who stated that he had not been involved in the robbery. According to him, he had had a meeting with a friend near the shop and shortly thereafter he was arbitrarily arrested by the police.
>
> The [temporary detention facility] provided the prosecutor's office with documents confirming [the applicant's] injuries. However criminal case no. 2948 showed that [the applicant] had taken part in the robbery of the shop.
>
> During the present inquiry the investigating authorities also questioned M., Head of the criminal investigation unit, who explained that [the applicant] and his acquaintances had committed [the robbery of a shop]. According to him, the police officers had had to use force against the robbers because they had had a sawn-off shotgun and had resisted arrest ..."

25. On 17 February 2005 the court quashed the decision of 26 October 2004 and noted that the investigative authorities had failed to comply with the previous court decision.

4. The fourth, fifth and sixth rounds of investigation

26. On 14 March 2005 the investigative authorities again issued a decision not to institute a criminal case against the police officers, having summarised their previous findings once more. Apparently, no additional measures were performed by the prosecutor's office in that round of investigation.

27. On 25 April 2005 the court again quashed the prosecutor's office's decision. It held that the investigation had been superficial and flawed. It required the prosecutor's office to perform an expert examination of the applicant's injuries and to question all eyewitnesses to the applicant's arrest and interrogation.

28. From the documents submitted it is apparent that on 20 May and 30 June 2005 the prosecutor's office repeatedly held that there was no reason to institute criminal proceedings in connection with the alleged ill-treatment. These decisions were subsequently quashed as unfounded.

5. The seventh round of investigation

29. On 22 August 2005 the prosecutor's office dismissed the applicant's allegations. The decision reads as follows:

> "... In the course of the additional investigation the prosecutor's office questioned [two police officers involved in the applicant's arrest]. They explained that they had used physical force against the applicant because he had been involved in an armed robbery of a shop.
>
> From the conversation with forensic expert V. it was found that the [applicant's] injuries could not have been inflicted from [a person of the applicant's] height falling over. However, this fact was disputed. The physical force was applied in respect of [the applicant] because his criminal actions had put the lives and health of the police officers in danger.
>
> When additionally questioned, K. stated that he had had a conversation with [the applicant] in the police station. However he had not put physical or psychological pressure on him. Two other police officers had also had conversations with [the applicant]. K. did not remember their names owing to the lapse of time of one-and-a-half years. According to K., they not had put any pressure on [the applicant]. Only the police officers had had access to [the applicant] in the police station.
>
> When additionally questioned, [the applicant] explained that two police officers, M. and A., had used force against him in the shop. They had broken his nose and middle finger. He noted that the police actions had been video recorded. He also stated that he had only had contact with police officers after his arrest. He sought the criminal prosecution of the police officers under Articles 114 [use of excessive force in self-defence resulting in severe and moderately severe injuries], 286 [abuse of power], and 301 [unlawful detention] of the CC.
>
> When additionally questioned, M., Head of the criminal investigation unit, noted that he had pushed [the applicant] down the stairs during the police operation. [The applicant] had lost his balance and had fallen down. Subsequently he had been provided with first aid. No one had used force against him in the police station with the aim of obtaining a confession.
>
> The investigative authorities examined a video record of the arrest of 29 February 2004. In this video one of the police officers, apparently M., had asked [the applicant] to state his name. Thereafter [the applicant] had been asked about the reasons for his arrest. [The applicant] had replied that he had been arrested because of his involvement in the robbery of a shop. He had also explained that a mask which was nearby belonged to him. Subsequently the police officer, apparently M., had noted "he wanted to do porridge" (the record is blurred). No one had used degrading phrases. M. had not told [the applicant] "no one will beat you any more". No one had beaten [the applicant] on camera. [The applicant] had already had injuries on his face.
>
> Consequently, the investigative authorities could not accept that the beating had been video recorded.
>
> When additionally questioned, Sh., Deputy Head of the criminal investigation unit, noted that force had been used in respect of [the applicant] because he had been

caught at the place of the incident. No one had applied force to [the applicant] at the police station. It was [the applicant] who had asked for some paper to make a written statement in connection with the incident. No one had put pressure on him.

It was impossible to examine police officer A., involved in the arrest, as he was stationed in the Republic of Chechnya. However, during the previous investigation the prosecutor's office examined [three of the police officers who had taken part in the applicant's arrest]. They stated that the police had only applied force to [the applicant] during his arrest.

From a conversation with G., [Deputy Head of the forensic bureau], it was made clear that it was impossible to perform a forensic medical examination in regard to [the applicant's] injuries without relevant X-ray images, which had not been found [by the prosecutor's office].

Owing to the lapse of time it was impossible to examine the doctor who had provided [the applicant] with first aid.

From the above it is clear that [the applicant's] statements were given in an attempt to avoid criminal liability for the offence committed. No one committed a criminal offence against [the applicant]. Force was applied in respect of [the applicant] because he had committed a robbery of a shop. There is no evidence that the applicant was beaten in the shop after arrest or in the police station. It should be noted that [the applicant] was convicted of the criminal offence. The sentence has not yet entered into legal force".

30. The applicant appealed against that decision. He claimed that the investigating authorities had failed to join medical documents to his file and to question the doctor who had provided him with medical assistance.

31. On 12 October 2005 the court quashed the above decision. It held that the investigation had been insufficiently thorough. It was pointed out that the prosecutor's office had not taken the necessary steps to acquire the applicant's medical documents and to find the doctor who had provided the applicant with first aid.

6. The eighth round of investigation

32. On 7 November 2005 the prosecutor's office rejected the applicant's request that it institute criminal proceedings. This decision repeated the previous one word for word, save for two additional paragraphs:

"During the investigation performed between 27 October and 7 November 2005 there was no opportunity to examine [the doctor who provided the applicant with first aid]. The medical documents of 29 February 2004 had been destroyed.

The prosecutor's office found X-ray images of the [applicant's] injuries. However an expert examination had not been ordered owing to the expiry of the term for additional investigation ..."

33. The applicant contested the decision not to institute criminal proceedings in court. He stressed that the prosecutor's office had refused to assess whether the use of force had been necessary in the circumstances of

his arrest. The applicant also noted that the investigator had failed to order an expert examination of his injuries and failed to question all of the officers involved and the doctor who had examined him after the events of 29 February 2004.

34. On 30 December 2005 the court quashed the decision of 7 November 2005. It held that the investigative authorities had failed to question the staff of the first-aid station and to check whether the documents relating to the applicant's injuries had been destroyed. The court also emphasised that the failure to order an expert examination of the applicant's injuries could not be justified by the expiration of the term of investigation.

7. The ninth round of investigation

35. On 24 November 2005 in the course of a new round of investigation the prosecutor's office issued a new decision not to institute criminal proceedings concerning the applicant's allegations of ill-treatment. It essentially reiterated the previous findings. In its relevant part it reads as follows:

> "... On 17 June 2004 the [prosecutor's office] received [the applicant's] complaint transmitted from the Prosecutor's Office for the Perm Region. In the complaint [the applicant] stated that on 29 February 2004 he had committed a robbery of a shop between 1 a.m. and 4 a.m. According to him, police officers ill-treated him during his interrogation. The alleged ill-treatment resulted in bodily injuries. During the arrest the police officers had used a service gun against one of [the applicant's] acquaintances, who subsequently died.
>
> On 17 June 2004 [the prosecutor's office] refused to institute criminal proceedings against the police officers. On 29 July 2004 [the court] quashed that decision. It held that the decision had been unlawful and unfounded. On 25 August [the prosecutor's office] ordered an additional investigation into the applicant's complaints.
>
> The investigation, performed between 25 and 28 August 2004, did not lead to a finding that the police officers had abused their power.
>
> Thus I., the senior police investigator in charge of the [applicant's] case, noted that... the applicant had been arrested by the police at the scene [of the crime while] committing the robbery of a shop. During his arrest the police had used force and a service gun against the [applicant] and his accomplice because [the applicant] had been carrying a sawn-off shotgun. In this connection, the prosecutor's office performed a preliminary investigation under Articles 144-5 of the CCrP. It refused to institute criminal proceedings.
>
> The investigative authorities have added to the case file written statements of the police officers in connection with [the events of 29 February 2004]. It was impossible to examine [all of the officers involved] since several of them were stationed in the Chechen Republic.

When questioned, investigator I. stated that during the preliminary investigation the police officers had not used psychological pressure or physical force against [the applicant]. She insisted that [the applicant] had attempted to avoid criminal liability.

On 28 August 2004 [the prosecutor's office] refused to institute criminal proceedings upon the applicant's request. On 5 October 2004 [the court] quashed that decision. It held that the decision had been unlawful and unfounded. On 25 October [the prosecutor's office] transmitted the case for additional investigation.

In the course of the additional investigation the [prosecutor's office] questioned [the applicant,] who stated that he had not been involved in the robbery. According to him, he had had a meeting with a friend near the shop and shortly thereafter he was arbitrarily arrested by the police.

The [temporary detention facility] provided the prosecutor's office with documents confirming [applicant's] injuries. However the materials in the file concerning criminal case no. 2948 showed that [the applicant] had taken part in the robbery of the shop.

During the present inquiry the investigating authorities also questioned M., Head of the criminal investigation unit, who explained that [the applicant] and his acquaintances had committed [a robbery of a shop]. According to him, the police officers had had to use force against the robbers because they had had a sawn-off shotgun and had resisted arrest.

When additionally questioned, K. stated that he had had a conversation with [the applicant] in the police station. However he had not put physical or psychological pressure on him. Two other police officers had also had conversations with [the applicant]. K. did not remember their names owing to the lapse of time of one-and-a-half years. According to K., they had not put pressure on [the applicant]. Only the police officers had had access to [the applicant] in the police station.

In the course of the additional investigation the prosecutor's office questioned [two police officers involved in the applicant's arrest]. They explained that they had used physical force against the applicant because he had been involved in the armed robbery of the shop.

From the conversation with expert V. it was established that the [applicant's] injuries could not have been inflicted from [a person of the applicant's] height falling over. However this fact was not disputed. Physical force was applied to [the applicant] because his criminal actions had put the lives and health of the police officers in danger.

When additionally questioned, [the applicant] explained that in the shop two police officers, M. and A., had used force against him. They had broken his nose and middle finger. He noted that the police actions had been video recorded. He also stated that he had only had contact with police officers after his arrest. He sought the criminal prosecution of the police officers under Articles 114 [use of excessive force in self-defence resulting in severe and moderately severe injuries], 286 [abuse of power], and 301 [unlawful detention] of the CC.

When additionally questioned, M., Head of the criminal investigation unit, noted that he had pushed [the applicant] down the stairs during the police operation. [The

applicant] had lost his balance and had fallen down. Subsequently he had been provided with first aid. No one had used force against him in the police station in order to obtain a confession.

The investigative authorities examined a video record of the arrest of 29 February 2004. In this video one of the police officers, apparently M., asked [the applicant] his name. Thereafter [the applicant] was asked about the reasons for his arrest. [The applicant] replied that he had been arrested because of his involvement in the robbery of the shop. He also explained that a mask belonged to him. Subsequently the police officer, apparently M., noted "he wanted to do porridge" (the record is blurred). No one used degrading phrases. M. did not tell [the applicant] "no one will beat you any more". No one beat [the applicant] on camera. [Upon filming the applicant] already had injuries on his face.

Consequently the investigative authorities could not accept that the beating had been video recorded.

When additionally questioned, Sh., Deputy Head of the criminal investigation unit, observed that force had been used against the applicant because he had been caught at the place of the incident. No one had used force against [the applicant] in the police station. It was [the applicant] who had asked for some paper [on which] to give a written statement in connection with the incident. No one had put pressure on him.

It was impossible to examine police officer A., [who had been] involved in the arrest. He was [now] stationed in the Republic of Chechnya. However during the previous investigation the prosecutor's office had examined [three of the police officers who had taken part in the applicant's arrest]. They stated that the police had only applied force on [the applicant] during his arrest.

From a conversation with G., [Deputy Head of the Forensic Bureau], it is clear that it was not possible to perform an expert forensic examination as regards [the applicant's] injuries without relevant X-ray images, which had not been found [by the prosecutor's office].

Owing to the lapse of time it is not possible to examine the doctor who provided [the applicant] with first aid.

From the above it follows that [the applicant's] statements were given in an attempt to avoid criminal liability for the offence in question. No one committed criminal offences against [the applicant]. Force was applied against [the applicant] because he had committed a robbery of a shop. There is no evidence that the applicant was beaten in the shop after his arrest or in the police station. It should be noted that [the applicant] was convicted of the criminal offence. The sentence has entered into legal force.

The expert forensic examination undertaken indicated that [the fracture of the applicant's finger] was a tapping [fracture] caused by a sliding impact of a blunt object. These injuries are moderately serious, owing to the length of incapacitation, amounting to twenty one days, caused.

However, no one has cast doubt on the fact that the police inflicted body injuries. Force was used against [the applicant] because he was caught red handed during the

robbery of the shop. The fact that the applicant had fallen down the stairs was confirmed by the expert's report.

From the findings of the investigation it is clear that [the applicant's] allegations were made in an attempt to avoid criminal liability for the offence committed. No one committed criminal offences against [the applicant]. Force was used on [the applicant] because he took part in the robbery of the shop. There is no evidence that [the applicant] was beaten in the shop after his arrest or in the police station. It should be noted that [the applicant] was convicted of the criminal offence. The sentence has entered into legal force ...

On these grounds the [prosecutor's office] decides not to institute a criminal case against police officers K., Sh., M., A. and [others] on suspicion of having committed the crimes specified in Articles 114 [use of excessive force in self-defence resulting in severe and moderately severe injuries], 286 [abuse of power], and 302 [forcing a confession] ..."

36. In his subsequent appeal against the above decision the applicant claimed that the prosecutor's office had not followed the court's indications. He pointed out that the investigator had refused to assess the need for the use of force against him and had not ordered an expert examination of the injuries to his nose.

37. On 23 January 2006 the court quashed the decision of 24 November 2005. The relevant part of the decision reads as follows:

"The analysis of the investigation file shows ... that despite the binding force of [this] court's decisions, the court's indications have been disregarded by the prosecutor's office.

The court observes that there is an insufficient amount of evidence in the case file to conclude that the police officers did not ill-treat [the applicant].

The doctor who provided [the applicant] with first aid was not examined. From the investigator's report it is clear that [the doctor] had been called on to give a statement but [that] she failed to appear without any valid reasons. It is also evident that [another doctor] was not examined owing to him being on annual leave. No information about the period of leave was given. The prosecutor's office did not check whether he had left Perm or not.

In the case file there is a certificate issued by the first aid station which stated that the medical documents should be kept for one year and then destroyed. However there is no information about destruction of the medical documents [concerning the events] of 29 February 2004.

In the impugned decision the [prosecutor's office] stated that it had not been possible to examine police officer A. because he was stationed in the Chechen Republic. However the report drafted by the investigator in that regard does not contain information about the period of his deployment there. There is no evidence that A. was ever called upon to give evidence in November 2005.

In addition, in the decision in question ... there is reference to the expert forensic examination regarding the fracture of [the applicant's finger]. The expert noted that

> the injury [was a] tapping [fracture which] had been caused by a sliding impact of a blunt object. This injury was moderately serious owing to the length of the incapacitation [it caused], which amounted to twenty-one days. At the same time the aforementioned expert examination had been carried out on 5 December and signed by the expert on 7 December 2005. Thus it was issued later than the impugned decision.
>
> Hence the decision in question is unlawful and unfounded. It was issued prematurely and should be quashed. In the expert examination there is no assessment of the fracture of [the applicant's] nose.
>
> Taking into account the above findings and Article 125 of the CCrP, the court grants the [applicant's] claim and quashes the decision of 24 November 2005 given by the [prosecutor's office] ..."

8. The tenth refusal to institute criminal proceedings

38. On 5 December 2006 the prosecutor's office issued a tenth refusal to institute criminal proceedings in connection with the applicant's allegations of ill-treatment. According to the applicant, he was not provided with a copy of that decision and therefore had no opportunity to challenge it in court.

D. Criminal proceedings against the applicant

39. On 8 February 2005 the Perm Regional Court, referring, among other pieces of evidence, to the applicant's self-incriminating statements of 29 February 2004 (see paragraph 14 above), convicted the applicant of organised aggravated robbery and an unrelated count of theft. The applicant received a sentence of seven years and a half of imprisonment.

40. The applicant appealed. He submitted, in particular, that he had given his confession under duress. He referred to the medical certificate which had established the bodily injuries allegedly inflicted on him during his ill-treatment in the police station.

41. On 2 August 2005 the Supreme Court of Russia quashed the applicant's conviction for theft and upheld his conviction of organised aggravated robbery.

II. RELEVANT DOMESTIC LAW

A. The Police Act (no. 1026-I of 18 April 1991)

42. The Police Act 1991 (Federal Law no. 1026-I of 18 April 1991) provides that the police may only use physical force, special equipment or a weapon in the circumstances specified in the Police Act and in accordance with the rules prescribed by that Act. Police officers must undergo specific

training and be periodically tested for their fitness to act in conditions requiring use of physical force, special equipment or a weapon (section 12(1) and (2)).

43. Before using physical force, special equipment or a weapon the police officer must:

- give warning of his intention to use physical force, special equipment or a weapon and give the person concerned sufficient time to comply with his order, except in cases where a delay in using physical force, special equipment or a weapon would create an immediate danger to the life and health of citizens and police officers, would be likely to cause other serious consequences or where a warning is impossible or impracticable in the circumstances; and
- endeavor to minimize the damage caused by the use of physical force, special equipment or a weapon to the extent possible depending on the nature and seriousness of the offence, dangerousness of the person who has committed it and degree of resistance offered.

Officers must also:

- ensure that anyone who has been injured as a result of use of physical force, special equipment or a weapon receives first aid and that their relatives are informed without delay; and
- inform a prosecutor of any use of physical force, special equipment or a weapon involving injuries or death (section 12(3)).

44. Abuse of the power to use physical force, special equipment or a weapon is punishable by law (section 12(4)).

45. Police officers may use physical force, including martial arts, to stop a criminal or administrative offence from being committed, arrest persons who have committed a criminal or administrative offence or overcome resistance to a lawful order, if non-violent methods are insufficient to ensure the discharge of their police duties (section 13).

46. Police officers are not liable for any physical, pecuniary or non-pecuniary damage caused to the offender as a result of the use, in accordance with the Act, of physical force, special equipment or a weapon if that damage is proportionate to the resistance offered (section 23(3)).

B. The Criminal Code of the Russian Federation

47. Article 112 of the CC provides that intentional infliction of minor damage to health causing a short-term health disorder or insignificant but durable loss of the general capacity to work shall be punishable by arrest for a period from three to six months or by deprivation of liberty for up to three years. The same acts committed with particular cruelty or in respect of a person in a vulnerable situation shall be punishable by imprisonment for a period from three to ten years. The same acts committed by a group shall be punishable by imprisonment for a term of five to twelve years.

C. The Code of Criminal Procedure of the Russian Federation

48. Article 9 of the CCP prohibits torture and inhuman or degrading treatment of a defendant or other participants in criminal proceedings.

49. Article 144 of the CCP provides that prosecutors, investigators and inquiry bodies must consider applications and information about any crime committed or being prepared, and take a decision on that information within three days. In exceptional cases, that time-limit can be extended to ten days. The decision should be one of the following: (a) to institute criminal proceedings; (b) to refuse to institute criminal proceedings; or (c) to transmit the information to another competent authority (Article 145 of the CCP).

50. Article 125 of the CCP provides that the decision of an investigator or a prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a District Court, which is empowered to check the lawfulness and grounds of the impugned decisions.

51. Article 213 of the CCP provides that, in order to terminate the proceedings, the investigator should adopt a reasoned decision with a statement of the substance of the case and the reasons for its termination. A copy of the decision to terminate the proceedings should be forwarded by the investigator to the prosecutor's office. The investigator should also notify the victim and the complainant in writing of the termination of the proceedings.

52. Under Article 221 of the CCP, the prosecutor's office is responsible for general supervision of the investigation. In particular, the prosecutor's office may order that specific investigative measures be carried out, transfer the case from one investigator to another, or reverse unlawful and unsubstantiated decisions taken by investigators and inquiry bodies.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED ILL-TREATMENT AND RELATED INVESTIGATION

53. Relying on Articles 3 and 13 of the Convention, the applicant complained that he had been ill-treated during and after his arrest and that no proper investigation into these events had been carried out by the

authorities. The Court will examine these complaints under Article 3 of the Convention, which provides as follows:

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

A. Admissibility

1. The parties' submissions

54. The Government submitted that the applicant had failed to exhaust available domestic remedies since he had not challenged the decision of 5 December 2006 not to open a criminal case. The Government also argued that the investigation into the applicant's allegations of ill-treatment had been thorough and effective.

55. The applicant disagreed with the Government and maintained his initial complaints. He stated that the remedy referred to by the Government was ineffective. Furthermore, he submitted that the competent authorities had not provided him with a copy of the decision of 5 December 2006.

2. The Court's assessment

56. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to first use the remedies that are ordinarily available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

57. Turning to the facts of the present case, the Court notes that the applicant challenged all of the decisions not to open criminal proceedings save for the decision dated 5 December 2006 (see paragraphs 18, 21, 24, 28, 29, 32, 35, 37 and 38 above). It further reiterates that in the Russian legal system although a court itself has no competence to institute criminal proceedings, its power to annul a refusal to institute criminal proceedings and indicate the defects to be addressed appears to be a substantial safeguard against the arbitrary exercise of power by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003).

The Court has previously pointed out that the rule of exhaustion is neither absolute nor capable of being applied automatically: for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case (see *Akdivar and Others*, cited above, § 69, and *Aksoy*, cited above, §§ 53-54).

58. The Court has strong doubts as to whether an appeal to a court in respect of the decision of 5 December 2006 would have been effective in the circumstances of the present case. The investigation into the applicant's allegations of ill-treatment continued with short interruptions for more than two years. During this period the criminal proceedings were discontinued and reopened nine times (see paragraphs 18, 21, 24, 28, 29, 32, 35, 37 and 38 above). On each of these occasions the courts invited the investigating authority to improve the quality of the investigation by eliminating defects in it that were identified (see paragraphs 20, 22, 25, 28, 31, 34 and 37 above).

59. The investigators disregarded these indications throughout the proceedings and did so yet again in the most recent decision of 5 December 2006. The parties agreed that the applicant did not attempt to bring court proceedings in this connection after the tenth refusal of the authorities to institute criminal proceedings. This being so, the Court is not convinced that an appeal to a court or to a higher prosecutor against the decision of 5 December 2006 would have offered the applicant any redress. It considers, therefore, that such an appeal in the particular circumstances of the present case would have been devoid of any purpose (see, for example, *Khatsiyeva and Others v. Russia*, no. 5108/02, § 151, 17 January 2008, and *Vanfuli v. Russia*, no. 24885/05, §§ 72-75, 3 November 2011). The Court finds that the applicant was not obliged to pursue that remedy and that the Government's objection should therefore be dismissed.

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

B. Merits

1. The parties' submissions

61. The Government admitted that the police officers had inflicted a number of injuries on the applicant during his arrest. They denied the applicant's allegations of ill-treatment after his arrest at the scene of the crime and thereafter in the police station. They also stated that the investigation had been effective, thorough and prompt.

62. The applicant disagreed and maintained his complaints.

2. The Court's assessment

(a) General principles

63. 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).

64. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). 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).

65. In relation to 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 recourse to physical force during an arrest, the Court reiterates that while Article 3 does not prohibit the use of force in order to effect a lawful arrest, such force must not be excessive (see, among others, *Polyakov v. Russia*, no. 77018/01, § 25, 29 January 2009).

66. 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* 1998-VIII).

67. 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).

68. 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.

69. Furthermore, the investigation must be expeditious. In cases examined under Articles 2 and 3 of the Convention, where the effectiveness of an official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita*, cited above, §§ 133 et seq.). Consideration has been given to the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, § 67, Reports 1998-IV), and the length of time taken to complete the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

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

(i) Alleged ill-treatment

70. The Court observes that the parties agreed that the applicant had sustained injuries to his scalp, nose, hand and finger, as recorded in the medical certificate of 29 March 2004 (see paragraph 15 above). The Court further observes that while it is undisputed by the parties that the applicant's scalp wound was inflicted upon him by police officers during his arrest, the parties disagreed on account of the origin of the injuries to the applicant's nose, hand and finger. The Government insisted that all of the applicant's injuries had been inflicted during his arrest, whilst the applicant argued that they had been sustained as a result of ill-treatment by the policemen after his arrest, initially at the place of the incident and then at the police station.

71. Taking into account the applicant's description of the alleged ill-treatment, which was credible and consistent throughout the proceedings, and the contents of the medical certificate of 29 March 2004, the Court takes the view that the burden of proof rested on the authorities to account for the injuries at issue by providing a satisfactory and convincing explanation of their cause (see *Zelilof v. Greece*, no. 17060/03, § 44, 24 May 2007, and *Polyakov*, cited above, §§ 25 and 26) and to demonstrate that in each case the use of force was not excessive (see, *mutatis mutandis*, *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Matko v. Slovenia*, no. 43393/98, § 104, 2 November 2006).

72. The Court notes the conclusions of the domestic inquiry that the police officers had had to apply physical force against the applicant to overcome his resistance. This resulted in the applicant being pushed by the arresting officers and falling down some stairs (see paragraph 35 above). The investigation was unable to specify exactly how this happened and whether the use of force was made at all inevitable by the applicant's resistance during arrest.

73. Having examined the evidence collected and assessed by the domestic authorities, the Court notes that this version of events sits ill with the nature and the location of the applicant's injuries reflected in the certificate of 29 March 2004. The injuries recorded manifestly correspond to multiple impacts rather than a single fall down the stairs. In this respect, the applicant's own version of events provides exact and very plausible reasons for his finger and nose being broken (see paragraph 13 above). And whilst the fact that the applicant was pushed and fell down the stairs remains undisputed, the applicant's account also puts in doubt the need for the arresting officers to have used physical force on that particular occasion. This is partly confirmed by the lack of any indication in the statements of the police officers questioned that the applicant resisted arrest, officer M. having repeatedly admitted that he pushed the applicant down the stairs, but not once mentioning the applicant having resisted arrest (see paragraphs 29 and 35 above).

74. Given the investigation's failure to establish in detail the exact circumstances of the incident and to account in full for all of the applicant's injuries (see paragraphs 29 and 35 above), the Court cannot but conclude that the respondent Government failed to discharge its burden and that it was not satisfactorily established that the applicant's account of events was inaccurate or otherwise erroneous.

75. Having examined the case file materials and the domestic decisions, the Court takes the view that the Government failed to justify the need for the use of force in respect of the applicant, as he did not resist arrest and followed police orders. The Court also finds it established that the applicant's injuries other than the "contused wound on his scalp" could not only have been sustained during his fall down the stairs and that, in the

absence of any other plausible explanation, they must have been inflicted by the police officers after the arrest in the circumstances indicated by the applicant (see paragraph 13 above).

76. Having regard to all the circumstances of the treatment, its physical and mental effects and the applicant's state of health, the Court is satisfied that the accumulation of the acts of physical violence inflicted on the applicant on 29 February 2004 amounted to inhuman and degrading treatment, in violation of Article 3 of the Convention.

77. There has therefore been a violation of Article 3 of the Convention under its substantive limb.

(ii) Adequacy of the investigation

78. The Court observes that the applicant's allegations against the police officers were confirmed by the medical evidence (see paragraph 13 above) and were thus sufficiently serious to reach the "minimum level of severity" required under Article 3 of the Convention. Furthermore, these allegations were "arguable" and thus required an investigation by the national authorities.

79. The Court observes that following the applicant's complaint, the prosecutor's office carried out an inquiry into his allegations of ill-treatment. The Court accepts that the authorities reacted promptly to the applicant's complaint (see paragraphs 16 - 18 above); it is not, however, convinced that their response to the applicant's allegations was sufficiently thorough to meet the requirements of Article 3.

80. Firstly, the Court notes that in the period between June 2004 and December 2006 the investigating authority issued ten decisions refusing to initiate criminal proceedings against the police officers. Nine of these were quashed by the courts because the preliminary inquiry had been found to be incomplete and inadequate, whilst the tenth refusal was not even appealed against in court by the applicant on account its repetitive reasoning. The Court endorses the domestic courts' criticism of the work carried out by the investigative authority and finds that the repeated remittals of the case for further investigation along with the prosecutor's reluctance to follow the recommendations of the courts (see paragraphs 20, 25, 31 and 36 above) disclose a serious defect in the investigation taken as a whole (see *Gladyshev v. Russia*, no. 2807/04, § 62, 30 July 2009, and *Alibekov v. Russia*, no. 8413/02, § 61, 14 May 2009), as these failings adversely affected the capacity of investigation to collect and assess evidence relevant for the resolution of the case.

81. Taking a closer look at the course of the proceedings, the Court finds that the relevant authority failed to conduct interviews of important witnesses, such as the doctor who had provided the applicant with first aid and police officer A. who had been involved in the applicant's arrest, and that, more generally, the investigation remained insufficiently critical in the

assessment of the oral evidence given by the police officers who had participated in the sting operation.

82. The Court further notes that many important investigating steps, such as interrogation of the applicant and the police officers involved, examination of the medical documents and expert examination of the applicant's injuries were carried out with significant delays, in disregard of courts' repeated instructions to this effect (see paragraphs 24, 29, 32, 35 and 37 above). Such deficiencies on the part of the authorities caused, in the Court's view, a loss of precious time and complicated, if not made impossible, any further investigation of the applicant's allegations (see, for similar reasoning, *Ablyazov v. Russia*, no. 22867/05, § 58, 30 October 2012).

83. Furthermore, the Court notes that no genuine attempt was made to distinguish between the injuries at various locations and to address the applicant's complaint in part relating to his nose and finger fractures and the scratches on his hand. The Court also notes that the authorities disregarded the applicant's complaint about the excessive use of force against him (see paragraph 36 above), as they failed to address the proportionality of the use of force with regard to the legitimate aim pursued (see paragraphs 18, 21, 24, 29, 32, 35 and 38 above).

84. Having regard to the above, the Court considers that the investigation cannot be said to have been diligent, thorough and "effective". There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

85. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair. He alleged that the domestic courts had violated his right not to incriminate himself and in convicting him had had regard to a confession given under duress. Article 6 § 1 of the Convention, in so far as relevant, reads as follows:

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

A. Admissibility

86. 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. The parties' submissions

87. The Government stated that the guarantees of Article 6 had been complied with. They noted that the prosecutor's inquiry had not confirmed the applicant's allegation of ill-treatment. The Government also submitted that the applicant had been advised of his right not to incriminate himself and that he had made his statements voluntarily. Lastly, they observed that the applicant's self-incriminating statements had been corroborated by the other pieces of evidence.

88. The applicant maintained his complaint. He claimed that his confession had been made under duress.

2. The Court's assessment

89. The Court reiterates that it is not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (see, *inter alia*, *Gäfgen v. Germany* [GC], no. 22978/05, § 162, ECHR 2010).

90. Furthermore, particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3. The use of such evidence, secured as a result of a violation of one of the core and absolute rights guaranteed by the Convention, always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction (see *Gäfgen*, cited above, § 165).

91. The Court has found in earlier cases in respect of confessions that the admission of statements obtained as a result of torture (compare *Örs and Others v. Turkey*, no. 46213/99, § 60, 20 June 2006; *Harutyunyan v. Armenia*, no. 36549/03, §§ 63, 64 and 66, ECHR 2007−III; and *Levinţa v. Moldova*, no. 17332/03, §§ 101 and 104-05, 16 December 2008) or of other ill-treatment in breach of Article 3 (see *Söylemez v. Turkey*, no. 46661/99, §§ 107, 21 September 2006, and *Tangiyev v. Russia*, no. 27610/05, § 74, 11 December 2012) as evidence to establish the relevant facts in criminal proceedings rendered the proceedings as a whole unfair. This finding applied irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction (ibid.).

92. In the present case, the Court notes that the self-incriminating statements made by the applicant following his arrest and during his time in police custody formed part of the evidence produced against him in the criminal proceedings (see paragraph 14 above). The trial and appeal courts did not find those statements inadmissible and referred to them when finding the applicant guilty and convicting him (see paragraphs 39 and 40 above).

93. The Court further notes that it has already established that the applicant was subjected to ill-treatment, both during his arrest and later during his detention by the police (see paragraphs 75 - 77 above), which took place immediately before the applicant confessed to having committed the crime with which he was subsequently charged (see paragraphs 12 and 14 above).

94. In such circumstances, the Court is not convinced by the Government's argument that the applicant's confessions should be regarded as having been given voluntarily. It concludes that, regardless of the impact the applicant's statements obtained under duress had on the outcome of the criminal proceedings against him, such evidence rendered the criminal proceedings unfair (see *El Haski v. Belgium*, no. 649/08, § 85, 25 September 2012 and *Tangiyev*, cited above, § 74). There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

95. 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

96. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

97. The Government considered the claim unsubstantiated and excessive.

98. The Court further observes that the applicant must have suffered a certain degree of stress and frustration as a result of the violations found. The actual amount claimed is, however, excessive. Making its assessment on an equitable basis, it awards the applicant the sum of EUR 9,000 in respect of non-pecuniary damage.

B. Costs and expenses

99. The applicant also claimed EUR 2,000 for costs and expenses incurred before the domestic courts and before the Court.

100. The Government submitted that this claim was unsubstantiated.

101. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to the material in its possession, the Court grants the applicant's claim in part relating to the legal and other costs incurred by him in the Strasbourg proceedings and considers it reasonable to award him EUR 1,000 plus any tax that may be chargeable.

C. Default interest

102. 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

1. *Declares* unanimously the application admissible;

2. *Holds*, by 6 votes to 1, that there has been a violation of Article 3 of the Convention under its substantive limb;

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

4. *Holds*, by 6 votes to 1, that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds,* by 6 votes to 1,
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 9,000 (nine thousand euros), plus any tax that may be chargeable on the above amount, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable on the above amount, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 14 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Dedov is annexed to this judgment.

I.B.L.
S.N.

DISSENTING OPINION OF JUDGE DEDOV

With all due respect for the majority's opinion, I am not in a position to find a violation of Article 3 under its substantive limb and, as a consequence, a violation of Article 6 of the Convention.

The circumstances of the applicant's arrest (see paragraphs 6-11 of the judgment) show that he was one of four gang members armed with a shotgun and other weapons. After the group had entered the shop with intent to commit a robbery they were stopped by the police. Shots were fired, and as a consequence the applicant was arrested.

Assessing these circumstances as a whole, in this situation the police had to use force to overcome the applicant's resistance and to apprehend him and the other gang members. Obviously, such use of force could not have been limited to pushing him down the stairs; however, the majority concentrated only on a single fall down the stairs as evidence of injuries.

The applicant's allegations concerning torture are too vague to be taken into consideration. He first stated that he was beaten at the police station (paragraph 13), but then claimed that it had happened in the shop (paragraph 35).

He stated that he had been beaten with a view to obtaining a confession and that he had confessed (paragraph 10), and then that he was beaten again with the same purpose and, as a result of the ill-treatment, made a confession about the robbery (paragraph 13). I wonder why the confession was necessary if the applicant had been apprehended at the crime scene. Therefore, it is difficult to take into account his version of the events.

I also regret the fact that the majority automatically applied the Court's previous rulings on the torture issue such as *Labita v Italy* (paragraph 63). In *Labita* the circumstances of the applicant's arrest and ill-treatment were completely different: the applicant was not arrested at the crime scene and was allegedly ill-treated for a long period of time in prison without any purpose of obtaining a self-incriminating statement from him. Ultimately, in that case the Court did not find a violation of Article 3 under its substantive limb.

Also, according to the findings of the national court, before the arrest the applicant had two offences on his criminal record. He served his prison sentence from 1996 to 2003. After his release from prison he joined the gang and just two months later he was arrested. He was charged with two crimes: robbery in a shop and theft of paintings. At the hearings he pleaded not guilty (as to the attack on the shop, he stated that he had entered the shop without intent to robbery); however, his guilt was substantially confirmed by witnesses, victims, expert evidence and clues (masks, weapons, paintings), and he was ultimately convicted by the national court on some of the charges and acquitted on others. The gang operated for two years (2003-2004); there were six members participating in the robbery

(against nine police officers), and one of them managed to escape arrest in the shop. These facts raise even more doubts in relation to possible reasons for ill-treatment and justify more strongly the use of force to stop the violence, which had lasted for two years.

What is more important for me in this case is the difficulty which the Court faces each time in applying the values of the Convention. One of these values is peaceful life. This value is so fragile and delicate that we should all feel responsible for maintaining the peace. If anyone takes up a shotgun or weapon with violent intent, this value is immediately placed at great risk. So, any such applicant should understand that the lives of others are in danger, that such danger is immeasurable because he may participate in killings, and that he may be injured or even killed as a result of the resistance to his unlawful violence (subject to the conditions set out in paragraph 2 of Article 2 of the Convention). The use of force against the applicant during his arrest was a way of making him take responsibility for the lack of respect he had shown for peaceful life. Where risks of this kind are involved the State's margin of appreciation should be broader.

The importance of protecting the peaceful life of society can be easily demonstrated by the definition of robbery under Article 162 of the Russian Criminal Code (which was not incorporated in the judgment): armed assault with intent to seize someone's property, committed with the threat of violence dangerous to the life and health of others.