



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

FIRST SECTION

CASE OF ALEKSANDR NOVOSELOV v. RUSSIA

(Application no. 33954/05)

JUDGMENT

STRASBOURG

28 November 2013

FINAL

28/02/2014

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

In the case of Aleksandr Novoselov v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 5 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 33954/05) 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 Aleksandr Valeryevich Novoselov (“the applicant”), on 9 August 2005.

2. The applicant was represented by Ms O. Sadovskaya, a lawyer practising in Nizhniy Novgorod. 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 complained that police officers had kidnapped and ill-treated him on 27 April 2004 and that subsequently there had been no proper investigation of these events.

4. On 20 May 2008 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Nizhniy Novgorod.

A. The events of April 2004 and the subsequent medical examinations

6. At the relevant time the applicant was an employee of one S., the owner of a private company. On 1 December 2003 an unknown person fired at S.'s car using an AK-74 assault rifle. S. was wounded but survived the attack.

7. The investigative authorities suspected the applicant and his acquaintances D.A., D.M. and Sh. of having planned it.

8. In this connection, on 21 April 2004 the Nizhniy Novgorod Regional Department of the Interior authorised an operative drill.

9. On 26 April 2004 the following instruction was given to the police officers in charge of it:

“The police officers should take [the applicant] in a car belonging to S. to the designated location. The police officers should hold themselves out as members of S.'s personal security service. At the designated location [the applicant] should be met and questioned by a police officer disguised as S.”

10. At about 10 a.m. on 27 April 2004 on his way to work the applicant was stopped by an unknown man. This man grabbed the applicant's hand and dragged him into a black car belonging to S.

11. The applicant tried to escape and shouted for help. Two other men came out of the car and started beating him, forcing him into the vehicle.

12. The applicant was handcuffed and driven to a forest in the Balakhinskiy District of the Nizhniy Novgorod Region.

13. According to the applicant, some time later, another car drove up. S. and a man in camouflage with a gun and a plastic bag appeared from the car. The man in camouflage hit the applicant on the back of the head. The applicant fell to his knees and the man kicked him in the back. Then S. kicked the applicant in the chest. After being severely beaten, the applicant was asked why he had wanted S. dead. The applicant denied his involvement in the attempt on S.'s life. Then the man in camouflage rammed a gun in the applicant's mouth, making his lower lip bleed. Later, unknown persons put a plastic bag over his head, with a view to suffocating him. The applicant passed out a few times. When he regained consciousness, the men began beating him again. Later S. said: “Take an axe and cut off his leg!” After the applicant saw an axe in the hands of one of the men, he told them he would write whatever they wanted. He was given a pen and paper. One of his kidnappers dictated several written statements to him and another one made a video recording. The applicant promised to confess his involvement in the attempt on S.'s life to a police officer, V. He was driven to the police station for this purpose.

14. On his arrival there, the applicant changed his mind and instead of confessing filed a complaint of ill-treatment by S. and his associates.

15. In the evening the applicant returned home, where he was met by his partner, L. Later that day he went to a hospital. The following entry was made in his medical record:

“Date of admission to the hospital: 27.04.2004 at 20.30

Date of discharge from the hospital: 14.05.2004

Department: surgery

...

Diagnosis: contusion of the right kidney, a brain contusion, bruising of the soft tissue of the face and limbs, blood in the urine, a subarachnoid haemorrhage and a fracture of the right ninth rib.

...

[According to the applicant,] on 27.04.2004 around 10 a.m., close to Svoboda Square, he was beaten up by three unknown persons, then he was put in a [car] and driven to Dubravniy, where he was beaten again. He received blows to the head, body and limbs. Unknown persons suffocated him with a plastic bag. He lost consciousness a few times...”

16. On 30 April 2004 the applicant was examined by his doctor, an investigator and an expert in the presence of attesting witnesses. The following injuries were established.

“There are two bruises of an irregular oval shape with blurred borders on the surface of the skin close to the right wrist joint and on the dorsal side of the right hand measuring 1.5 by 2 cm and 1 by 2.5 cm respectively. Similar bruises are located on the front left part of the rib cage on top of the third rib measuring 3 to 5 cm. On the front of the right thigh there are two bruises measuring 1 by 2 cm and 2 by 4 cm respectively. On the back of the left leg there is a bruise measuring 1.5 by 2 cm. On the frontal part of the left leg there is a bruise measuring 3 by 4 cm. On the front of the left knee joint there are two bruises measuring 1 by 3 and 1 by 1.5 cm respectively. In the middle of those bruises there is an oval-shaped scratch measuring 0.7 to 1.5 cm. covered with a reddish-brown scab. Two similar bruises are located on the right shoulder measuring 1 by 1.5 and 1 by 2 cm respectively. Palpating the right temple is painful. The patient has a burst blood vessel in the left eye measuring 0.1 cm.”

17. After discharge from the hospital the applicant sent all of his medical documents to a licensed specialist in forensic medicine, who reached the following conclusions in a report of 26 July 2004:

“... the [applicant’s] injuries ... could have been inflicted on 27.04.2004 in the circumstances described by the applicant ... [His resulting incapacitation for work for] twenty-one days enables the conclusion that the injuries in question should be classified as inflicting medium-severity damage to the [applicant’s] health ...”

18. The investigation into the attempt on S.’s life subsequently abandoned the theory that the applicant had been involved and its eventual outcome is unclear.

19. On 7 June 2005 the applicant obtained, for the purposes of the present case, the following statement from his partner L. The statement reads as follows:

“[The applicant] is my partner. On 27 April 2004 at about 10 a.m. we went to work. My partner had no complaints about his health and no bodily injuries. [While] on the bus he noticed that a familiar car was following us. I do not remember the model or the car’s number plate. I got off at the Minina bus stop and went to work. After arriving at work I phoned [the applicant] but could not reach him. I tried to call several times more [but the applicant did not answer me].

At about 5 p.m. [the applicant] contacted me and asked me to go home and to not open the door to anybody. At about 6 p.m. I returned home. At about 7.30 p.m. [the applicant] came home. He looked bad. His face was blue. He could hardly move and kept his arm across his chest. His clothes were dirty. He told me that S. with his associates had kidnapped him earlier that day and had driven him to a forest where they had ill-treated him, forcing him to confess to S.’s attempted murder. He also told me that afterwards he had been driven to a police station to see V.

Subsequently [the applicant] went to hospital where he was admitted until 14 May 2005 for inpatient treatment. He later received outpatient treatment there.”

B. Criminal investigation

20. In response to the applicant’s complaint of 27 April 2004 (see paragraph 14 above) the Prosecutor for the Nizhegorodskiy District of Nizhniy Novgorod (“the Prosecutor’s Office”) carried out a preliminary check. An investigator questioned M., one of the police officers involved in the operative drill, and S. The documents issued in connection with the drill were declassified and the police report of 27 April 2004 containing the summary of what had happened was added to the case file. It reads as follows:

“At 10.00 a.m. [the police] forced the applicant into the car with a view to forcing him to talk to the ‘right man’. The applicant shouted for help and fought. He was counteracted by the police officers. No injuries were inflicted on him. The car drove [the applicant] to the designated location, where a police officer disguised as S was waiting for him. The police officer imitating S. asked: ‘Why did you shoot me?’ [The applicant] was stressed and showed real fear. [The applicant] answered that he had not been involved in S.’s attempted murder and had no information about it. At the same time [the applicant] told him that on 8 December 2003 at D.M.’s request he and Sh. had gone in Sh.’s car to Okskiy to check out a car. For this purpose, D.M. had provided them with a hand-drawn map of the car’s location. [The applicant] later threw the map away. [While] at the location [the applicant] spoke with D.M. and D.A. by phone. Later [the applicant] went back to [work]. He did not know that the car had been used in S.’s attempted murder ...

In this connection [the applicant] was invited to write down his statements in a report, addressed to the Prosecutor’s Office. The applicant agreed to do so. He was advised to take the report to a law-enforcement authority. The applicant agreed to file it with V. During this discussion the applicant asked for alcohol and money for his

services, complaining about the poor conditions of his life and low salary of 4,000 roubles.

At 1.15 p.m. V. was informed of the results of the operational drill. V. ordered that [the applicant] be brought to the police station. This instruction was put into effect. The operative drill was finished at 2 p.m.”

21. On 2, 21 June and 17 July 2004, following the orders of the investigative authorities, the applicant was examined by doctors who inspected his general appearance, the condition of his skin and gave him a general physical examination. No injuries on the applicant’s body, except a scar on his palm, were established. These findings were reflected in three expert reports.

22. On 16 August 2004 the Prosecutor’s Office refused to institute criminal proceedings concerning the applicant’s complaint. The refusal reads as follows:

“On 27 April 2004 [the applicant] contacted the Prosecutor’s Office, demanding the criminal prosecution of S and members of his personal security service who at about 10 a.m. on 27 April 2004 kidnapped him from a bus stop on Svoboda Square. He was forced into a [car] and driven to a forest close to Dubravniy where he was beaten for two to three hours. The kidnappers beat him and made threats to his life. They told [the applicant] to confess and to prepare a written statement in which [it is stated that the applicant], D.A. and D.M. were guilty of attempting to murder S. [The applicant] repeated [this] during his examination as a witness and during a crime scene reconstruction. However, during the crime scene reconstruction he could not point to the exact place where he had been beaten by the kidnappers.

According to the applicant, after this incident, at 8.30 p.m. on 27 April 2004 he went to [a hospital] where doctors diagnosed contusion of the right kidney, brain contusion, bruising of the soft tissue of the face and limbs, blood in the urine, subarachnoid haemorrhage, fracture of the right ninth rib.

However the preliminary investigation established that on 27 April 2004 [police officers] had performed an operative drill involving the applicant on the basis of an order of 21 April 2004 issued by the Deputy Head of the Nizhniy Novgorod Regional Department of the Interior in order to assess the applicant’s involvement in S.’s attempted murder. In the course of the operative drill the applicant was driven to a forest in the Balakhinskiy District of the Nizhniy Novgorod Region. [The applicant] explained that, upon D.M.’s request, on 8 December 2003 he and Sh. had towed [a car] located in Okskiy. This car was used in an attempt on S.’s life. [The applicant] also noted that D.M. and D.A. had instructed him as to what he should say to the police [if stopped]. They wanted him to state that they were going to a cemetery in the Avtozavodskoy District of Nizhniy Novgorod, passing through Okskiy on the way there.

In the course of the operative drill no violence was used against the applicant. There was no use or brandishing of firearms or [other] weapons [during the drill].

The operative drill was audio and video recorded by a hidden camera.

The operative drill was performed in accordance with sections 6–11 of the Operational Search Activities Act.

The aforementioned findings are confirmed by statements of M., who was involved in the operative drill and who has been questioned as a witness.

A report of the operative drill was declassified and joined to case file no. 69727.

S., who was examined by the police [as a witness], explained that on 27 April 2004 from 10 a.m. to 6 p.m. he had been in his office (except a lunch break for one hour). He had not given orders to his personal security service concerning [the applicant's] kidnapping.

S.'s statements are confirmed by the statements of I. [the identity of this person is unclear]

From the aforementioned it follows that S. did not commit a criminal offence prohibited by Articles 116, 119 and 126 of the Criminal Code of Russia.”

23. The applicant learned about the police involvement in the incident of 27 April 2004 from this refusal.

24. On 22 September 2004 the applicant wrote to the Prosecutor's Office asking it to prosecute the police officers involved in the events of 27 April 2004. He also challenged the decision of 16 August 2004 before a higher authority.

25. On 30 September 2004 the police ordered an expert examination of the applicant by a psychologist with a view to checking his personality and propensity to lie. Among other documents, the authorities made available to the expert the video records of the applicant's statements concerning the events of 27 April 2004 as well as video records of the operative drill of 27 April 2004. In the expert report subsequently drawn up on 28 January 2005 it was found that the applicant had “a personality with heightened level of restlessness, conformist, with high dependence on the influence from the exterior”, which could explain the fact that he had earlier changed his statements multiple times. In the description of the circumstances of the case, the report also mentioned as a finding that:

“... during the operative drill, when the police officers presented themselves as the security service of S. and S. himself and put psychological pressure on [the applicant] (during daytime, at a crowded place, forced him into a car, drove him to the forest, demanded to confess in the attempt on S.'s life ...). These actions of the officers could provoke the applicant's feelings of worry, fear for his life, future and the wish to prevent the negative consequences ...”

26. On 19 October 2004 the Prosecutor for the Nizhniy Novgorod Region quashed the decision of 16 August 2004 and remitted the case for further investigation, having found the following:

“[The applicant] challenged before the Prosecutor for the Nizhniy Novgorod Region the decision not to institute criminal proceedings following his complaint of 27 April 2004.

An examination of case file no. 697272 and the applicant's complaint indicates that the refusal of 16 August 2004 is premature and that the case requires further investigation. In this connection, the applicant's complaint should be granted.”

27. In this decision the Prosecutor for the Nizhniy Novgorod Region did not point out any specific defects in the investigation.

28. On 18 March 2005 the investigative authority issued a new decision refusing to bring a prosecution. The first part of this refusal repeated the previous findings of the Prosecutor's Office cited above (see paragraph 22 above). The remaining part reads as follows:

“Expert reports of 2, 21 June and 17 July 2004, a medical examination of 30 April 2004, along with statements of expert Y. could not confirm the applicant's injuries.

On 16 August 2004 [the Prosecutor's Office] refused to institute criminal proceedings against S. because no indication of the criminal offences prohibited by Articles 116, 119 and 126 of the Criminal Code of Russia was found in his actions.

On 19 October 2004 [the Prosecutor's Office for the Nizhniy Novgorod Region] quashed the refusal and remitted the case for further investigation.

Information provided by an ambulance station [shows that] the applicant did not make any telephone calls to the ambulance station.

Sh., who was examined [in connection with the applicant's allegations,] stated that towards the end of April 2004 he had spoken with [the applicant], who had mentioned his [having been] beaten. In response to the question: ‘where are you?’ [the applicant] replied that he was in a sauna. The telephone company confirmed that on 27 April 2004 after 4 p.m. the [applicant's] telephone was located in an area of his workplace, the ‘Atlantic’ sauna club.

M., [one of the policemen involved in the operative drill] who was repeatedly questioned [in connection with the applicant's allegations], confirmed his previous statements. He pointed out that no physical [ill-treatment] or psychological pressure had been used against [the applicant], no firearms or [other] weapons had been brandished. There were no visible injuries on the applicant's body. The applicant had not complained about his health and looked healthy. He had not resisted the police after he had been forced into the car. During the operative drill [the applicant] had not injured himself. He had also noticed that one of the police officers was disguised as S.

S.O. and M.B. [the applicant's acquaintances] stated that they had seen the applicant on 27 April 2004 after the alleged incident. He was not injured and he did not complain about his health. He had a positive attitude and ‘drank cognac’.

The expert psychological report of 28 January 2005 (no. 340/4446/27) indicated that the applicant had an anxious and compulsive, highly co-dependant personality. His statements about a car being towed and about being put under pressure were not true.

Moreover, the applicant's statements which had been given during the operative drill were confirmed by other case materials. The revised statements of the applicant were not confirmed.

The investigation shows that the operative drill concerned the applicant. It was carried out in line with the requirements of federal law.

No objective information confirming [that] the applicant [was] beaten [or subjected to] psychological pressure, physical ill-treatment or violence was found.

It is impossible to disprove M.'s and S.'s statements and the statements of other witnesses.

No evidence of the criminal offences prohibited by Articles 116, 119, 126, 285 and 286 of the Criminal Code of Russia was found during the present investigation.

No evidence [pointing to the truth] of [the applicant's version of the events] was found. All methods of gathering evidence were used by the investigation.

In the light of the above findings, there are no signs of the criminal offences provided by Articles 116, 119, 126, 285 and 286 of the Criminal Code of Russia in the actions of the police officers.”

29. The applicant challenged this refusal to institute criminal proceedings in court. He complained that the investigative authority had failed to perform investigative actions. In particular, the police officer disguised as S had not been questioned by the police. The police had not examined medical documents provided by the applicant or the video records of the operative drill. The applicant also noted that the police had not investigated the alleged use of force when he was pushed into the car. In court, the applicant also complained that the prosecutor's office had not found any eyewitnesses to his kidnapping.

30. On 12 May 2005 the Nizhniy Novgorod Sovetskiy District Court dismissed the applicant's claim, having found as follows:

“From the criminal case file no. 69727 it is evident that on 27 April 2004 the police performed an operative drill concerning [the applicant] on the basis of [the police] order of 21 April 2004. It was carried out in order to check [the applicant's potential] involvement in the offence. During the operative drill the applicant was put into a car and taken to a forest in the Balakhinskiy District of the Nizhniy Novgorod Region.

According to the records of the operative drill and M.'s statements, which were confirmed in the court hearings, no violence or weapons were used against [the applicant]. According to [the applicant's] statements, he suffered body injuries which had been confirmed by medical records. The validity of the medical records could not be examined in the present proceedings as by an order of 21 March 2005 the investigator instituted separate proceedings in this connection.

The investigative authorities after declassification of the records of the operative drill provided all of the participants in the present proceedings with the relevant transcripts. There is no information regarding the applicant's request for an ... examination of [whether] the recordings [had been tampered with].

In the court hearings, the applicant stated that eyewitnesses to his kidnapping of 27 April 2004 from Svodboda Square had not been questioned and the police had not investigated his allegation that one of the witnesses to this incident had phoned the police. The applicant and his lawyer made no attempt to find these witnesses. The court was not provided with information about them.

The above findings enable the court to conclude that the applicant did not provide the court with new information which could refute the lawfulness of the investigator's order.

In the courts' view, the impugned order was issued after an examination of all of the evidence at [the prosecutor's office's] disposal. The investigator properly assessed the evidence.

In this connection, the court does not see any grounds for granting the applicant's claim.”

31. On 24 June 2005 the Nizhniy Novgorod Regional Court upheld this decision on appeal, having found as follows:

“Having examined the statement of appeal, the court sees no grounds for granting [the appeal].

The court of first instance, in line with the requirements of Article 125 of the Code of Criminal Procedure of Russia (“CCP”), examined the reasons for the investigator’s refusal and its lawfulness.

The conclusions in the court’s decision were validly made on the basis of an examination of the case file, which allows this court to uphold the trial court’s findings ...

The argument [made] in the statement of appeal lodged by the [applicant’s] lawyer concerning the unreasonableness of the refusal is baseless.

The court of first instance correctly pointed out that information about [the applicant’s] injuries [could not be admitted as evidence] because there were separate proceedings pending before the investigative authorities [to check whether the medical certificates had been falsified]. The court had no jurisdiction to assess [the medical evidence] in the proceedings under Article 125 of the CCP.

The defence’s claim concerning the arbitrary assessment of the evidence is a pernicious argument, as in the relevant part of the proceedings the court had no jurisdiction to assess [this aspect] of the collected evidence because the case was not being examined in full.

The refusal was issued by a competent official of the Prosecutor’s Office within its jurisdiction and in line with requirements of Articles 145 and 148 of the CCP.

Taking into account the aforementioned considerations, the court concludes that the trial’s court’s decision of 12 May 2005 is reasoned and lawful.”

32. On 10 September 2008 the criminal investigation instituted by order of 21 March 2005 in connection with the alleged falsification of the applicant’s medical records and mentioned in the judgment of 21 May 2005 (see paragraphs 30 and 31 above) was discontinued for the lack of indication of any crime.

II. RELEVANT DOMESTIC LAW

A. Constitution of the Russian Federation

33. Articles 20, 21 and 20 of the Constitution provide that everyone has the right to life and the right to liberty and personal security, which are guaranteed and protected by the State. No one shall be subjected to cruel or degrading treatment or punishment.

34. Articles 45 and 46 of the Constitution guarantee the judicial protection of Constitutional rights.

35. Articles 52 and 53 of the Constitution protect the rights of victims of crimes. The State guarantees victims access to justice and compensation of

damage. Everyone is entitled to compensation of damage caused by the unlawful actions of State officials.

B. Russian Criminal Code

36. Article 112 § 1 of the Criminal Code of the Russian Federation of 13 June 1996 provides that intentionally causing bodily harm of medium severity but which does not risk the victim's life or result in the consequences listed in Articles 111 of the present Code, but which leads to sustained damage to the victim's health or permanent loss of up to a third of his or her work capacity is punishable by detention from three to six months or deprivation of liberty for a term of up to three years. The same offence, if committed by a group of individuals, is punishable by deprivation of liberty for a term of up to five years.

37. Article 286 § 3(a) of the Criminal Code provides that actions of a public official which clearly exceed his authority and entail a substantial violation of the rights and lawful interests of citizens, committed with violence or the threat of violence, are punishable by three to ten years' imprisonment, with a prohibition on occupying certain posts or engaging in certain activities for a period of three years.

C. Russian Code of Criminal Procedure

38. Article 140 of the CCP provides that criminal proceedings should be instituted if there is sufficient information which indicates signs of a criminal offence having taken place.

39. 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).

40. 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.

41. 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.

42. 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.

D. Operational-Search Activities Act

43. The Operational-Search Activities Act of 12 August 1995 (no. 144-FZ) provides that the aims of operative search activities are: (1) the detection, prevention, suppression and investigation of criminal offences and identification of persons conspiring to commit, or committing, or having committed a criminal offence; (2) finding fugitives from justice and missing persons; (3) obtaining information about events or activities endangering the State, military, economical or ecological security of the Russian Federation (section 2).

44. State officials and organs performing operational-search activities are to show respect for the private and family life, home and correspondence of citizens. It is prohibited to perform operational-search activities to attain aims or objectives other than those specified in this Act (section 5).

45. Operational-search activities include, *inter alia*, operative drills (*оперативный эксперимент*, section 6).

46. Section 7 of the Operational-Search Activities Act provides that operational-search activities may be conducted, *inter alia*, pending criminal proceedings.

THE LAW

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

47. The applicant complained that he had been ill-treated by the policemen during the operative drill on 27 April 2004. He also complained that the authorities had failed to carry out a proper investigation in this connection. The Court will examine this complaint under 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. The parties’ submissions

48. The Government insisted that the applicant had failed to provide evidence of ill-treatment which would confirm his allegations beyond a reasonable doubt and that he had also failed to prove that his injuries had not been sustained prior to the operative drill. At the same time, they asserted that the applicant had not challenged the police actions in court and had not sought to have criminal proceedings instituted against the police officers.

49. The applicant disagreed and maintained his complaints. He referred, in particular, to the medical records noting his injuries. He stated that the genuineness of these medical records had been confirmed by the police investigation.

50. The applicant insisted that he had exhausted domestic remedies. According to the applicant, he had lodged the first crime report against S. because he had genuinely believed that he had been beaten by S. and his personal security service. As soon as he had become aware of the police involvement in the incident, he had lodged a new complaint seeking the prosecution of the policemen involved in the operative drill.

B. The Court’s assessment

1. Admissibility

51. As to the Government’s argument concerning non-exhaustion of domestic remedies, the Court reiterates that non-exhaustion of domestic remedies cannot be held against the applicant if, in spite of the latter’s failure to observe the formalities prescribed by law, the competent authority has nevertheless examined the substance of the claim (see, *mutatis mutandis*, *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007; *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).

52. In the present case, both the investigative authorities and the courts examined in substance and rejected as unfounded the applicant’s allegations of ill-treatment during the operative drill on 27 April 2004 (see paragraphs 20, 28, 30 and 31 above). Moreover, the applicant learned about the police involvement in the events of April 2004 from the decision of 16 August 2004 (see paragraphs 22-23 above) and at once sought the prosecution of the police officers who he claimed had ill-treated him (see paragraph 24 above). This was made in the context of the on-going investigation into the

events of April 2004. In view of this, it cannot be said that the applicant has failed to exhaust domestic remedies in connection with his grievances. The Government's argument should therefore be dismissed.

53. The Court also notes that the complaints under Article 3 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. *Merits*

(a) **The applicant's ill-treatment**

(i) *General principles*

54. The Court has stated on many occasions that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits, in absolute terms, torture and inhuman and degrading treatment or punishment, irrespective of the victim's conduct (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV; and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V). No derogation is allowed even in the event of a public emergency threatening the life of the nation. Article 3, which has been framed in unambiguous terms, recognises that every human being has an absolute, inalienable right not to be subjected to torture or to inhuman or degrading treatment under any circumstances. The philosophical basis underpinning the absolute nature of the right under Article 3 does not allow for any exceptions or justifying factors or balancing of interests, irrespective of the conduct of the person concerned and the nature of the offence at issue (see, for example, *Gäfgen v. Germany* [GC], no. 22978/05, § 107, ECHR 2010).

55. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161 in fine, Series A no. 25). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Where an individual is taken into custody in good health but is found to be injured at the time of release, the burden of proof may be regarded as resting on the authorities to provide a plausible and convincing explanation of how those injuries were caused (see

Salman v. Turkey [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

56. The Court further reiterates its settled approach that Article 3 imposes on the State a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees or conscripted servicemen (see *Chember v. Russia*, no. 7188/03, § 50, 3 July 2008; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; *Jalloh v. Germany* [GC], no. 54810/00, § 69, ECHR 2006-IX; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). However, given the absolute nature of the protection of Article 3, whose requirements permit of no derogation, this duty to protect cannot be said to be confined to the specific context of the military or penitentiary facilities. It also becomes relevant in other situations in which the physical well-being of individuals is dependent, to a decisive extent, on the actions of the authorities, who are legally required to take measures within the scope of their powers which might have been necessary to avoid the risk of damage to life or limb (see, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-II).

57. As for the assessment of the minimum level of severity required for a violation of Article 3 of the Convention, the Court notes that it 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 (see *Tekin v. Turkey*, 9 June 1998, § 52, *Reports of Judgments and Decisions* 1998-IV).

58. According to the Court's settled approach, treatment is considered "inhuman" if it is premeditated, applied for hours at a stretch and causes either actual bodily injury or intense physical or mental suffering (see, as a classic authority, *Denmark, Norway, Sweden and the Netherlands v. Greece* (the "Greek case"), applications nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission's report of 5 November 1969, Yearbook XII). The question whether the purpose of the treatment was to make the victim suffer is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see *the Greek case*, cited above, and also *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

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

59. The Court notes that during his medical examination on 27 and 30 April 2004 the applicant was diagnosed with "a contusion of the right kidney, a brain contusion, bruising of the soft tissue of the face and limbs", including bruises on the right hand, the rib cage, the right thigh, the left leg and knee, the right shoulder, the right side of the temple and a burst vessel

in the left eye, as well as “blood in the urine, a subarachnoid haemorrhage and a fracture of the right ninth rib” (see paragraphs 15 and 16 above). The Court finds the applicant’s injuries were sufficiently serious to reach the “minimum level of severity” under Article 3 of the Convention.

60. The Court next notes that the parties agreed that on 27 April 2004 the applicant was involved in an operative drill conducted by police agents in disguise and therefore that he was in State custody (see paragraphs 10-14 and 20 above). Nothing in the police report of 27 April 2004 shows that the applicant had these injuries before the start of the drill. The police officers themselves noted that the applicant was uninjured and looked healthy (see paragraph 28 above) and this is also confirmed by the applicant’s partner L. in her statement of 7 June 2005 (see paragraph 19 above). There is furthermore no indication in the case file that the applicant could have received these injuries between his release and the first visit to the doctor on 27 April 2004. The Court concludes therefore that the applicant was in good health before the drill.

61. The Court finds that the applicant presented a detailed description of the ill-treatment by the policemen which corresponds to the nature and location of the recorded injuries and the witness statements (see paragraphs 15, 16 and 19 above). In these circumstances, the Court cannot but conclude that the applicant sustained the bodily injuries while at the hands of the police (see, *mutatis mutandis*, *Makhashevy v. Russia*, no. 20546/07, §§ 158-162, 31 July 2012; see, by contrast, *Maksimov v. Russia*, no. 43233/02, §§ 80-82, 18 March 2010).

62. Bearing in mind the authorities’ obligation to account for injuries caused to persons within their control (*Ablyazov v. Russia*, no. 22867/05, § 49, 30 October 2012) and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court finds it established that the injuries recorded in the medical report were the result of the treatment of which the applicant complained and for which the Government bears responsibility (see *Polonskiy v. Russia*, no. 30033/05, § 123, 19 March 2009).

63. Having regard to the parties’ submissions, the Court finds it established that as a result of the operative drill of 27 April 2004 the applicant was kidnapped by police officers in disguise posing as private security guards and that the operation lasted for at least a few hours, during which the applicant was severely beaten and interrogated under threat, which lead to his having repeatedly lost his consciousness. This method of ill-treatment was undoubtedly applied to the applicant intentionally, its only aim having been to intimidate, humiliate and debase him and break his physical and moral resistance with a view to forcing him to confess to a crime.

64. The police officers in the present case acted in a ruthless and violent manner and the operation was conducted with full knowledge and consent

of their superiors in the Regional Department of the Interior (see paragraph 8 above). The Court considers that such actions on the part of the authorities have no place in a democratic society and are in itself in contravention of the States' obligations under Article 3 of the Convention.

65. In this respect, the Court would underline that, having regard to its long-established case-law (see *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V; *Labita v. Italy* [GC], cited above, § 119; *Selmouni v. France* [GC], cited above, § 95; *V. v. the United Kingdom* [GC], no. 24888/94, § 69, ECHR 1999-IX; *Ramirez Sanchez v. France* [GC], no. 59450/00, § 116, ECHR 2006-IX; *Saadi v. Italy* [GC], no. 37201/06, § 127, ECHR 2008; and *Gäfgen v. Germany* [GC], cited above, § 107), the prohibition on ill-treatment of a person applies irrespective of the conduct of the victim or the motivation of the authorities. No derogation is allowed even in the event of a public emergency threatening the life of the nation. Article 3, which has been framed in unambiguous terms, recognises that every human being has an absolute, inalienable right not to be subjected to torture or to inhuman or degrading treatment under any circumstances, even the most difficult. The philosophical basis underpinning the absolute nature of the right under Article 3 does not allow for any exceptions or justifying factors or balancing of interests, irrespective of the conduct of the person concerned and the nature of the offence at issue.

66. The Court has no doubt that the aforementioned forms of ill-treatment caused the applicant severe physical pain and suffering, and that they were inflicted on him intentionally. Having regard to the relevant factors indicated in the Court's case-law (see paragraphs 57-58 above), it is satisfied that the accumulation of acts of violence and threats inflicted on the applicant amounted to torture within the meaning of Article 3 of the Convention.

67. Accordingly, there has been a violation of the substantive aspect of Article 3 of the Convention on that account.

(b) The subsequent investigation

(i) General principles

68. 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).

69. 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*, cited above, § 71; and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

70. 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 statements and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey*, cited above, § 106; *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.

71. 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*, cited above, *Reports* 1998-IV, § 67), and the length of time taken to complete the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

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

72. The Court finds it established that the medical evidence (see paragraphs 15 and 16 above) and the fact that the applicant sustained injuries while being in State custody gave rise to a reasonable suspicion that the injuries he sustained were attributable to the police. It was therefore incumbent on the domestic authorities to conduct an effective official investigation in this connection.

73. Whilst the Court accepts that the authorities promptly reacted to the applicant’s complaint (see paragraphs 20, 21 and 26 above), it is not

convinced that the investigation was sufficiently thorough to meet the requirements of Article 3, for the following reasons.

74. Firstly, the inquiry into the circumstances in which the applicant's injuries could have been sustained was quite limited. The Prosecutor's Office interviewed only one of the three police officers against whom the applicant had made his allegations. The fact that this police officer obviously had a potential interest in the outcome of the case and in exonerating himself was not taken into account. The credibility of this officer's statements was not called into question. Even though the remaining two officers were identified, the authority did not question them. Moreover, the applicant's request of 22 September 2004 to investigate the involvement of the police officers in the events was ignored (see paragraphs 22 and 24 above).

75. The Court further observes that a full investigation of the matter required a meticulous comparison of the evidence in relation to specific details, as well as a series of interviews and confrontations which were not, in fact, carried out. Taking into account the important role of investigative interviews in obtaining information from suspects, witnesses and victims and, ultimately, the discovery of the truth about the matter under investigation, the Court also notes that the investigative authorities never interviewed V., the officer to whom the applicant reported the incident shortly after it occurred on 27 April 2004 (see paragraph 14 above), his partner L. or the doctors who established the applicant's injuries. They also largely ignored the audio and video recording of the drill mentioned in the decision of 16 August 2004 (see paragraph 22 above), having only used it indirectly for the purposes of the expert psychological report of the applicant dated 28 January 2005 (see paragraph 25 above), and not, as it would have been more appropriate in the circumstances, to shed light on the exact course of the events of 27 April 2004. In the Court's view, this central piece of evidence, which was otherwise never mentioned in the final legal acts (see paragraphs 30 and 31 above), could have potentially proved or disproved the applicant's allegations.

76. It should also be noted that the Prosecutor's Office did not investigate the use of physical force against the applicant when he was pushed into the car, a fact which was confirmed by the police report of 27 April 2004 (see paragraph 20 above). The Court thus considers that the inquiry into his allegations of ill-treatment was superficial and formalistic.

77. Lastly, the Court takes note of the final legal decision which summarised the findings of the investigation (see paragraph 28 above), as well as the court decisions given in the present case (see paragraphs 30 and 31 above). The authorities' refusal to admit the applicant's medical records as evidence of the alleged ill-treatment was apparently unfounded as there were no sound reasons for such refusal, taking into account the fact that the medical records were subsequently found to be genuine (see paragraph 32

above). To sum up, the authorities failed to offer any plausible alternative explanation for the applicant's injuries (see *Nechto v. Russia*, no. 24893/05, § 90, 24 January 2012; and *Vanfuli v. Russia*, no. 24885/05, § 82, 3 November 2011).

78. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the applicant's complaint of ill-treatment cannot be considered to have been "effective". There has therefore been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

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

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

80. The Court observes that this complaint concerns the same issues as those examined above under the procedural limb of Article 3 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 3 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention (see, for example, *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 57, ECHR 2005-XIII (extracts); *Polonskiy v. Russia*, cited above, § 127; *Sherstobitov v. Russia*, no. 16266/03, § 94, 10 June 2010; and *Suleymanov v. Russia*, no. 32501/11, § 157, 22 January 2013).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed 30,000 euros (EUR) in respect of pecuniary damage on account of his alleged inability to work and 35,000 euros (EUR) in respect of non-pecuniary damage.

83. The Government disagreed with these claims and regarded them as excessive.

84. The Court does not find any causal link between the alleged pecuniary losses and the violations found. It therefore dismisses the applicant's pecuniary claim. As regards his claim in respect of non-pecuniary damage, the Court, making an assessment on an equitable basis, awards the applicant EUR 27,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

85. The applicant also claimed EUR 12,958 for legal costs and postal expenses incurred before the Court.

86. The Government contested these claims as unsubstantiated.

87. 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.

88. The Court notes that the costs claimed by the applicant were necessarily incurred. However, it considers that the sums claimed are not reasonable as to quantum. Regard being had to the information in its possession and to the sums awarded in comparable cases, the Court considers it reasonable to award the sum of EUR 2,000, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

89. 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 application admissible;
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* that it is unnecessary to examine the applicant's complaint under Article 13 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 27,500 (twenty seven thousand five hundred euros), plus any tax that may be chargeable on the above amount, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant 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* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 November 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President