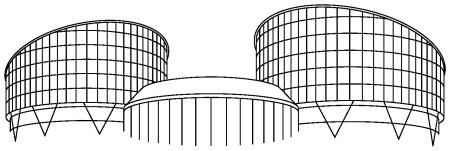

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF AMADAYEV v. RUSSIA

(Application no. 18114/06)

JUDGMENT

This version was rectified on 24 March 2015 under Rule 81 of the Rules of Court

STRASBOURG

3 July 2014

FINAL

15/12/2014

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

In the case of Amadayev v. Russia,

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

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

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 3 June 2014,

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

PROCEDURE

1. The case originated in an application (no. 18114/06) 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 Dzhanar-Ali Amadayev[1] ("the applicant"), on 28 April 2006.

2. The applicant was represented by lawyers from the Memorial Human Rights Centre and the European Human Rights Advocacy Centre (EHRAC), NGOs practising in Moscow and London. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been subjected to ill-treatment by private persons whom the State had failed to prevent or to investigate, in breach of Article 3 of the Convention.

4. On 5 April 2012 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Chastoozerye, the Kurgan Region, Russia.

[1] Rectified on 24 March 2015: the applicant's name was indicated Zhanar-Ali Amadayev.

A. The events of 18 May 2002

6. The applicant and his family are of Chechen ethnic origin. They live in the Chastoozerskiy district of the Kurgan Region (also called Chastoozerye). According to the applicant, at the time of the events in question the population of the Chastoozerye district constituted about 6,000 persons, of whom about 50 were of Chechen origin.

7. The applicant submitted that attitudes towards the Chechen minority had worsened after 2000, when the second armed conflict in Chechnya had started. Two Russian nationalist organisations were particularly active in the Region: Russian National Unity (RNE) and Russian National Cultural Autonomy (RNKA).

8. It appears from the applicant's statements and other documents that prior to 18 May 2002 there was a conflict between individuals involving Chechens. This was perceived by some as mounting ethnic tension in the district. In particular, the applicant claimed that a resident of Kurgan, Mr A.I., the manager of a sausage factory in Chastoozerye, and Mr S.K., a boxing coach from Chastoozerye, had invited the Chechen community and some nationalist Russian groups to meet to "settle the dispute" on 18 May 2002. Pursuant to a statement of 3 June 2006 given by Mr D.A., who calls himself "the spiritual leader of the Chastoozerye Chechens", on 18 May 2002 he had transmitted this information to the district prosecutor and the head of the administration in order that measures could be taken with a view to maintaining law and order (see below).

9. In the afternoon of 18 May 2002 a group of police officers was deployed on the main road of Chastoozerye, near the sausage factory. At about 5 p.m. this group stopped the applicant's car, in which there were also two other Chechen men from Chastoozerye, Mr S.-A.B. and Mr U.B. Their vehicle was inspected, together with their documents. The car then proceeded to Mr S.-A.B.'s house at no. 28 Marx Street.

10. At about 5.30 p.m. three cars – a white and a red VAZ 2110 and a Moskvich 2115 – passed the same police officers and stopped in front of the house. About fifteen men, including Mr S.K., got out of the cars and invited the applicant and Mr U.B. to get into the cars and accompany them. When they refused, one of the men shot the applicant in one knee, and then in the other knee, with an airgun. They then beat the two men with baseball bats, as a result of which the applicant's right arm was broken.

11. The applicant was left on the road in front of Mr S.-A.B.'s house, while Mr U.B. was forced into the Moskvich and driven to the sausage factory. There was a crowd of up to 70 men there, including the manager Mr A.I.; they beat Mr U.B. with metal rods, baseball bats and pipes. During the beatings the crowd shouted nationalist and anti-Chechen slogans. The police eventually intervened and set Mr U.B. free. Later the same day the applicant and Mr U.B. were taken to the local hospital by Mr D.A. The

applicant did not submit any medical documents to the Court, but the criminal investigation (see below) cited two forensic expert reports describing his and Mr U.B.'s injuries.

12. It appears that other incidents not involving the applicant directly took place later that day in Chastoozerye. A group of men of Chechen ethnic origin remained in the forest near the village; in the early hours of 19 May 2002 the police rounded them up and found weapons and home-made explosive devices. This group was taken to the district police department (ROVD) by officers of the police special forces (SOBR). They were released after they had spent the night at the police station where, allegedly, they had also been beaten and insulted.

B. Criminal investigation

13. The applicant submitted a list of the documents contained in criminal investigation file no. 96348 and extracts from (not copies of) some of the documents. According to his notes, by 2006 the case file contained 255 pages of documents in two volumes. The Government did not contest the applicant's description of the investigation, but supplemented it with information on later developments. The most relevant information may be summarised as follows.

1. The decision to open a criminal investigation and other procedural decisions

14. On 18 May 2002 the Chastoozerye ROVD opened a criminal investigation under Article 111, part 3, (intentional infliction of serious injuries committed by a group of persons or as a result of conspiracy).

15. On 13 June 2002 the head of the Kurgan Department of the Interior set up a group of five police investigators to work on the case.

16. Between August 2002 and June 2004 the investigation was suspended and resumed on five occasions. Following the applicant's latest complaint, on 28 June 2011 the decision of 11 June 2004 adjourning the investigation was quashed and the case was sent for further processing to the police investigation department of the Kurgan Region. The prosecutor's office letter of the same date acknowledged that the applicant had not been timeously informed of the decision to adjourn the case in June 2004.

17. On 10 August 2011 the investigation was again suspended, since the perpetrators could not be identified.

2. The victims' statements and the forensic evidence

18. On 18 May 2002 the applicant was questioned and granted victim status.

19. On 22 May 2002 the applicant submitted a written statement to the Chastoozerye District Prosecutor ("the district prosecutor's office"), describing the events of 18 May 2002 and asking for a criminal investigation to be carried out into the incident in which he had sustained his injuries. In his statement the applicant named Mr. S.K. as one of the perpetrators and the owner of the Moskvich vehicle.

20. Mr U.B. was questioned on 18 May 2002; on 18 June 2002 he was additionally questioned and granted victim status. He named Mr. A.I., the sausage factory manager, as one of the persons present at the factory during his ill-treatment, and Mr S.K. as the owner of the car in which he had been transported. He also described several other attackers in some detail, including a Mr Ye.P.

21. On 22 May 2002 a forensic expert found that Mr U.B. was suffering from the consequences of beatings and that one rib was fractured; the injuries were therefore moderately serious.

22. On 28 June 2002 a forensic expert found that the applicant had suffered two gun-shot wounds from pellets in the knees, resulting in fractures of the tibiae; and a fracture of the right elbow caused by a blow with a blunt instrument. These were described as moderately serious injuries.

23. In May 2003 the applicant was again questioned. He described the attack on him, again mentioning Mr S.K. as one of the perpetrators. He further stated that Mr U.B. had gone to Chechnya and would not be able to identify the other attackers.

3. Statements by other Chechens

24. On 19 May 2002 about a dozen men - local residents of Chechen ethnic origin - were questioned by the police. Most of them confirmed that on 18 May 2002, after 7 p.m., they had had a pre-arranged meeting with Mr A.I. During the meeting he had told them that the men who had injured the applicant and Mr U.D. had already left. After the meeting they had gone into the forest to avoid further violence.

25. On 3 June 2002 Mr D.A., the "spiritual leader of the Chastoozerye Chechens", submitted a written statement to the head of the Kurgan Region Police. Mr D.A. described the events of 18 May 2002, indicating that at 10 a.m. on that day he had informed the district prosecutor and the head of the administration about the forthcoming gathering of an anti-Chechen group in Chastoozerye. He then described the attack on the applicant and Mr U.B. and the subsequent detention and ill-treatment of the Chechen men by the police. He asked the police to investigate the crimes committed.

26. In July 2002 the investigators questioned a number of other Chechens, including the applicant's brother. They described the attack on the applicant and the subsequent events of 18 May 2002, referring in particular to Mr S.K. and Mr A.I. as active participants in the violence.

27. On an unspecified date, 28 ethnic Chechen men residing in Chastoozerye submitted a complaint to the prosecutor of the Kurgan Region. They described the events prior to 18 May 2002, as well as the attack on the applicant and Mr U.B. They also complained about their detention at the ROVD on the night of 18 to 19 May 2002, stating that they had been subjected to beatings and insults.

4. Identification of the perpetrators and their questioning

28. On 18 and 19 May 2002 the investigators questioned a dozen men who had been present at the sausage factory during the events. Some of them stated that they had come to Chastoozerye to spend the weekend with Mr. A.I., to play football and go to the sauna together. Others stated that they had been told by their friends that "their help was needed" at a meeting with Chechens. Most of them confirmed that a group of up to 80 men had gathered at the sausage factory in the afternoon of 18 May 2002 and that they had discussed the conflict involving the local Chechens. No one mentioned the incident with the applicant or the beating up of Mr. U.B.

29. On 19 May 2002 Mr U.B. identified Mr Ye.P. in a line-up as one of the men who had attacked him in Marx Street and then at the sausage factory.

30. Mr A.I. was questioned on 19 May 2002 and then again on 19 June 2002. During the first questioning he stated that on the previous day some of his friends had come to Chastoozerye to spend the weekend together or for business reasons. They had learnt that the Chechens were planning a violent confrontation and decided to stay with him. At about 6 p.m. one Chechen man had come to the sausage factory and told him that someone had shot at one of his compatriots, but Mr A.I. had denied any knowledge of this and the man had left. After 8 p.m. several cars containing Chechens had come to the sausage factory but Mr A.I. and the police who were there had prevented further violence.

31. During his second questioning Mr A.I. named several of the men who had come to the sausage factory on 18 May 2002, including his brother Mr D.I. – the factory owner – and Mr Ye.P. He confirmed that he had arranged a meeting with the Chechens on that day in order to "discuss their behaviour with them" and that he had invited his friends to attend the meeting "in order to support him". His friends had arrived unarmed. At about 6 p.m. he had seen a group of men beating Mr U.B. in the courtyard of the sausage factory; he had intervened and stopped the beating. He did not know the men who had been beating Mr U.B. Several cars containing Chechens had then arrived and he and the police officers had intervened to prevent further violence. The Chechens had then left, taking Mr U.B. with them.

32. In June 2002 the police compiled a list of about 20 men and 6 vehicles that had come to Chastoozerye on the day in question. Most of the

men were questioned in June and July 2002 and confirmed that they had come to Chastoozerye because they had "heard about problems involving Chechens", but denied that they had taken part in attacks on the applicant or Mr U.B.

33. On 19 June 2002 Mr S.K. was questioned as a witness. He stated that he had been made aware of the conflict with the Chechens by Mr A.I. but that he had not planned to take part in the meeting arranged for 18 May 2002. On the evening of that day he had been driving his car along Marx Street when he had seen a man lying on the ground and several men standing around. One of them, brandishing a gun, had ordered him to take the wounded man to the sausage factory. Mr S.K. did not know these men and would not be able to identify them; he had then seen them continue to beat the man at the sausage factory and had left immediately. In July 2003 Mr S.K. was questioned again; he repeated his previous statements about the attack on the applicant.

34. On 25 June 2002 Mr Ye.P. was questioned as witness. He explained that on the day before 18 May 2002, Mr A.I. had called him and invited to come, with his friends, to a "rendez-vous" with Chechens in Chastoozerye. He then named several men who had come with him from Kurgan, and the vehicles in which they had travelled. He confirmed that he had had a baseball bat in the trunk of his car, and that their vehicle had not been inspected by police. Soon after 5 p.m. he had seen a large crowd at the sausage factory, many of them armed with rods and sticks. He had witnessed the crowd beating one Chechen but denied that he had taken part.

35. In July 2002 the applicant identified four men, including Mr Ye.P., as the perpetrators of the attack.

5. Police officers' statements

36. A police officer from the Chastoozerye ROVD stated that on 18 May 2002 he had been manning a post on the road near the sausage factory. He and another police officer had searched vehicles for arms, but nothing had been found.

37. In June 2002 two other police officers confirmed that they had inspected a number of vehicles containing young "fit-looking" men which had arrived in Chastoozerye on 18 May 2002; no arms or other dangerous items had been found. Later at the sausage factory one police officer had seen Mr A.I. and Mr S.K. in the crowd; the latter had behaved in an aggressive manner and incited the crowd.

6. Statements by other witnesses

38. In June 2002 the investigators questioned about a dozen local residents. Some of them had seen the Moskvich car being driven by Mr S.K. in Marx Street. Others had been aware of the "tensions" with the Chechens

and of the "rendezvous" on 18 May 2002. No one had witnessed the attack on the applicant.

7. Material evidence relating to the events

39. On 18 and 19 May 2002 the investigators searched Marx Street and collected cartridges from airguns and pellets. Pellets were also extracted from the applicant's wounds.

40. On 19 May 2002 the premises of the sausage factory were searched, but nothing of relevance was found.

41. On 19 May 2002 the police compiled a list of twelve vehicles present in Chastoozerye on the day of the incident, and of their owners.

42. On 19 May 2002 the police examined the place in the forest where the group of Chechen men had gathered in the evening of 18 May 2002. There they collected metal rods and pipes, wooden sticks, bottles containing inflammable liquid (gasoline), knives, one hand pistol and one hunting gun. On the same day searches were carried out of the houses of Mr S.-A.B. and another Chechen resident in Chastoozerye. A separate criminal investigation was opened on 20 May 2002. Its outcome is not known.

43. In their observations of July 2012 the Government, without citing or appending any documents from the criminal investigation, also stated that six hunting guns had been collected from persons who had come to Chatoozerye upon Mr A.I.'s invitation. The ballistic expert reports had not linked any of these weapons to the cartridges collected at the site.

8. Decisions not to charge anyone with incitement to racially motivated hatred

44. On 13 June 2002 the district prosecutor's office decided not to bring charges of incitement to racially motivated hatred (Article 282 of the Criminal Code) against Mr. A.I. on account of lack of evidence of a criminal act.

45. On 28 June 2002, pursuant to the applicant's complaint, that decision was quashed by the Kurgan Region prosecutor's office.

46. On 12 July 2002 the district prosecutor's office again ruled not to open a criminal investigation against Mr. A.I.

47. In parallel to these proceedings, on 13 June 2002 the district prosecutor's office ruled not to charge Mr. S.K. and Mr. A.I. with incitement to racially motivated hatred on account of lack of evidence of a criminal act. On 26 June 2002 that decision was quashed by the Kurgan Region prosecutor's office and the case was remitted to the district prosecutor's office.

48. In the new round of proceedings, the investigator questioned the applicant, who confirmed his previous statements about Mr. S.K.'s and Mr. A.I.'s roles in the events. Several residents of Chastoozerye denied that

they had been called on to take part in the "disturbances" against the Chechens. Several of the men who had gathered at the sausage factory on 18 May 2002 denied that they had been invited there by anyone. The head of the district administration confirmed that he had seen RNE flyers prior to 18 May 2002, but stated that he had been unaware of their provenance and had not considered them to contain incitements to ethnic violence. On 6 August 2002 the district prosecutor's office again ruled to close the criminal proceedings against Mr. S.K. and Mr. A.I. for lack of evidence of a crime.

49. On 16 September 2002 that decision was quashed. In the new round of proceedings, the investigator additionally questioned several men who had gathered on 18 May 2002 at the sausage factory; all of them stated that they regularly came to Chastoozerye at Mr. A.I.'s invitation to spend weekends together and that they had not been aware of any incitements to ethnic violence. They had not carried or seen any items which could serve as weapons, such as metal rods or baseball bats, and had not seen any RNE flyers on the factory premises. On 1 October 2002 the district prosecutor's office ruled not to bring charges against the two men. That decision appears not to have been appealed against.

50. On 12 November 2004 the investigator of the Kurgan Region Police Department ruled not to open criminal proceedings against persons unknown. The decision was taken in response to a letter from the applicant's representative claiming that the applicant's injuries had been caused in the context of incitement to ethnic hatred. The decision referred to pending criminal investigation no. 96348 and the absence of information on the alleged perpetrators of that crime. It also referred to the fact that no charges had been brought under Article 282 of the Criminal Code (incitement to ethnic or religious hatred) in the entire Kurgan Region in 2002-2004. It appears that the decision was not appealed against.

9. Decisions not to bring charges against the SOBR servicemen

51. On 14 June 2002 the Chastoozerye district prosecutor's office decided not to open a criminal investigation into the actions of the SOBR servicemen. The decision referred to the conclusions of the preliminary inquiry, according to which the actions of the police officers had been lawful; no one had sought medical help on 19 or 20 May 2002 in relation to police violence; no individual complaints about police actions had been lodged between 19 May and 12 June 2002.

52. On 28 June 2002 the decision was quashed by the Kurgan Region prosecutor's office.

53. On 12 July 2002 the district prosecutor's office again decided not to open a criminal investigation concerning the police officers' actions.

10. The applicant's attempts to appeal in respect of the conduct of the investigation

54. On several occasions the applicant and his representative attempted to lodge complaints with the courts under Article 125 of the Criminal Procedural Code about failure by the prosecutors to act diligently. Some of the complaints were left without consideration owing to alleged procedural irregularities or because the applicant had failed to indicate the particular actions he was challenging.

55. On 30 May 2006 the Chastoozerye District Court dismissed the applicant's complaint about the district prosecutor's office's failure to supervise the criminal investigation of case no. 96348. The court found that the prosecutor's office had taken all possible steps in response to the applicant's complaints and that the police investigator had taken all possible steps to identify the perpetrators of the crime, even if those steps had failed to produce a result.

56. The applicant lodged a complaint against that decision, and on 1 August 2006 the Kurgan Regional Court quashed the District Court's ruling and closed the proceedings. It found that the complaint could not be examined by the court on its merits because the applicant had failed to indicate the specific decisions and actions which had infringed his rights. The District Court was not competent to replace the prosecutor's office or to evaluate the latter's work in supervising criminal investigations. The complaint had therefore to be dismissed without examination.

11. The latest developments

57. On 25 May 2012 the deputy prosecutor of the Kurgan Region quashed the decision of 10 August 2011 (see paragraph 17 above) suspending the investigation and forwarded the file to the investigative department of the Kurgan Region Ministry of the Interior. He pointed out that the exact circumstances of the events had not been established, including in relation to Mr U.B.'s allegation that Mr Ye.G. had taken a silver chain off his neck. Although Mr U.B. had identified Mr Ye.G. and Mr S.K. as the perpetrators of the crime, no steps had been taken to resolve the serious discrepancies between the statements of Mr S.K., Mr Ye.G. and Mr U.B. Nor had proper identification parades or confrontations between them been carried out.

C. Press reports and other relevant materials

58. The applicant submitted a number of copies of press articles and flyers concerning the events. A copy of a newspaper edited by the RNKA called *Natsionalnaya Mysl* (National Thought), issue no. 1(7) 2002, contained an article in which the events in Chastoozerye were described as a

justified reaction by the local population, which was "enslaved" and "occupied" by "aliens from the Caucasus mountains". The same newspaper contained an open letter to the Governor of the Kurgan Region signed by the head of the RNKA. It described the events in Chastoozerye as "the first call" of the "Russian protest" and invited the Governor to rely on the local Cossacks in order to maintain peace in the region.

59. Other publications described the events in Chastoozerye as a major ethnic clash between hundreds of armed men which had been dispersed by special police forces (*Ural-MK in Kurgan*, 20-27 June 2002, and *Strana.ru*, 21 June 2002).

60. An undated RNE flyer referred to the events in the following way:

> "... one of the predators was hit by a bullet, others were similarly rewarded. ... 500 armed men had come out for a 'talk' with [200] mountainous jew-predators ... [thus] the Orthodox Russian Dawn rises! Death to the villain! Hail the heroes! Russian rule for Russia!"

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

61. The applicant complained that the State had failed to prevent his ill-treatment by private individuals and then failed to investigate the incident. Thus, he contended, there had been a violation of Article 3 of the Convention, which reads as follows:

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

62. The Government contested that argument and asked the Court to declare the complaint inadmissible as being manifestly ill-founded.

A. Admissibility

63. The Court finds 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. Arguments of the parties

(a) The applicant

64. The applicant insisted that the treatment to which he had been subjected on 18 May 2002 amounted to torture. He stressed that the forensic evidence confirmed the presence of injuries qualified by the domestic criminal legislation as "serious bodily harm". This treatment had been unprovoked by the applicant and constituted a deliberate attempt to cause him very serious and cruel suffering, to arouse in him feelings of fear and humiliation, break his physical and moral resistance, and debase him and drive him into submission (the applicant referred to the Court's judgments in the cases of *Ireland v. the United Kingdom*, 18 January 1978, § 167 Series A no. 25; *Dedovskiy and Others v. Russia*, no. 7178/03, § 85, ECHR 2008 (extracts); and *Vladimir Romanov v. Russia*, no. 41461/02, § 70, 24 July 2008). As to the State's positive obligation to prevent ill-treatment, the applicant was of the opinion that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to him from the criminal acts of third parties and that they had failed to take reasonable and effective measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (he referred to the judgments of *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII; *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 73, ECHR 2001-V; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 53, ECHR 2006-XI; and *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, no. 71156/01, § 96, 3 May 2007). The applicant stressed that the ethnic tension in the region had been well-known to the authorities, and argued that as an ethnic Chechen in Chastoozerye he should have been treated as a member of a "class of highly vulnerable members of society to whom the ... State owed a duty to take adequate measures to provide care and protection as part of its positive obligations" (see *Mubilanzila Mayeka*, cited above, § 55). The applicant cited several witness statements from the criminal investigation file which indicated that the information about the forthcoming "settling of scores" on 18 May 2002 between Mr A.I. and the local Chechen community had been known to the authorities in advance, and that the police, in particular, had failed to take the necessary steps to protect that community.

65. The applicant was of the opinion that the criminal investigation into his ill-treatment had been neither fast nor effective, in breach of the relevant obligations under Article 3. He stressed that within several weeks of the incident the investigators had become aware of the identities of the persons who had come to Chastoozerye on 18 May 2002 and taken part in the

attack. In particular, the roles of S.K. and Ye.P., as well as that of A.I., were sufficiently clear from the witness statements, identification parades and the fact that S.K. had been driving the Moskvich vehicle. Nevertheless, the investigation had failed to act upon these clear leads and had repeatedly and inexplicably ignored these pieces of evidence. Several decisions to suspend the proceedings had further delayed the taking of the necessary steps; the directions issued by the supervising prosecutors had been ignored.

(b) The Government

66. The Government, in their turn, denied that the authorities had been aware of a real and immediate risk to the applicant's life and health prior to the attack. Having received information about a conflict between the Chechen diaspora and the local population at the sausage factory, the police had deployed several detachments to deal with it. The Government referred to the results of the criminal investigation, which had failed to produce any results as to the circumstances of and reasons for the attack.

67. The Government then pointed to the fact that damage to health such as that inflicted upon the applicant was proscribed under the Criminal Code. On the day when the applicant and Mr U.D. had been injured, the district prosecutor's office had opened criminal investigation no. 96348, and all the necessary steps had been taken in a timely manner. Thus, the persons who had come to Chastoozerye upon Mr A.I.'s invitation had been identified and questioned; six hunting guns had been collected from them. None of those weapons had been used during the attack on the applicant. The investigation had not been able to identify the culprits; the efforts to complete the proceedings had continued in 2012.

2. The Court's assessment

(a) General principles

68. The Court reiterates that the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman and degrading treatment or punishment, including such treatment administered by private individuals (see *Pretty v. the United Kingdom*, no. 2346/02, §§ 50 and 51, ECHR 2002-III). A positive obligation on the State to provide protection against inhuman or degrading treatment has been found to arise in a number of cases (see *A. v. the United Kingdom*, § 22, 23 September 1998, *Reports* 1998-VI; *Z and Others v. the United Kingdom* [GC], cited above, § 73; and *M.C. v. Bulgaria*, no. 39272/98, § 149, ECHR 2003-XII).

69. This positive obligation under Article 3 requires States to set up a legislative framework, notably effective criminal-law provisions, aimed at preventing and punishing the commission of offences against personal integrity administered by private individuals. This framework should be backed up by law-enforcement machinery, so that when aware of an imminent risk of ill-treatment to an identified individual, or when ill-treatment has already occurred, it affords protection to the victims and punishes those responsible for the breaches of such provisions (see *Mudric v. the Republic of Moldova*, no. 74839/10, § 47, 16 July 2013).

70. As to the effective application of the existing legal framework once the ill-treatment has already occurred, even though the scope of the State's procedural obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence has been inflicted by private individuals, the requirements as to an official investigation are similar (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009, and *Koky and Others v. Slovakia*, no. 13624/03, § 215, 12 June 2012). Thus, the authorities have an obligation to take action as soon as an official complaint has been lodged. A requirement of promptness and reasonable expedition is implicit in this context. A prompt response by the authorities in investigating allegations of ill-treatment may generally be regarded as essential in maintaining public confidence in their maintenance of the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts. Tolerance by the authorities towards such acts cannot but undermine public confidence in the principle of lawfulness and the State's maintenance of the rule of law (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 136, ECHR 2004-IV (extracts); *Abdülsamet Yaman v. Turkey*, no. 32446/96, § 60, 2 November 2004; and *Denis Vasilyev*, cited above, § 100).

71. As to the prevention aspect of this obligation, a number of principles have been developed by the Court in the context of Article 2 of the Convention. Thus, it has been found that for the Court to find a violation of this aspect, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Osman*, cited above, § 116; *Paul and Audrey Edwards v. the United Kingdom*, no. 6477/99, § 55, ECHR 2002-II; *Medova v. Russia*, no. 25385/04, § 96, 15 January 2009; *Rantsev v. Cyprus and Russia*, no. 25965/04, § 222, ECHR 2010 (extracts); and *Tsechoyev v. Russia*, no. 39358/05, § 136, 15 March 2011). A similar test is applicable to allegations of failure to comply with the positive obligations under Article 3 (see *Mubilanzila Mayeka*, cited above, § 53).

72. On the other hand, it goes without saying that the obligation on the State under Article 1 of the Convention cannot be interpreted as requiring the State to guarantee through its legal system that inhuman or degrading treatment is never inflicted by one individual on another or that if it is, criminal proceedings should necessarily lead to a particular sanction. In order that a State may be held responsible it must, in the view of the Court, be shown that the domestic legal system, and in particular the criminal law applicable in the circumstances of the case, failed to provide practical and effective protection of the rights guaranteed by Article 3 (see *Beganović v. Croatia*, no. 46423/06, § 71, 25 June 2009).

(b) Application in the present case

73. First, the Court notes that the parties do not dispute that on 18 May 2002 the applicant was attacked in front of his house by several private individuals. They shot the applicant in both knees with an airgun, causing fractures of both tibiae, and beat him with baseball bats, breaking his arm. These injuries were evaluated by a forensic expert as being moderately serious (see paragraphs 10 and 22 above). The Court considers that the extent of the applicant's injuries and the circumstances under which they were inflicted fall within the scope of Article 3 of the Convention (see *Beganović*, §§ 66-68, and *Koky*, § 225, both cited above).

74. Turning to the applicant's allegation as to the violation of the positive obligation of Article 3, the Court notes that damage to health such as that inflicted upon the applicant was indeed proscribed under the Criminal Code. It is thus satisfied that the legislative framework aimed at deterring and punishing attacks at individual's integrity was in place. It remains to be considered whether the application of these provisions was in line with the Convention principles enumerated above.

75. In doing so, the Court will first turn to the domestic criminal investigation, which is the primary instrument for ensuring effective application of the existing legal framework to the cases of ill-treatment caused by private parties. As can be seen from the case file, the investigation was opened on the day of the attack. By the end of June 2002 more than a dozen witnesses, including the victims, had been questioned. A list was put together of the persons and cars that had come to Chastoozerye on 18 May 2002. In May and July 2002 two identification parades enabled the applicant and Mr U.B. to identify several men who had taken part in the attack (see paragraphs 28-35 above). The scene of the crime and the premises of the sausage factory were examined on 18 and 19 May 2002; relevant evidence was collected and forwarded for expert examination (see paragraphs 39-42 above). Both victims, Mr U.B. and the applicant, underwent forensic examinations (see paragraphs 21 and 22 above). The Court is thus satisfied that the initial response of the police to the information concerning the applicant's ill-treatment by private individuals

was prompt and adequate and enabled the investigators to collect, secure and analyse a significant amount of evidence capable of leading to the effective prosecution of the perpetrators.

76. Nevertheless, in August 2002 the investigation was suspended for failure to identify the perpetrators. It does not appear that by August 2011 any further relevant steps in this direction had been taken, despite regular attempts to revive the investigation (see paragraph 16 above). It can be seen from the decision of 25 May 2012 that the investigation had still failed to clarify the extent of the involvement of the named individuals in the attack, and to resolve the discrepancies between the witnesses' statements (see paragraph 57 above).

77. The Court finds it inconceivable that no steps have been taken to resolve these discrepancies between the witnesses' statements over the ten years since serious injuries were caused to the applicant in an episode of mob violence. The inability of the investigation to reach any conclusion as to the identity of the perpetrators appears particularly remarkable in the light of the assertion that by July 2002 all persons and vehicles having come to Chastoozerye on the day in question had been established (see paragraph 67 above) and that there had been a preliminary identification of several individuals as perpetrators of the attack. Such a situation creates an impression of tolerance by the law-enforcement authorities of serious unlawful acts and, as such, undermines public confidence in the principle of lawfulness and the State's maintenance of the rule of law.

78. Furthermore, the Court notes that it is not disputed between the parties that the local authorities had at least some degree of warning of a potential conflict situation in Chastoozerye on 18 May 2002 when, it appears, the two parties intended to "settle their scores". Mr D.A. stated that he had informed the local administration about the expected arrival of Mr A.I.'s supporters and the danger of violence (paragraphs 8 and 25 above). Persons from both sides of the conflict confirmed that they had arrived at Chastoozerye with the intention of taking part in this "*rendez-vous*"; the case-file materials also contain references to the presence of guns and other dangerous objects. Police units were deployed with the aim of maintaining order and preventing criminal acts (see paragraphs 8, 9, 24-25, 28, 30-34, 39, 42 above).

79. The Court notes that a "settling of scores" through a violent confrontation involving dozens of persons, aggravated by the presence of weapons, would appear to contain several elements of criminally prescribed behaviour in virtually any legal system. It is incomprehensible that this aspect of the incident has not been the subject of a thorough criminal investigation, rather than the narrowly focused one in respect of the infliction of injuries on the applicant and Mr U.D. The absence of such a response may be regarded not just as a deficiency of the investigation, but as a breach of the State's positive obligation to protect individuals from ill-

treatment by third parties because of a failure to effectively enforce the existing criminal law mechanisms. This constitutes a breach of the positive obligation under Article 3 of the Convention, as formulated in the Court's case-law cited above (see paragraph 69 above).

80. Moreover, the applicant's attempts to appeal against the investigator's actions to a court under Article 125 of the CCrP had been futile. On 1 August 2006 the Kurgan Regional Court refused to consider the complaint on the merits, pointing out that it was not the courts' role to act as a general supervisor of the investigator's work. The Court notes that in such cases the domestic courts would be unable to issue specific guidelines to the investigating authorities, precisely because of the absence of a procedural act against which an appeal could be lodged (see *Esmukhambetov and Others v. Russia*, no. 23445/03, § 128, 29 March 2011, and *Aslakhanova and Others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, § 153, 18 December 2012).

81. Finally, and irrespective of the applicant's complaint under Article 14 of the Convention examined below, the Court is sensitive to the allegations that there were racial motives for this attack (see paragraphs 44-50 above). It reiterates the particular requirement for an investigation into an attack with racial overtones to be pursued with vigour and impartiality, having regard to the need to continuously reassert society's condemnation of racism in order to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence (see *Koky*, cited above, § 239).

82. To sum up, in the Court's view, the relevant authorities have not done all that could have been reasonably expected of them to investigate the incident, to establish the identity of those responsible and to bring them to justice. As a result, the criminal proceedings in the present case cannot be said to have provided adequate response to the serious act of violence against the applicant, to have had a sufficient deterrent effect on the individuals concerned, or to have been capable of ensuring the effective prevention in the future of such unlawful acts.

83. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of the State's positive obligation under Article 3 of the Convention.

84. In view of this finding, the Court does not find it necessary to go into the details of the applicant's arguments as to whether prior to the incident the authorities ought to have been aware of the real and imminent danger to him individually, or as a member of an identifiable vulnerable group.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

85. The applicant complained of a violation of the right to effective remedies in relation to his complaints. He relied on Article 13 of the Convention, which reads:

> "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."

86. The Government contested that argument.

87. 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*, no. 30033/05, § 127, 19 March 2009; and *Sherstobitov v. Russia*, no. 16266/03, § 94, 10 June 2010).

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

88. The applicant further complained that he had been discriminated against on account of his ethnic origin in the enjoyment of rights under Articles 3 and 13. He relied on Article 14 of the Convention.

89. The Government contested that argument.

90. In so far as the applicant's complaint in this regard is not covered by the above findings under Article 3 of the Convention, the Court notes that the allegation of racial motives for the attack was dealt with by the investigation in a separate set of criminal proceedings (see paragraphs 44-50 above). Even though such an approach may appear questionable, there is no doubt that the applicant was aware of those proceedings and did not appeal against the decisions of 12 July 2002, 1 October 2002 and 12 November 2004 not to open criminal proceedings. The Court has already found that although in the Russian legal system a court has no competence to institute criminal proceedings, its power to overturn 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 authority (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). The applicant did not argue that he had not had an effective remedy at his disposal in this regard (compare *Vanfuli v. Russia*, no. 24885/05, § 74, 3 November 2011).

91. Assuming that such arguments were raised, there is still no justification for the delay between the decisions in question and the lodging of the complaint with this Court. It follows that this complaint has been

introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

IV. COMPLIANCE WITH ARTICLE 38 OF THE CONVENTION

92. The applicant alleged that the Government's failure to submit copies of additional documents from the investigation file which were in their exclusive possession had been prejudicial to the Court's and his own assessment of the evidence in this case. He further complained that the authorities' actions had been inadequate. He alleged that this ran contrary to the Government's obligations under Article 38 of the Convention, which reads as follows:

> "The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities."

93. The Court notes that the applicant submitted numerous documents from the case-file and that no specific requests to produce additional documents were made to the Government, apart from the usual practice that requires the party to produce the necessary evidence, including copies of the documents on which it relies. Having regard to the above, and to its conclusions under Article 3, the Court finds that the alleged incompleteness of certain documents and information had no bearing on its examination of the application (see *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, § 234, ECHR 2011 (extracts), and *Gakayeva and Others v. Russia*, nos. 51534/08, 4401/10, 25518/10, 28779/10, 33175/10, 47393/10, 54753/10, 58131/10, 62207/10 and 73784/10, § 388, 10 October 2013).

94. There has accordingly been no failure to comply with Article 38 of the Convention.

V. 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 25,000 euros (EUR) in respect of non-pecuniary damage.

97. The Government questioned the reasonableness of this claim.

98. Having regard to the above finding of a breach of Article 3, the Court awards the applicant EUR 20,000 in respect of non-pecuniary damage.

B. Costs and expenses

99. The applicant also claimed 3,245 pounds sterling (GBP) for the costs and expenses incurred in the proceedings before the Court. He submitted a detailed breakdown of the legal consultants' work and the rates applied (GBP 100 and 150 per hour), plus translators' invoices in the amount of GBP 1,665, and claimed reimbursement of administrative expenses. The applicant asked for the payment in respect of costs and expenses to be made in GBP to EHRAC's account in London.

100. The Government questioned the reasonableness of and justification for these claims.

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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500, together with any tax that may be chargeable to the applicant, the net award to be paid into the representative's bank account, as identified by the applicant.

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, UNANIMOUSLY,

1. *Declares* the complaint concerning Articles 3 and 13 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in that the State has not complied with its positive obligation;

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

4. *Holds* that there has been no failure to comply with Article 38 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, the net award to be paid into the representative's bank account, as identified by the applicant;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 3 July 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President