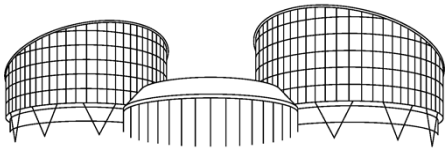

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BOBROV v. RUSSIA

(Application no. 33856/05)

JUDGMENT

STRASBOURG

23 October 2014

FINAL

23/01/2015

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

In the case of Bobrov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 30 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 33856/05) 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 Valeriy Nikolayevich Bobrov ("the applicant"), on 11 August 2005.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been subjected to ill-treatment by police officers and that no effective investigation had been conducted in this regard.

4. On 19 June 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in Togliatti, in the Samara Region.

6. On 31 August 2004 the applicant was arrested in his flat on suspicion of drug-related offences after a "test purchase" of heroin, which involved his girlfriend, Ms P., acting on instructions from State agents, and which was supervised by the police.

7. During the arrest the police officers pushed the applicant to the floor and handcuffed him. After the arrest the applicant was taken to the police station. In his submission, he stated that he had been beaten up by officers R. and K. in the presence of their superior S. and other unspecified officers throughout the evening and night until 5 a.m. the next day. During the interrogations the applicant's hands were allegedly attached to a radiator with handcuffs while the officers beat and kicked him. The applicant also alleged that a plastic bag had been put over his head to restrict his air supply; the officers subjected the applicant to insults and threatened to kill him if he refused to confess.

8. It remains unclear at precisely what time after his arrest the applicant was placed in the temporary detention facility of the Togliatti police department ("the IVS").

9. On 1 September 2004 a medical certificate was issued confirming that the applicant had a chest injury.

10. On 2 September 2004 a judge authorised the applicant's continued detention on suspicion of drug trafficking.

11. On 3 September 2004 the IVS personnel arranged for the applicant to be examined by a traumatologist. On the same date the traumatologist diagnosed the applicant with a closed rib fracture.

12. On 6 September 2004 the applicant complained to the Avtozavodskiy district prosecutor's office of Togliatti ("the prosecutor's office") about his ill-treatment, first in Ms P.'s flat and then in the police station (his letters nos. 57/13-1116 and 57/13-1117).

13. On 13 September 2004 an investigator from the prosecutor's office instituted a preliminary criminal inquiry. It was claimed that the applicant's complaint had been received on 13 September 2004.

14. On 23 September 2004 the investigator from the prosecutor's office refused to institute criminal proceedings against the police officers for lack of any criminal event. The decision referred to the applicant's account of events, according to which two police officers had beaten and kicked him repeatedly in his flat; to depositions by several police officers, who all claimed that the applicant had resisted arrest and had then been handcuffed but had not been beaten at any time; to statements by four of the applicant's fellow inmates in the IVS, who submitted that the applicant "had not looked like someone with a broken rib"; and to the testimony of Ms P., who stated that the applicant had tried to jump out of the window during the arrest but had been handcuffed. The decision further referred to a registration log maintained by the IVS – in which it was stated that the applicant had arrived at the facility in good health but with an abrasion on his knee – and to the traumatologist's examination of 3 September 2004 confirming that the applicant had had a rib fractured. The investigator concluded that the applicant had been injured "under unknown circumstances".

15. On 11 December 2004 the Avtozavodskiy District Court of Togliatti ("the district court") convicted the applicant as charged and sentenced him to seven years' imprisonment and a fine of 10,000 Russian roubles. Despite a request from the applicant, the trial court confined its inquiry into the alleged ill-treatment after the arrest to the reading out of the investigator's refusal to institute proceedings dated 23 September 2004. The applicant appealed against the trial judgment, seeking a reclassification of the charge and a reduction in the prison term. On 25 February 2005 the Samara Regional Court ("the regional court") upheld the conviction.

16. On 24 March 2005 the deputy prosecutor of the Samara Region quashed the decision of 23 September 2004 and ordered an additional preliminary inquiry to be carried out.

17. On 16 April 2005 the same investigator from the prosecutor's office again refused to institute criminal proceedings against the police officers. The decision reproduced verbatim the text of the decision of 23 September 2004 save for the results of the additional inquiry, which were as follows. A police officer who had not been present at the time of the applicant's arrest had been questioned. Neither the applicant's fellow inmates nor the two police officers who had formally registered the applicant's arrival at the IVS had been questioned. The medical certificates confirming the chest injury and the rib fracture had been obtained. The applicant explained that the chest injury had been a result of his falling over in the street and the fracture had been caused by the beatings by the police officers. The medical experts had confirmed that the applicant had sustained minor bodily injuries. The investigator concluded that the applicant had "possibly sustained injuries during the period between 1 and 3 September 2004 under unknown circumstances".

18. On 19 December 2005 the deputy prosecutor of the Samara Region quashed the decision of 16 April 2005 and ordered an additional inquiry to be carried out.

19. On 6 January 2006 an investigator from the prosecutor's office refused to institute criminal proceedings against the police officers for the third time. The decision reproduced verbatim the one of 16 April 2005 and also included statements by two officers from the IVS – who claimed that upon his arrival to the facility the applicant had not made any complaints about his health – and statements from ex-girlfriends of four of the applicant's former fellow inmates, who submitted that they had no information as to the whereabouts of those men. The investigator concluded that the applicant had "possibly sustained injuries during the period between 1 and 3 September 2004 in unknown circumstances or had possibly self-inflicted them in order to avoid prosecution for the crime he had committed".

20. On an unspecified date the decision of 6 January 2006 was quashed.

21. On 4 April 2007 an investigator from the prosecutor's office again refused to institute criminal proceedings against the police officers for lack of any criminal event. The investigator considered – with reference to statements by officers K., R., S. and another officer M. – that the applicant had resisted lawful arrest following the "test purchase" on 31 August 2004 and that no physical force had been used except for handcuffing the applicant to prevent him resisting. The investigator also referred to statements made by the four IVS inmates questioned at the beginning of the inquiry in 2004. They affirmed that the applicant had told them about his resistance to the arrest. The investigator concluded that "the bodily injuries inflicted on the applicant had not been confirmed by anything except medical certificates and, owing to the objective impossibility of carrying out a forensic examination, it would be impossible to determine when and how the injuries had been caused".

22. On 11 March 2008 the district court upheld the refusal of 4 April 2007 on judicial review. On 30 May 2008 the regional court upheld the first-instance decision.

23. On 28 August 2008 the Presidium of the Regional Court granted the applicant's request for supervisory review of the judgment of 25 February 2005, reclassified the charge as an attempt to supply drugs, and reduced the sentence to six years and six months.

24. On 18 September 2009 the district court again examined the applicant's complaint – under Article 125 of the Russian Code of Criminal Procedure – concerning the refusal, dated 4 April 2007, to institute a criminal investigation, noted that the applicant himself had withdrawn the complaint in the course of the court hearing, and dismissed it. The decision explicitly stated that the applicant's complaint concerning the alleged ill-treatment had been received by the Samara regional prosecutor's office on 6 September 2004.

25. In 2009 the applicant was conditionally released from prison.

II. RELEVANT DOMESTIC LAW

26. For a summary of relevant domestic law see *Ryabtsev v. Russia* (no. 13642/06, §§ 42-52, 14 November 2013).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained that he had been ill-treated by the police and that there had been no effective investigation into his allegations at

national level. He invoked Articles 3 and 13 of the Convention. The Court considers that the complaints fall to be examined under Article 3, which reads as follows:

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

28. The Government admitted that the police officers had used unspecified lawful physical coercion to overcome the applicant's resistance to the arrest and had handcuffed him. They denied the applicant's allegations of ill-treatment during his arrest and thereafter. The Government did not contest the fact that the applicant had had his chest injured and a rib fractured as confirmed by the medical certificates of 1 and 3 September 2004, which had amounted to minor bodily injuries, but did not comment on their possible origin. They also maintained that the investigation had been effective, thorough and prompt, despite the fact that the applicant had been responsible for a delay in commencement of the inquiry because he had not complained to the prosecutor's office until 13 September 2004.

29. The applicant maintained his complaint.

A. Admissibility

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

B. Merits

1. General principles

31. 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).

32. Allegations of ill-treatment must be supported by appropriate evidence (see, among many other authorities, *Keller v. Russia*, no. 26824/04, § 114, 17 October 2013). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt", but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A

no. 25). Where an individual claims to have been injured as a result of ill-treatment in custody, the Government are under an obligation to provide a complete and sufficient explanation as to how the injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

33. In relation to detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-XV (extracts); *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002−IX). In respect of recourse to physical force during an arrest, the Court has held that while Article 3 does not prohibit the use of force in order to effect a lawful arrest, such force must not be excessive (see, among others, *Polyakov v. Russia*, no. 77018/01, § 25, 29 January 2009).

34. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such State agents unlawfully and in breach of Article 3, that provision – read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention" – requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

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

36. An investigation into serious allegations of ill-treatment must be thorough. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill−founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence and so on (see, with further references, *Korobov and Others v. Estonia*, no. 10195/08, § 113, 28 March 2013). 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 (see *Mikheyev v. Russia*, no. 77617/01, § 108, 26 January 2006).

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

2. Application of the general principles to the present case

(a) Alleged ill-treatment

38. The Court observes that the parties agreed that the applicant had sustained injuries to his chest and had had a rib fractured, as recorded in the medical certificates of 1 and 3 April 2004 (see paragraphs 9 and 11 above). However, they are in disaccord as to how these injuries were inflicted.

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

40. It is noteworthy that while the Government in their observations on the admissibility and merits of the application have claimed that the police officers used a certain coercion to effect the arrest because the applicant had shown resistance, they have not provided any details as to the nature of either the resistance or the coercion in question (see paragraph 28 above) except for referring to the fact that the applicant was at some point handcuffed.

41. Given that the Government have chosen not to comment on when the injuries were inflicted, the Court will turn to the conclusions of the domestic authorities on the matter. The domestic preliminary inquiries established that the applicant had sustained injuries recorded in the medical certificates, namely, the chest bruise and the rib fracture, between 1 and 3 September 2004 (see paragraphs 14, 17 and 19 above), that is to say, after the arrest and while in custody. The Court reiterates in this respect once again its long-established jurisprudence that where an individual is taken into police custody in good health but is found to be injured later, it is incumbent on the State to provide a plausible explanation of how those

injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni v. France* [GC], cited above, § 87).

42. The domestic inquiries initially concluded that the origins of the applicant's injuries were unknown (see paragraphs 14 and 17 above). Almost a year and a half after the applicant had been diagnosed with the chest bruise and the rib fracture the investigator suggested that the injuries had been self-inflicted, without stating why no incident of self-harm whilst the applicant was in the detention facility had been recorded (or noticed) by the IVS administration (see paragraph 19 above).

43. In such circumstances the Court is bound to conclude that neither the domestic investigative authorities in the course of the preliminary inquiries nor the Government have provided a credible account of how the applicant's injuries were caused. It therefore considers that the respondent Government failed to discharge its burden of proof and that it was not satisfactorily established that the applicant's account of events was inaccurate or otherwise erroneous (see *Ryabtsev*, cited above, § 74).

44. In the absence of any submission by the Government of a plausible explanation as to the circumstances under which the applicant sustained the injuries to his chest, the Court finds it established that the applicant was ill-treated by the police officers after his arrest on 31 August 2004.

45. Having regard to the physical and mental effects of the ill-treatment in question and the applicant's state of health, the Court is satisfied that the accumulation of the acts of physical violence inflicted on the applicant on 31 August 2004 amounted to inhuman and degrading treatment, in violation of Article 3 of the Convention.

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

(b) Investigation into the ill-treatment

47. The Court observes that the applicant's allegations against the police officers were confirmed by the medical evidence and were thus sufficiently serious to reach the "minimum level of severity" required under Article 3 of the Convention. Furthermore, these allegations were "arguable" and thus required an investigation by the national authorities. It is the Court's task to assess whether the respondent State has complied with its procedural obligation under Article 3 of the Convention.

48. The Court emphasises that an official criminal investigation into the applicant's ill-treatment was never instituted, because the prosecutor's office repeatedly refused to do so after preliminary inquiries into the applicant's allegations.

49. It is noteworthy that even those limited-scope inquiries were impaired from the very beginning by the authorities' failure to react promptly to the applicant's complaint of 6 September 2004. The Government claimed that the applicant had not lodged his complaint until

13 September 2004 and had thus contributed to the delay in the commencement of the inquiry, thereby diminishing its potential effectiveness (see paragraph 28 above). However, this argument is refuted by the findings of the district court, which specifically indicated in its decision upholding the fourth refusal to institute an investigation against the police officers that the applicant had complained of the ill-treatment on 6 September 2004 (see paragraph 24 above).

50. The Court further observes that in the period between September 2004 and April 2007 the prosecutor's office issued four decisions refusing to institute criminal proceedings against the police officers (see paragraphs 14, 17, 19 and 21 above). Three of them were quashed by a higher prosecutor's office owing to a failure to collect all the requisite evidence. Nonetheless, the second and the third decisions contained whole passages copied from the first one, with the addition of some slight new developments in the inquiry. The Court notes that the investigators, when asked to take additional steps to carry out an effective and adequate preliminary inquiry, obtained clearly irrelevant materials, such as statements by ex-girlfriends of four fellow inmates of the applicant in the IVS (see paragraph 19 above). In its view, this manner of carrying out an inquiry into serious allegations of ill-treatment while in the hands of police officers points to serious defects in the investigation taken as a whole, because these failings must have adversely affected the capacity of the investigation to collect and assess evidence relevant for the resolution of the case.

51. The Court points out that it is not in a position to assess whether the investigative measures were carried out promptly, because the Government have not provided any information on the issue. However, it appears that certain crucial steps were not taken at all. For instance, the investigators failed to conduct interviews with important witnesses such as the doctors who had diagnosed the applicant with the chest injury and the rib fracture. Furthermore, as is clear from the wording of the refusal to institute an investigation of 4 April 2007, the domestic investigative authorities did not consider ordering a forensic expert examination of the applicant until it was too late (see paragraph 21 above). Such deficiencies on the part of the authorities caused, in the Court's view, precious time to be lost and made any further investigation of the applicant's allegations complicated, if not impossible (see, for similar reasoning, *Ablyazov v. Russia*, no. 22867/05, § 58, 30 October 2012).

52. Lastly, the Court finds it striking that the prosecutor's office decided that it needed – in addition to the medical certificates that unequivocally confirmed the existence of the injuries (see paragraph 21 above) – further proof of the fact that the applicant had sustained them.

53. In the light of the foregoing, the Court considers that the investigation cannot be said to have been diligent, thorough and "effective".

There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. The applicant further complained under Article 5 of the Convention that there had been no reasonable suspicion to justify his arrest, and under Article 6 of the Convention that the criminal proceedings against him had been unfair, in particular on account of his alleged entrapment by the police during a "test purchase" of drugs from him. In his letter of 13 March 2006 the applicant raised further complaints concerning the trial under Article 6 of the Convention, claiming that he had been refused legal assistance after his arrest, that he had not been promptly informed of the charges against him, and that he had not been able to question a number of witnesses.

55. Having regard to all the material in its possession, and as far as it is within its competence, the Court finds that the applicant's submissions disclose no appearance of violations of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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."

57. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 3 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 under its substantive limb;

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

Done in English, and notified in writing on 23 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President