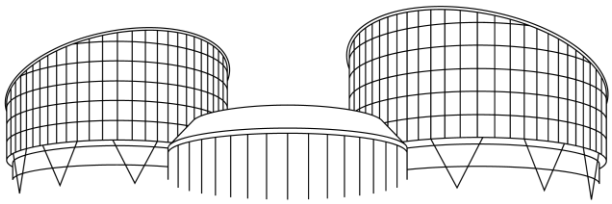

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SHANIN v. RUSSIA

(Application no. 24460/04)

JUDGMENT

STRASBOURG

27 January 2011

FINAL

27/04/2011

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

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

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 6 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 24460/04) 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 Igor Nikolayevich Shanin ("the applicant"), on 18 May 2004.

2. The applicant was represented by Ms O. Preobrazhenskaya, a lawyer practising in Moscow and Strasbourg. The Russian Government ("the Government") were represented by Ms V. Milinchuk, the then Representative of the Russian Federation at the European Court of Human Rights.

3. On 26 November 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1 of the Convention).

4. The Russian Government objected to the joint examination of the admissibility and merits of the application. Having considered the Government's objection, the Court dismissed it.

THE FACTS

5. The applicant was born in 1970 and lives in the town of Kansk, Krasnoyarsk Region.

A. Criminal proceedings against the applicant

6. On 19 March 2001 the applicant resisted a lawful arrest during a robbery and allegedly caused bodily harm to Mr F., officer of the Achinsk Department of the Interior, who was passing by with his wife. By a decision of 19 May 2001 an investigator of the Investigations Unit of the Achinsk Department of the Interior ordered the applicant's arrest.

7. The applicant was arrested on 10 July 2002 and brought to the Achinsk police station (see also paragraph 13 below). It is unclear whether any investigative measures were taken during the initial period of his detention. On 24 July 2002 the applicant was charged with robbery.

8. On 26 July 2002 the Achinsk Town Court considered that the applicant's arrest and detention had been unlawful because there had been deficiencies in the arrest record, in particular because he had not been informed of the above decision dated 19 May 2001; the applicant had not been brought before a court within the statutory time-limits. The applicant was released and ordered not to leave his place of residence. On 22 August 2002 the Krasnoyarsk Regional Court quashed the Town Court's order and ordered a re-examination of the matter. On the same date, the applicant was charged with the assault of officer F.

9. On 3 September 2002 the applicant was served with a copy of the indictment. On 4 September 2002 he was arrested. On 5 September 2002 the judge extended the applicant's detention and listed the case for trial on 26 September 2002. On 28 February 2003 the trial judge extended the applicant's detention until 4 June 2003. On 3 June 2003 the judge extended the applicant's detention until 4 September 2003 with reference to the gravity of the charges against him, his previous criminal record and attempts to flee justice. On 15 July 2003 the Regional Court upheld that order.

10. The applicant pleaded not guilty. At a court hearing on 19 August 2003 the prosecutor dropped the charges of assault because the case had been investigated, in breach of the Code of Criminal Procedure, by the Department of the Interior where the victim, officer F., was employed. By a decision issued on the same day, the Town Court terminated the proceedings concerning the charge of assaulting F. By a judgment of 20 August 2003, the Town Court convicted the applicant of robbery and sentenced him to seven years' imprisonment. On 2 December 2003 the Regional Court upheld the aforementioned judgments.

11. In separate proceedings, by a judgment of 28 October 2005 the Town Court recognised the applicant's right to compensation on account of the dropped charges. However, the court refused to award compensation, given the factual basis of the dropped and pursued charges.

12. The applicant was released in 2006.

B. Alleged ill-treatment on 10 July 2002

1. The applicant's account

13. On 10 July 2002 several police officers arrived at the applicant's flat. In the presence of his wife and child, officer B. struck him several times on the back and insulted him and his wife.

14. The applicant was then taken to the Achinsk police station, where he was beaten up by officer F. for nearly one hour. The officer inflicted blows to the applicant's chest, abdomen, legs and head. Such actions were due to the animosity of the officer toward the applicant after the events in 2001 and in order to extract a confession for the robbery. The applicant was forced to sign unspecified documents.

15. Instead of being placed in a standard cell, the applicant was kept alone for ten minutes in a tiny cell. While he was examined by medical assistant M., his former neighbour, M. refused to record any of the injuries to his body. On the same day, he was transferred to the remand centre. According to the applicant, the transfer did not exceed ten minutes and was supervised by at least five convoy officers.

16. The applicant was not brought before a court after his arrest (see paragraph 8 above). He alleges that by failing to draw a record of arrest and by failing to bring him before a court within the statutory time-limits the authorities attempted to cover up the alleged ill-treatment.

2. The Government's account

17. After his arrest on 10 July 2002, the applicant had been placed in the temporary detention centre (of the Achinsk police station). The bruises on his chest had been self-inflicted during his transfer from the temporary detention centre to the remand centre.

3. Investigation into the allegation of ill-treatment

(a) Initial complaint to the authorities

18. According to a note by the temporary detention centre, the applicant had been brought to the centre on 10 July 2002 at 5.30 pm and had had no injuries.

19. On the same day, he was transferred to the remand centre in Achinsk. As follows from the written report (*акт медицинского освидетельствования*) issued by the remand centre on the same day, the applicant was examined by a medical assistant of the remand centre, in the presence of the on-duty senior officer and the senior convoy officer. According to the report, the applicant displayed numerous bruises on his chest and explained that the injuries had been sustained during his arrest.

20. On 24 July 2002 the applicant was interviewed by investigator A. in relation to the criminal charges against him. A lawyer was present at the interview. The applicant made the following statement:

> "I was beaten up by police officers during my arrest on 10 July 2002. I cannot name them because they did not introduce themselves. They hit me on the chest, abdomen and back. The injuries were recorded in the remand centre. When brought to the police station, I was refused access to a lawyer and was not given any notice about my rights and the accusation against me. I had no interview with an investigator and consider that my detention for fourteen days was unlawful..."

21. Between 26 July and 4 September 2002 the applicant was at liberty. According to the applicant, he raised a complaint of ill-treatment at trial hearings held on 26 and 27 September 2002. However, the trial court refused to examine the complaint because no medical evidence had been adduced by him.

22. In reply to the applicant's request, by letter dated 1 April 2003, the Achinsk prosecutor's office informed him that the report of the remand centre dated 10 July 2002 had been kept in another file concerning the applicant. In September 2003 the applicant complained to the Achinsk prosecutor's office that he had been beaten up by officer F. and his colleagues.

23. According to the Government, the applicant's complaint of ill-treatment at the hands of police officers was first raised by him at the national level on 9 March 2003. They subsequently submitted that it had first been raised on 22 September 2003.

(b) Investigative measures and judicial review

24. The applicant complaint was dealt with by investigator P. of the Achinsk prosecutor's office. The investigator interviewed officer F., who stated that he had seen the applicant for a moment in the lobby of the police station on 10 July 2002 but had not had any encounter with him.

25. Officers B. and L. stated that there had not been any ill-treatment or use of force during the applicant's arrest in his flat on that date.

26. Medical assistant M. stated that she did not remember the events, as they dated back to 2002. Referring to the record, she affirmed, however, that she should have examined the upper part of the applicant's body and, as followed from the record, had detected no injuries. Nor had the applicant aired any complaint to her.

27. The investigator also interviewed F.'s wife, who recounted the circumstances relating to the applicant's arrest after the robbery in March 2001.

28. Later on, the applicant was also interviewed and stated that during his arrest in the flat officer B. had inflicted several blows to his back. In the police station, officer F. had kicked the applicant's chest, abdomen and legs; F. had also struck several blows to the applicant's head with his hand.

29. By a decision of 2 October 2003, the investigator refused to initiate criminal proceedings. He stated in a summary manner that the applicant's allegations were refuted by the above statements made by B., F., his wife and M.

30. On 24 February 2004 the prosecutor annulled the decision of 2 October 2003 and ordered further enquiries. The investigator in charge of the complaint interviewed investigator A., who stated that she had indeed interviewed the applicant in the presence of his lawyer and that soon thereafter she had gone on sick leave and had transferred the case to another official. In reply to the investigator's request, the applicant's wife had refused to make a statement about the circumstances of the applicant's arrest.

31. By a decision of 3 March 2004, the investigator refused to initiate criminal proceedings for the following reasons:

> "According to the medical report of 10 July 2002 issued by the temporary detention centre, the applicant had been in good health. However, according to the medical report issued after his transfer to the remand centre on the same date, he had displayed bruises on his chest. There is no evidence that the applicant sustained those injuries during his arrest."

32. On 29 March 2004 the applicant was served with a copy of the decision of 3 March 2004.

33. On 23 April 2004 the prosecutor annulled the decision of 3 March 2004 and ordered an additional inquiry. The investigator then took a statement from a Mr Sh., who had been detained with the applicant on 10 July 2002 in the temporary detention centre. Sh. stated that the applicant had told him that he had been beaten up during the arrest.

34. It appears that the investigator asked a medical expert Z. to examine the available documents concerning the alleged ill-treatment. In reply to a question from the investigator, Z. made "written explanations" (*объяснение*) that when physical force was applied close to bone tissue, bruises could either become visible immediately or within several hours. She also replied that it was not practicable to determine the timing of the injuries caused to the applicant because the medical report of 10 July 2002 did not contain a morphological description of the bruises, such as details of their colour or a description of any oedema.

35. By a decision of 5 May 2004, the investigator refused to initiate criminal proceedings because no evidence could be adduced that the applicant had sustained injuries during the arrest. In particular, the investigator established that the information contained in the medical reports and the arrest record had been insufficient to determine when the arrest had taken place and when the relevant injuries had been sustained.

36. By judgment of 4 June 2004, the Town Court annulled the decision of 5 May 2004. The court held as follows:

"After his arrest, the applicant remained under the control of the police or convoy officers...

Article 3 of the European Convention on Human Rights provides that no one shall be subjected to torture...

In the *Ribitsch v. Austria* judgment of 4 December 1995, the European Court held that the Government should give a plausible explanation of how the detainee's injuries have been caused.

The case file contains no evidence rebutting the applicant's allegations and the medical evidence or supplying any such plausible explanation....

The European Court pointed out in the *Ribitsch* judgment that any recourse to violence in respect of a person deprived of his liberty not made strictly necessary by the conduct of the detainees, is in principle an infringement of Article 3.

In view of the above, the decision of 5 May 2004 is unlawful and lacks reasons explaining how the applicant's injuries had been caused."

37. In June 2004 the administration of the remand centre decided to transfer the applicant to a prison, where he would serve his prison sentence. The applicant brought proceedings claiming that his transfer would impede the inquiry in respect of his complaint of ill-treatment. By letter of 1 July 2004, the Town Court informed the applicant that the above decision was not amenable to judicial review.

38. The investigator questioned a medical expert, Ms Kr., who interpreted in her "written explanations" the location of the injuries mentioned in the report of 10 July 2002 as meaning that the area had been accessible to the applicant's hands and thus could have been self-inflicted. Mr K., chief of the convoy section, stated that the applicant had been transported to the remand centre in a convoy van, in which detainees were not restrained and could thus inflict injuries upon themselves. It does not appear that K. participated in the applicant's transfer on 10 July 2002.

39. By a decision of 25 June 2004, the investigator concluded that the applicant had inflicted the injuries on himself "with the intention of avoiding prosecution for the criminal offence" during his transfer from the temporary detention centre to the remand centre.

40. By letters of 5 and 8 July 2004, the prosecutor informed the applicant that, due to his transfer to the prison, he would not have access to the inquiry reports and that he had already been provided with a copy of "the decision".

41. By a judgment of 10 September 2004, the Town Court upheld the investigator's decision of 25 June 2004. Having heard the parties, the court considered that the investigating authority had carried out all practicable measures during the inquiries; all relevant testimonies and documentary evidence had been collected and assessed. On 19 October 2004 the Regional Court upheld the Town Court's judgment, endorsing its reasoning.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained that he had been ill-treated by agents of the State on 10 July 2002 and that the investigation into the alleged ill-treatment had not been effective in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

44. The applicant submitted that had been ill-treated during his arrest in the flat by officer B. and in the police station by officer F. He had not inflicted any injuries upon himself during his transport to the remand centre. The transfer had not exceeded ten minutes and had been supervised by at least five convoy officers, who should have noticed and prevented any attempts on the part of the detainees to inflict or self-inflict injuries. In any event, no reports had been made of any such incident on 10 July 2002. It would have been futile for the applicant to have built his defence to the criminal charges on an allegation of ill-treatment, in view of the probative value of the statements made against him. Although the investigator and then the trial court had been informed of the ill-treatment, no inquiry into it had been opened. An investigation of the applicant's complaint had started only after the medical report of 10 July 2002 had been identified in early 2003. However, no investigative measures had been taken between March and September 2003; no confrontation had been held between the applicant and the police officers; and the convoy officers had not been interviewed. The applicant had not been given access to the inquiry file.

45. The Government argued that the bruises on the applicant's chest had been self-inflicted during the transfer between the temporary detention centre and the remand centre. He had made allegations of ill-treatment

during his trial. By implicating officer F., who was one of the witnesses against him in the 2001 case (see paragraphs 6 and 10 above), the applicant had sought to avoid prosecution. The applicant had been convicted on the basis of statements and material evidence. There had been no need to extract a confession from him. In any event, the allegation of ill-treatment had first been aired in March 2003; subsequently, the Government submitted that the complaint had been made in September 2003. In addition, the applicant's wife had refused to make a statement about the circumstances of the applicant's arrest on 10 July 2002. Importantly, the location of the injuries implied that the applicant could have inflicted them by his own hand. The national authorities had carried out an effective investigation, the results of which had passed the muster of judicial scrutiny.

2. The Court's assessment

(a) The alleged ill-treatment

46. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. In order to fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among others, *Ireland v. the United Kingdom*, judgment of 18 January 1978, § 162, Series A no. 25).

47. The Court observes at the outset that the thrust of the applicant's complaint before the Court concerns alleged ill-treatment during his arrest in his flat and at the hands of officer F. in the police station on 10 July 2002. In particular, he alleged that during his arrest in the flat officer B. had struck him several times on the back; the police station officer F. had hit and kicked him in the chest, abdomen, legs and head (see paragraphs 14 and 28 above). As follows from the applicant's statement made to the investigator on 24 July 2002, during his arrest police officers, whom he could not name, had hit him on the chest, abdomen and back (see paragraph 20 above).

48. The Government argued that the bruises on the applicant's chest had been self-inflicted during the transfer between two detention facilities. They also pointed out that the court at two levels of jurisdiction upheld the findings made by the investigative authority (see paragraph 41 above).

49. First of all, it is noted that the allegations concerning the arrest are limited to striking the applicant on the back, which is not confirmed by any medical evidence. Nor is there any such evidence in relation to the alleged beatings in the abdomen, legs and head. At the same time, it is common ground that the bruises on the applicant's chest were sustained or self-inflicted during and/or after his arrest and detention. Nor is it in dispute

between the parties that by the time of his arrival in the remand centre the applicant had "numerous bruises on his chest".

50. In the Court's view, the established injuries were sufficiently serious to reach the "minimum level of severity" under Article 3 of the Convention. It remains to be considered whether the State should be held responsible under Article 3 for those injuries.

51. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. 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. Indeed, as rightly pointed out by the national court in the present case (see paragraph 36 above), the burden of proof may be regarded as resting on the authorities to provide a plausible explanation for the injuries (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

52. Where domestic proceedings have taken place, as in the present case, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006).

53. Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny. 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-... (extracts). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch*, cited above, § 38; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

54. As can be seen from a note compiled in the temporary detention centre, the applicant was brought to the centre on 10 July 2002 and had no injuries. On the same day, he was transferred to the remand centre in the town of Achinsk. According to a report issued by the remand centre on the same day, the applicant had displayed numerous bruises on his chest. As follows from the report, the applicant explained that the injuries had been sustained during his arrest.

55. While the findings of the medical report compiled in the remand centre on the day of his arrest are not directly challenged, it should be noted that before his release on 26 July 2002 the presence of injuries on the applicant's body did not give rise to any forensic medical examination by a medical expert. It appears that between 10 and 26 July 2002 the administration of the remand centre did not judge it necessary, in particular in view of the applicant's own account of the origin of the injuries, to order any further inquiries or more comprehensive examinations. As was noted in the domestic proceedings, it was not practicable on the basis of the above report to determine the timing of the injuries because this report contained no morphological description of the bruises, such as details of their colour or a description of any oedema (see paragraph 34 above).

56. The Court is not convinced by the Government's argument that the injuries had been self-inflicted. No measure was taken at the domestic level to verify whether any reports concerning use of force against the applicant were drawn, or whether there were any incidents during his transport between detention facilities. No written statement was sought from the applicant, despite a clear indication concerning use of force.

57. Moreover, it does not appear that any depositions, including the "written explanations" made by the medical assistant of the temporary detention centre or medical experts, were made under oath. The Court reiterates in that connection that it cannot hold in the abstract that evidence given by a witness in open court and on oath should always be relied on in preference to other statements made by the same witness in the course of proceedings, even when the two are in conflict (see *Doorson v. the Netherlands*, 26 March 1996, § 78, *Reports* 1996-II; *Melnikov v. Russia*, no. 23610/03, § 75, 14 January 2010, and *Bulfinsky v. Romania*, no. 28823/04, § 46, 1 June 2010). The above does not exclude that the credibility and weight of an ordinary deposition, which is not punishable for perjury, may be called into question in the circumstances of a given case.

58. In view of the above considerations and bearing in mind the findings in paragraphs 67-73 below, the Court is not satisfied that it was convincingly established that the bruises on the applicant's chest had been self-inflicted during the transfer in the prison van between the temporary detention centre and the remand centre. Thus, it should be concluded in the circumstances that the applicant was subjected to inhuman treatment.

59. There has accordingly been a violation of Article 3 of the Convention under its substantive aspect.

(b) The obligation to investigate

60. The Court reiterates that where an individual raises an arguable claim that he has been ill-treated by agents of the State 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 their jurisdiction

the rights and freedoms defined in the Convention, requires by implication that there should be an effective investigation (see, among others, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

61. An obligation to investigate is an obligation of means: not every investigation should necessarily 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).

62. The investigation into "arguable" allegations of ill-treatment must be thorough. That means that the authorities must 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*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Also, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time, consideration being given to the date of commencement of investigations, delays in taking statements and the length of time taken to complete the investigation (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV, and *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001). 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 the applicable standard.

63. Turning to the circumstances of the case, the Court considers that the applicant's description of the alleged ill-treatment accompanied by the medical certificate of 10 July 2002, as well as the fact that the injuries were sustained when he was deprived of his liberty, amounted to an "arguable" claim of ill-treatment (compare *Çevik v. Turkey* (dec.), no. 57406/00, 10 October 2006). An investigation into the applicant's allegations was thus required.

64. The parties are in disagreement as to the date on which the national authorities were made aware of the alleged ill-treatment on 10 July 2002 and could thus be required to start an inquiry.

65. The applicant did not provide any information as to whether or not before 24 July 2002 he explicitly complained of ill-treatment and/or alleged excessive use of force during his arrest, which would, in the normal course of the events, prompt a preliminary inquiry on the part of the national authorities. Be that as it may, the Court considers that having identified

some injuries on the applicant's body and having learnt that they had been probably sustained during the arrest, it was incumbent on the national authorities – the remand centre in the present case – to verify that no proscribed treatment had been inflicted on the arrestee.

66. Furthermore, the Court observes that during his interview with investigator A. on 24 July 2002 the applicant mentioned being beaten during his arrest. While he was not able to name the responsible officers, he took care to substantiate his allegation by reference to a medical report drawn up in the remand centre.

67. The Court further notes that, as can be seen from the interview record, the applicant also referred to a lack of legal advice, non-notification of his rights and that his detention in the intervening period was unlawful, notably because he had not been brought before a judge. In the present case the parties did not make any particular comment on those points. Nor did they argue whether a complaint of ill-treatment was raised by the applicant between 10 and 24 July 2002. The Court has emphasised on several occasions that persons held in custody are often in a stressful situation and may be vulnerable to pressure (see *Belevitskiy v. Russia*, no. 72967/01, § 66, 1 March 2007, and *Mammadov v. Azerbaijan*, no. 34445/04, § 74, 11 January 2007). In view of the circumstances of the applicant's detention in July 2002, the Court is not prepared to draw any adverse inferences against the applicant in so far as a possible delay in raising his complaint is concerned (see, by contrast, *Andreyevskiy v. Russia*, no. 1750/03, §§ 55 and 56, 29 January 2009).

68. Furthermore, while it is true that as he was represented, at least on 24 July 2002, and at large after 26 July 2002, the applicant was not restrained in his ability to raise or further substantiate a complaint of ill-treatment, the Court considers that at latest by 24 July 2002 the national authorities were already sufficiently on notice about the alleged unjustified use of force during the applicant's arrest and possible ill-treatment of the applicant and were thus required to react promptly in order to comply with the requirements of Article 3 of the Convention.

69. It cannot be found with certainty that the applicant's right to participate effectively in the inquiry was secured (see also *Denis Vasilyev v. Russia*, no. 32704/04, § 126, 17 December 2009). He was not granted victim status in the proceedings and did not acquire any rights attaching to that procedural status. It is noted in that connection that in 2004 the applicant was transferred to another detention facility and was refused access to the inquiry file.

70. It does not appear from the available material that the ill-treatment issue was discussed at the trial (see, by contrast, *Vladimir Romanov v. Russia*, no. 41461/02, §§ 50-52, 24 July 2008; *Akulinin and Babich v. Russia*, no. 5742/02, § 33, 2 October 2008; *Samoylov v. Russia*, no. 64398/01, §§ 43 and 44, 2 October 2008; *Vladimir Fedorov v. Russia*,

no. 19223/04, §§ 44-50, 30 July 2009; *Toporkov v. Russia*, no. 66688/01, §§ 28-35, 1 October 2009, and *Lopata v. Russia*, no. 72250/01, § 107, 13 July 2010). In addition, it was only in April 2003 that the national authorities took note of the applicant's requests and established that the medical report, referred to by the applicant in July 2002, had been placed (or misplaced) in another case file concerning him. However, despite being in possession of the information relating to the applicant's "numerous chest injuries", the national authorities did not carry out any inquiries in this regard until September 2003.

71. It is further noted that since September 2003 the investigator questioned a number of police officers and medical staff. However, as follows from the report issued of 10 July 2002, the applicant was examined by the medical assistant of the remand centre, in the presence of the on-duty senior officer and the senior convoy officer. It does not appear that any testimony by these persons was taken into consideration.

72. In the Court's opinion, having been confronted with conflicting versions of the events based on either inflicted or self-inflicted injury, the role of medical forensic evidence was particularly important to confirm or discard either version. However, given the brevity of the report of 10 July 2002, which resulted from a superficial visual assessment of the applicant's medical condition upon his admission to the remand centre, and bearing in mind the lapse of time between July 2002 and September 2003, the Court has serious doubts that any expert forensic assessment would shed light on the circumstances in which the applicant had sustained the injuries. In any event, such an attempt at assessment was first made in June 2004, when a medical expert confirmed that in the absence of any morphological description of the injuries in the initial report it was impossible to make any further assessment. In this context, the Court cannot afford any weight to the Government's argument based on the fact that the injuries were located in an area of the applicant's body which was easily accessible to his own hands. Nor does the Government's suggestion that the use of self-harm was a defence tactic stand up to any scrutiny.

73. In fact, there is nothing in the available material which would either confirm or refute that the applicant's chest injuries were caused by the applicant himself (with his own hands or, for instance, by throwing himself against an external object) or by another person (a police officer or another detainee). Importantly, the national authorities did not interview any of the convoy officers or detainees, if any, who had been present in the prison van during the transfer from the temporary detention centre to the remand centre on 10 July 2002. In addition, it appears that the applicant was first questioned and his statement taken only in September 2003 at the closure of the initial inquiry.

74. The Court concludes that the investigation in the present case did not satisfy the requirements of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

75. The applicant further submitted a number of complaints relating to his arrest, detention and trial. He referred in this respect to Articles 5, 6 and 13 of the Convention.

76. The Court has examined these complaints, as submitted by the applicant. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant claimed 131,000 euros (EUR) in respect of non-pecuniary damage.

79. The Government contested this claim.

80. Having regard to the nature of the violation found, the Court awards the applicant EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

81. Since the applicant made no claim under this head, the Court is not called to make any award.

C. Default interest

82. The Court considers it appropriate that default interest 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 ill-treatment and ineffective investigation admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive aspect;

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

4. *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, EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
   (b) that, from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President