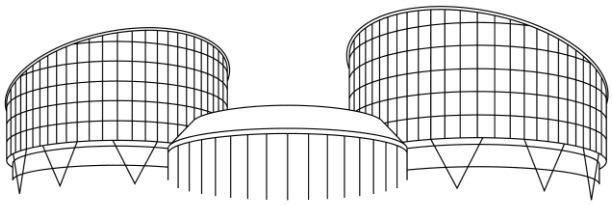

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SOKURENKO v. RUSSIA

(Application no. 33619/04)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

09/07/2012

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

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

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 33619/04) 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 Vadimovich Sokurenko ("the applicant"), on 24 August 2004.

2. The applicant was represented by Mr M. Rachkovskiy, a lawyer practising in Moscow. 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 17 September 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1960 and lives in the town of Bratsk in the Irkutsk Region.

A. The applicant's arrest and pre-trial detention

5. At around 3 a.m. on 29 January 2001 the applicant and his accomplice were arrested when attempting to rob a private shop. The applicant had tied up a shop attendant and the guard. His accomplice had threatened the staff with a gun. The police had to use physical force against the applicant, who was pacified and was then taken to a police station.

6. The applicant complained about the use of force against him. A medical report dated 5 February 2001 indicated that he displayed linear joining bruises on his left hip and two oval bruises on the right hip. The expert concluded that the injuries could have been inflicted with a man's boots. The town prosecutor refused to initiate criminal proceedings against the officers. The inquiry was closed and reopened on several occasions between 2001 and 2008.

7. On an unspecified date an investigating or prosecuting authority decided that the applicant should be kept in detention pending the investigation of the attempted armed robbery. On 26 April 2001 the applicant was informed of his right to legal assistance. As can be seen from the notification record, the applicant waived the right to legal assistance for reasons "unrelated to financial hardship" and refused to sign the record. His accomplice also waived his right to legal assistance; the record was signed by a lawyer.

8. On an unspecified date the criminal case against the applicant was committed for trial at the Bratsk Town Court in the Irkutsk Region. On 23 July 2001 the Town Court rejected an application by the defence for the applicant's release, noting that he was charged with a particularly serious offence and was not a resident of Bratsk. At the same hearing the court decided that the case file should be returned to the prosecutor "in view of the violation of the applicant's right to legal assistance at the pre-trial stage of the proceedings". On 17 September 2001 the Town Court decided, without giving any reasons, that the applicant should remain in custody.

9. On 16 July 2002 the Town Court extended the applicant's detention as follows:

> "The Code of Criminal Procedure entered into force on 1 July 2002...and requires that the detention issue be determined by a court... [The applicant] is charged with a particularly serious offence, has pleaded not guilty, has no permanent place of residence in Bratsk and, therefore, might abscond and obstruct the proceedings... The court decides that [the applicant's] detention should be extended to 1 October 2002."

The applicant appealed. On 10 September 2002, for unspecified reasons, the Irkutsk Regional Court adjourned the examination of the applicant's appeal against that decision (see also paragraph 11 below).

10. On 2 October 2002 the Town Court ordered another extension, to 1 January 2003, in the following terms:

> "While the court has taken note of the [applicant's] state of health and disability, it cannot release him because he is charged with a violent and particularly serious offence, has pleaded not guilty and has no permanent place of residence in Bratsk. He might evade trial, continue his criminal activity and obstruct the proceedings; the victims fear to attend hearings."

11. On 29 October 2002 the Regional Court again adjourned the examination of the applicant's appeal against the detention order of 16 July 2002 because the applicant had not been brought to the appeal hearing. On an unspecified date in December 2002 the Irkutsk Regional Court upheld the detention order.

12. On an unspecified date, one of the victims of the armed robbery of 29 January 2001 made a written statement indicating that she would not participate in the trial hearings because she had received a letter containing threats. Two other persons made written statements indicating that they refused to participate in the trial hearings for unspecified reasons. In December 2002 two unsigned type-written letters, apparently addressed to two victims, were admitted to the criminal case file. They read as follows:

> "I urge you to be honest at the trial hearing as regards what happened on 29 January 2001, that is, the officers' actions. This is in your best interest. I do not give any details since you know everything and saw everything."

13. On 26 December 2002 and 25 March 2003 the Town Court extended the applicant's detention, referring to the absence of residence registration and permanent place of residence in Bratsk, the gravity of the charges concerning use of violence and firearms. On both occasions, the court also mentioned that several hearings had to be adjourned because the victims had not attended fearing for their lives. On 27 June and 30 September 2003 the Town Court heard the applicant's counsel and issued further extensions on the same factual and legal grounds, also expressly referring to the above-mentioned letters. It appears from the above court decisions that the applicant was ill and, for that reason, did not attend the hearings.

14. From 26 March to 30 September 2003 the applicant was kept in a psycho-neurological dispensary and subsequently received in-patient treatment in a hospital.

15. On 9 December 2003 the Regional Court held an appeal hearing concerning the detention order of 30 September 2003. The court refused to hear the applicant in person and endorsed the reasoning of the detention order.

16. The applicant subsequently lodged a request to be released. On 29 December 2003 the Town Court rejected it and extended his detention until 1 April 2004, reproducing verbatim the text of the earlier extension orders. The applicant was represented by counsel at the hearing. It appears that the applicant appealed and that the Regional Court dismissed his appeal on an unspecified date in early 2004.

17. On 2 February 2004 the trial judge granted the applicant's request for a medical examination and ordered that an expert from the Irkutsk psychiatric hospital be designated to carry out a forensic psychiatric examination of the applicant. On 13 March 2004 the applicant was transferred from Bratsk remand centre to Irkutsk for the psychiatric examination. The examination was not carried out, for unspecified reasons (see also paragraph 24 below). It appears that the applicant remained in Irkutsk for some time.

18. On 26 March 2004 the Bratsk Town Court extended the applicant's detention until 1 July 2004. The applicant did not attend the hearing. Having agreed that the hearing be held without the applicant, his counsel made short submissions to the Town Court. On 21 June 2004 the Regional Court upheld the detention order in the following terms:

> "... [the applicant] supplied no evidence in support of his argument that his state of health was incompatible with further detention in the remand centre and that he needed medical treatment...
>
> ...his right to be present at the first-instance hearing was not violated because he had been transferred to a hospital for a forensic examination."

The applicant and his lawyer did not attend the appeal hearing.

19. From 26 June to 31 August 2004 the applicant was kept in a psycho-neurological dispensary.

20. In the meantime, on 28 June 2004 the Town Court extended the applicant's detention until 1 October 2004. His counsel attended the hearing and made short submissions to the Town Court. As can be seen from the hearing record, in reply to a question from the judge the applicant's counsel agreed that the hearing could proceed without the applicant.

21. On 10 or 11 July 2004 the applicant was returned to Bratsk remand centre. The President of the Bratsk Town Court was informed accordingly on 14 July 2004.

22. On 31 August 2004 the Regional Court rejected the applicant's complaint of procrastination in the proceedings and upheld the detention order of 28 June 2004 as follows:

> "...the grounds for extending [the applicant's] detention still obtain...The proceedings were adjourned on several occasions for valid reasons...The applicant's disability cannot justify his release."

The applicant and his counsel did not attend the appeal hearing.

23. On 29 September 2004 the trial judge heard the prosecutor and the applicant's counsel, rejected the latter's challenge to the prosecutor and extended the applicant's detention until 1 January 2005. The judge held as follows:

> "It is noted that [the applicant] has been accused of a particularly serious violent offence causing damage to the victims' life and limb and committed with the use of weapons. It is also noted that the expert report has not been issued; that [the applicant]

> has no permanent or registered residence in Bratsk; and that several adjournments have been ordered on account of the victims' failure to appear before the court out of genuine fear for their life and limb. Since the circumstances justifying detention persist, the court has every reason to believe that [the applicant] would evade justice, continue his criminal activity, interfere with the course of proceedings and put pressure on the victims."

The applicant did not attend the hearing.

24. In a procedural order of 30 September 2004, the trial judge noted that his order of 2 February 2004 (see paragraph 17 above) had not been executed for unspecified reasons, and ordered that the applicant be transferred to another remand centre to enable the authorities to prepare the expert report ordered by the court.

25. Between October and December 2004 the applicant was kept in the remand centre or a hospital in Irkutsk. In the meantime, on 29 November 2004 the Regional Court upheld the detention order of 29 September 2004 as follows:

> "When concluding about the risk of pressure being put on the victims, the court took into consideration the gravity of the charges, the circumstances of the case and the information concerning the defendant's personality....The court rejects [the applicant's] argument about the excessive length of his detention because the proceedings are pending and a forensic examination is required."

The applicant and his counsel did not attend the appeal hearing.

B. Trial

26. In June 2001 the applicant sought the appointment of legal-aid counsel for the trial. In July 2001 lawyer A. was appointed by the Town Court. He represented the applicant until in October 2001, when the applicant dismissed him. Another lawyer was appointed, whom the applicant also dismissed. Many hearings were adjourned in late 2001 and 2002 because the presiding judge was involved in other proceedings or was on leave. In 2003 the proceedings were suspended, in particular because the applicant had been ill (after an attempted suicide at a court hearing in June 2003). It appears that the applicant hurt himself with some kind of needle or spike.

27. By a letter of 10 December 2004 the Regional Court wrote to the President of the Town Court indicating that the trial had been unreasonably long and urging him to speed it up. It was noted that there had been unjustified delays in the proceedings in 2002-2004.

28. By a judgment of 31 December 2004 the Town Court convicted the applicant of robbery and possession of weapons, and sentenced him to five years' imprisonment, to be counted from 29 January 2001.

29. On 16 February 2005 the Town Court examined the applicant's request for early release. Noting that he had already served most of the

prison term and had a permanent place of residence, the court ordered his release.

C. The alleged beating in January 2004

1. The applicant's account of the events

30. According to the applicant, during his detention in Bratsk remand centre no. 2 pending trial he began a hunger strike in November 2003. Allegedly, he was placed in a punishment cell, where it was cold. During the night of 1 to 2 January 2004 a search was carried out in the cell, which he shared with several other detainees. The guards hit the detainees, including the applicant, with rubber truncheons. On 2 and 4 January 2004 the prison doctor refused to record the injuries. On 6 January 2004 the applicant was taken to a hearing in the Town Court, where he told the guards that he had swallowed a razor blade. This was true. The applicant explained that his intention had been to gain access to an "independent" medical professional in order to have his earlier injuries recorded.

31. The applicant was then taken to the city hospital where a trauma specialist observed linear blue bruises in the area of the shoulder blades. On the discharge certificate and the trauma card the trauma specialist concluded that the applicant had recently sustained bruises to the soft tissues of the thorax (front and back) and numerous oval bruises to the back. On or around 16 February 2004 the applicant asked his counsel to lodge a complaint about the unjustified use of force.

2. The Government's account of the events

32. According to the Government, between 1 and 6 January 2004 the applicant did not seek any medical assistance in the medical unit of the remand centre. Nor did he make any complaint during daily checks carried out by the staff of that unit. On 6 January 2004 the applicant was taken from the courthouse to a hospital after swallowing a razor blade. As he also complained of chest and stomach pain, he was examined by a doctor. The applicant was issued with a certificate confirming thorax contusions. The certificate did not contain any detailed description of the injuries. On 16 February 2004 the applicant lodged a complaint about ill-treatment. The Bratsk acting deputy prosecutor supervising detention facilities was instructed to carry out a preliminary enquiry.

3. Investigation at the domestic level

33. Following the applicant's complaint, on 24 February 2004 a refusal to prosecute the remand centre officers was issued for lack of a criminal offence/event.

34. It appears that the refusal of 24 February 2004 was revoked in June 2004 because the applicant had lodged a new complaint. In the resumed inquiry several detainees and remand centre officers were interviewed. The prison medical officer stated that the records between 2 January and 11 March 2004 did not mention any complaint from the applicant. The trauma specialist of the hospital stated that he had examined the applicant on 6 January 2004 in the presence of a surgeon and that he was not able to describe the injuries, which had been recorded on the "trauma record card" at the time. This card had been handed over to the convoy officers.

35. A medical expert report was commissioned on 19 June 2004. In a report of 28 June 2004 the expert stated that he could not determine the nature and origin of the injuries but considered that they could not be classified by national standards as "causing any damage to the health".

36. On 29 June 2004 the deputy prosecutor issued a decision refusing to initiate criminal proceedings against the staff of the detention facility on charges of abuse of authority by a public official (Article 286 of the Criminal Code). The deputy prosecutor held as follows:

> "As alleged by the applicant during his initial interview, in the night of 1 to 2 January 2004 prison guards carried out a search in his cell and somebody inflicted several blows on his back with a rubber truncheon...
>
> [Seven people], the applicant's co-detainees at the time, stated that during the search the prison officers had been rude, and had taken the detainees into the lobby and placed them in another cell. They had heard the officers hit someone, but had not seen anything. They had not applied for medical assistance or examination in the medical unit of the detention facility.
>
> Nine on-duty or other staff members, stated that no cell search had been carried out during the night of 1 to 2 January 2004; no restraints had been used against the applicant or any other detainee. The detainees had lodged complaints to slander staff members in order to obtain a better detention regime or to intimidate the staff.
>
> The information provided by the medical unit and the security unit indicates that the applicant did not seek medical assistance or examination, that no cell search was carried out, that no restraints were used against the detainees and that no relevant record was drawn up... The applicant could not name any of the officers who had allegedly beaten him up... The detainees interviewed did not see any officer beat the applicant. No force or restraints were used against the detainees.
>
> Since no medical record had been drawn up in the city hospital, the forensic expert could not determine the timing or origin of the injuries in the absence of information concerning the morphological features of the injuries."

37. The applicant sought judicial review of the above refusal to prosecute. On 23 September 2004 the Town Court heard the parties and upheld the prosecutor's decision. It held as follows:

> "...[Nine people], the applicant's co-detainees, heard and saw somebody being beaten up and threatened with dogs... Certain belongings were removed from the

cell... The applicant stated that the prison officers had beaten up the detainees, then removed them from the cell and carried out the search...

The dog handler at the detention facility stated that she had not taken part in any cell search on the night of 1 to 2 January 2004; instead, she had been called to zone no. 4 where detainees were making a noise. When she got there, she remained in the lobby. Prison officers took some detainees out of their cells to have them tested for alcohol intoxication...

The officer in charge of the locker-room stated that on 1 or 2 January 2004 no detainees' belongings had been taken out of any cell or placed in the locker-room for safekeeping ...

The refusal to prosecute is lawful and properly reasoned, being supported by the evidence gathered during the inquiry. The applicant has not raised before the court any argument capable of casting doubt on the findings made by the prosecutor. The applicant has not submitted any further material or request, for example, to call other witnesses or carry out investigative measures. The presence of injuries on his body is not the result of the use of force against him in the night of 1 to 2 January 2004. The applicant first sought medical assistance in a hospital on 6 January 2004. His cellmates did not apply for medical assistance."

38. The applicant appealed. Having heard a representative of the prosecutor's office, on 11 November 2004 the Regional Court upheld the judgment of 23 September 2004, endorsing the reasoning of the Town Court. However, the appeal court concluded that there was "no *corpus delicti* in the actions of the officers of the remand centre".

D. Other proceedings

39. In 2005 the applicant brought civil proceedings, claiming the outstanding amount of his disability pension. By a judgment of 6 May 2006 the Severobaykalsk Town Court of the Buryatiya Republic rejected his claims. On 12 July 2006 the Supreme Court of the Buryatiya Republic upheld that judgment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Use of force against detainees

40. Under section 44 of the Custody Act (Federal Law no. 103-FZ of 15 July 1995), physical force may be used against a suspect or an accused in a detention facility in order to put an end to an offence or to resistance to lawful orders issued by public officials, if other means prove ineffectual. Rubber truncheons may be used to stop a detainee assaulting a public official, to put an end to mass disorder or breaches of prison rules committed in a group, to put an end to unlawful actions on the part of the detainee if he resists a lawful order, or to prevent him from causing damage to others (section 45). Handcuffs may be used to put an end to unlawful

actions on the part of the detainee if he resists a lawful order, or to prevent him from causing damage to himself or others (ibid.).

B. Code of Criminal Procedure (CCrP)

41. Article 125 of the CCrP provides for judicial review of a decision or (in)action on the part of an inquirer, investigator or prosecutor, which has affected constitutional rights or freedoms. The judge is empowered to verify the lawfulness and reasoning of the decision/(in)action and to grant the following forms of relief: (i) to declare the impugned decision/(in)action unlawful or unreasoned and to order the respective authority to remedy the violation; or (ii) to reject the complaint.

42. In its Resolution of 10 February 2009 the Plenary Supreme Court of Russia considered that the above judicial review proceedings should not prejudge issues which could subsequently be the subject-matter of the (main) criminal case. In particular, the court should not reach conclusions as to the factual circumstances of the case, the assessment of evidence or the legal classification of the events (§ 1 of the Resolution). As regards a refusal to institute criminal proceedings, a judicial-review court should verify compliance with the procedure for dealing with a complaint about a committed or planned crime, to verify whether the refusal was taken by a competent authority or official and whether it was based on relevant legal grounds (§ 14). When declaring an official's decision or (in)action unlawful and/or unreasoned, the judicial-review court should indicate that the official should remedy the shortcoming identified by the court. However, the court is not empowered to determine which actions should be taken by an investigating authority or official, or to annul or require annulment of their decision (§ 21).

43. For a summary of the applicable national legislation relating to detention on remand, see the Court's judgment in the case of *Khudoyorov v. Russia* (no. 6847/02, §§ 76-93, ECHR 2005).

III. RESERVATION MADE BY THE RUSSIAN FEDERATION

44. The instrument of ratification of the Convention deposited by the Russian Federation on 5 May 1998 contained the following reservation:

> "In accordance with Article 64 of the Convention, the Russian Federation declares that the provisions of Article 5 paragraphs 3 and 4 shall not prevent ... the temporary application, sanctioned by the second paragraph of point 6 of Section Two of the 1993 Constitution of the Russian Federation, of the procedure for the arrest, holding in custody and detention of persons suspected of having committed a criminal offence, established by Article 11 paragraph 1, Article 89 paragraph 1, Articles 90, 92, 96, 96-1, 96-2, 97, 101 and 122 of the RSFSR Code of Criminal Procedure of 27 October 1960, with subsequent amendments and additions..."

45. On 1 July 2002 a new Russian Code of Criminal Procedure entered into force, replacing the RSFSR Code of Criminal Procedure of 27 October 1960.

THE LAW

I. ALLEGED ILL-TREATMENT

46. The applicant complained that he had been beaten up by prison guards in the night of 1 to 2 January 2004 and that the inquiry had been ineffective, in breach of Articles 3 and 13 of the Convention. The Court will examine this complaint under the substantive and procedural aspects of Article 3, which reads as follows:

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

A. Submissions by the parties

47. The Government submitted that the applicant had mutilated himself on several occasions and that, in any event, the injuries recorded on 6 January 2004 did not attain the minimum level of severity. They submitted that the applicant had significantly prejudiced the domestic inquiry relating to his complaint of ill-treatment, which had first been raised before the national authorities over one month after the event. Notably, between 1 and 6 January 2004 the applicant had not sought any medical assistance. The initial medical certificate contained no morphological description of his injuries and, thus, could not serve as a proper basis for the subsequent expert report commissioned by the investigator. The national authorities, including the courts, had made every possible effort to investigate the circumstances in which the applicant had sustained his injuries.

48. The applicant submitted that the Government had provided no evidence to support the hypothesis of self-mutilation. Nor did that hypothesis have any basis in the domestic inquiry. He argued with reference to his own version of the events (see paragraphs 30 and 31 above) that from 1 to 6 January 2004 he had been refused access to a doctor. Moreover, the prison staff had refused to forward his complaint about the beatings. The applicant had lodged the complaint through his counsel on an unspecified date in February 2004. The inquiry had not been prompt since the refusal of the prosecuting authorities had not been issued until June 2004. The injuries had not been properly recorded and assessed; the applicant had not been asked to identify any officers. The authorities' explanation for the thorax

injuries by reference to his earlier self-mutilation could not be accepted as plausible.

B. The Court's assessment

1. Admissibility

49. 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.

2. Merits

(a) Alleged beating

(i) General principles

50. 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 other authorities, *Ireland v. the United Kingdom*, judgment of 18 January 1978, § 162, Series A no. 25).

51. In assessing evidence in cases concerning Article 3 of the Convention, 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, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Zelilof v. Greece*, no. 17060/03, § 44, 24 May 2007, and *Polyakov v. Russia*, no. 77018/01, §§ 25 and 26, 29 January 2009).

52. The Court reiterates that, in view of the subsidiary nature of its role, it must be cautious in taking on the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case. The Court has held in various contexts that where domestic proceedings have taken place, 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, among other authorities, *Giuliani and Gaggio v. Italy* [GC], no. 23458/02, §§ 179 and

180, 24 March 2011). 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 (ibid.).

53. At the same time, in accordance with Article 19 of the Convention, the Court's duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. Where allegations are made under Article 3 of the Convention, the Court must apply a particularly thorough scrutiny.

(ii) Application of the principles in the present case

54. The Court observes that the scope and adequacy of the documentation of the injuries is in dispute between the parties. According to the applicant, during a search in his cell the guards hit him with rubber truncheons. It is noted in that connection that, having examined the applicant several days after the alleged beating, a trauma specialist concluded that the applicant had sustained bruises to the soft tissues of the thorax (front and back) and numerous oval bruises to the back. Taking into account the injuries which were documented, the Court considers that they were sufficiently serious to reach the "minimum level of severity" required under Article 3 of the Convention. It is irrelevant that the injuries were not classified as health-impairing by domestic standards. It remains to be considered whether the State should be held responsible for the injuries under Article 3.

55. The domestic authorities and the respondent Government denied the existence of the events underlying the alleged excessive use of force against the applicant (the cell search, the handling of the detainees, the use of rubber truncheons, handcuffing and threats with dogs). They also contested that the applicant had sought medical assistance before 6 January 2004.

56. It is noted that the prosecutor's refusal to prosecute on charges of abuse of authority by a public official was reviewed and upheld by the courts at two levels of jurisdiction. In cases concerning Russia the Court has previously accepted judicial review proceedings as remedies to be used, as a rule, for the purpose of exhaustion of domestic remedies under Article 35 § 1 of the Convention in relation to complaints of physical ill-treatment or excessive use of force in detention (see, among other authorities, *Belevitskiy v. Russia*, no. 72967/01, § 61, 1 March 2007). In such cases contentious proceedings are instituted, to which the applicant and the prosecutor are parties. Although in these proceedings a court is not competent to pursue an independent investigation or make findings of fact, a judicial review of a complaint has the advantage of providing a forum guaranteeing due process of law. In adversarial proceedings an independent tribunal is called upon to assess whether the applicant has a prima facie case of ill-treatment and, if he has, to declare the refusal to investigate unlawful and/or unreasoned (see paragraphs 41 and 42 above).

57. In the present case the Court finds it possible to depart from the findings made at the national level, in particular as to the existence of the alleged events in the night of 1 to 2 January 2004.

58. It transpires from the available material that in 2003 the applicant hurt himself with some kind of spike and that in November 2003 he started a hunger strike. On 6 January 2004 he swallowed a razor blade. He justified the first actions as a way of objecting to the way the criminal case was handled. He swallowed the razor blade to gain access to an "independent" medical professional after the alleged beating in the night of 1 to 2 January 2004. The Court also observes that between March and September 2003 and between June and August 2004 the applicant was kept in a psycho-neurological dispensary and subsequently received in-patient treatment in a hospital.

59. The Court notes in this connection that the argument of self-mutilation was first raised by the respondent Government before this Court and was not examined at the national level. Thus, the national authorities were not afforded or did not take the opportunity to delve into this aspect of the case. In any event, there is no established correlation between any alleged means of self-mutilation on or around 1 or 2 January 2004 and the injuries, in particular in the area of shoulder-blades or the upper back. Therefore, the circumstances mentioned in the preceding paragraph do not suffice for the Court to disprove the allegation of ill-treatment in the present case. It does not appear, despite the applicant's prolonged presence in a dispensary or a hospital, that he was submitted to any related psychological or psychiatric assessment that might shed light on the possible self-inflicted nature of the injuries. Thus, in the Court's view it should be concluded that the injuries were inflicted on the applicant.

60. It has not been alleged that the injuries were the result of unlawful actions on the part of co-detainees. Equally, it was denied that the applicant disobeyed any legal order and that legitimate force was used against him. In the absence of a plausible explanation for the injuries and given the shortcomings in the investigation (see below), the Court concludes that the injuries were inflicted on the applicant by agents of the State and amounted to inhuman treatment in breach of Article 3 of the Convention.

(b) Obligation to investigate

(i) General principles

61. The Court reiterates that where an individual raises a credible claim that he has been seriously ill-treated by agents of the State in breach of Article 3, there should be a thorough and effective investigation (see, among other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 117, ECHR 2010, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII). Otherwise, the general legal

prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.

62. While not every investigation should necessarily come to a conclusion which coincides with the claimant's account of events, 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).

63. The investigation into credible 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 and others*, 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.

(ii) Application of the principles in the present case

64. Turning to the present case, the Court reiterates that the injuries, both as alleged and as recorded, were sufficiently serious and the allegations were sufficiently credible to require an investigation on the part of the national authorities.

65. The parties agreed that a complaint of ill-treatment concerning the events in the night of 1 to 2 January 2004 was lodged by the applicant's counsel on or around 16 February 2004. The applicant has not substantiated that this delay occurred for a valid reason. The Court agrees with the Government that the delay could have prejudiced the authorities' eventual efforts to carry out an inquiry in order to provide a plausible explanation for the injuries. A person alleging ill-treatment should not act in such a way as to prejudice an eventual investigation.

66. In the circumstances of the case, however, the Court is not prepared to draw adverse inferences from this delay (compare *Shanin v. Russia*,

no. 24460/04, §§ 64-68, 27 January 2011). It should be noted in this connection that by 6 January 2004 at the latest the convoy officers who took the applicant to a city hospital were in possession of a trauma card which indicated that the applicant had thorax contusions (see paragraph 31 above). The trauma specialist observed linear blue bruises in the area of shoulder-blades and concluded that the applicant had recently sustained bruises on the soft tissues of the thorax and upper back and numerous oval bruises on the back.

67. Assuming that the convoy officers handed over the trauma card to the competent staff of the detention facility, it does not appear that the applicant was asked about the origin of the above injuries. Nor does it appear that the presence of injuries, taken alone or in conjunction with the fact of the applicant's swallowing of a razor blade, gave rise to any preliminary inquiry to make sure that the injuries had not been inflicted on the applicant. Indeed, it would have been preferable that the matter be raised immediately before an impartial authority or public official independent of the suspected perpetrators and the agency they served, namely the detention facility mentioned above (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-II, and *Oğur v. Turkey* [GC], no. 21594/93, §§ 91 and 92, ECHR 1999-III). In the present case it does not appear that the trauma specialist or the surgeon who also examined the applicant on 6 January 2004 reported that the applicant had alleged ill-treatment before them or that they had any suspicion of unjustified use of force against him.

68. It appears that on 24 February 2004 an unspecified public authority issued a refusal to institute criminal proceedings in relation to the alleged ill-treatment (see paragraph 33 above). The Court was not made aware of, and the respondent Government did not rely on, the findings made in that decision. Nor does it appear that the applicant was made aware of the decision, or that any investigative measures were carried out between January and June 2004. The Court observes in that regard that between March and July 2004 the applicant was kept in a detention facility in another town for psychiatric examination, apparently in connection with the charges against him (see paragraph 17 above). However, this opportunity was not used to make any assessment of his physical or psychological condition *vis-à-vis* the allegations he had raised against the officers at Bratsk remand centre. Therefore, the requirement of promptness was not respected in the present case.

69. Moreover, it is not surprising that a forensic expert was not able in June 2004 to make any adequate assessment, in particular owing to the absence of a detailed description of the morphological features of the applicant's injuries recorded on 6 January 2004. The Government provided no convincing explanation for the delay in carrying out a forensic examination of the applicant.

70. The Court reiterates in this connection that proper medical examinations are an essential safeguard against ill-treatment (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000-X). When a medical doctor writes a report after examining a person who has alleged ill-treatment, it is important that the doctor states the degree of consistency with the allegation of ill-treatment. A conclusion indicating the degree of support for the allegation of ill-treatment should be based on a discussion of different possible diagnoses (injuries not relating to ill-treatment, including self-inflicted injuries and diseases) (see *Barabanshchikov v. Russia*, no. 36220/02, § 59, 8 January 2009). In the Court's view, the above-mentioned shortcoming significantly prejudiced the effectiveness of the inquiry and its ability to establish the relevant facts.

71. The Court also observes that the decision not to prosecute indicated that the applicant's cellmates had heard officers use physical force against someone, while the first-instance court decision mentioned that the co-detainees had heard and seen the beatings. These legal acts contain differing descriptions of the sequence of events, including as presented by the applicant, without any further explanation of the discrepancies (see paragraphs 36 and 37 above). In addition, while the prosecutor and the first-instance court of judicial review concluded that there had been no event requiring criminal prosecution, the appeal court considered that there was no *corpus delicti* in the actions of the officers of the remand centre (see paragraphs 36 and 38 above). Lastly, the Court considers that it might have been useful to interview the doctor who had examined the applicant on 6 January 2004 (see paragraphs 32 and 34 above).

72. The Court agrees with the Government that it does not appear from the available material that the applicant raised any specific omissions of investigative measures at the national level which might have improved the effectiveness of the domestic inquiry into the allegation of ill-treatment. While this omission on the part of the applicant is regrettable, it does not suffice to absolve the national authorities from their obligation under Article 3 of the Convention to investigate serious allegations of ill-treatment.

73. As already noted, it has not been alleged that the applicant disobeyed a lawful order or sustained injuries at the hands of other detainees. His thorax injuries remain unexplained. In view of the above considerations, the Court concludes that the investigation in the present case did not meet the requirements of Article 3 of the Convention.

74. Therefore, there has been a violation of the procedural aspect of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

75. The applicant alleged that the length of his detention pending investigation and trial had been excessive and had not been based on the

relevant and sufficient reasons, in breach of Article 5 § 3 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial..."

A. Admissibility

76. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

77. The applicant argued that although he had no permanent place of residence, he could have stayed with his next of kin pending trial. The fact that he was unemployed could be explained by his disability. The information about threats to witnesses was not related to the applicant. In any event, none of this indicated any actual threats or need to protect witnesses. In view of their repeated failure to comply with its summonses, the court itself asked the bailiffs to make sure the witnesses were brought to the courtroom.

78. The Government argued that the decisions to detain the applicant and to maintain him in custody were based on the gravity of the charges and his lack of a permanent address or occupation, as well as the information concerning pressure brought to bear on witnesses.

79. The Court observes that the applicant was arrested on 29 January 2001 and was convicted on 31 December 2004. Therefore, the period to be taken into consideration under Article 5 § 3 of the Convention amounts to three years, eleven months and two days. Such a period of detention is a matter of concern for the Court.

80. The Court observes that the applicant and his accomplice were arrested when they tried to rob a shop (see paragraph 5 above). Having examined the available material, the Court is satisfied that the suspicion

against the applicant was a reasonable one in the circumstances. It accepts that the existence of this suspicion justified the applicant's arrest and the initial period of detention. It can be discerned from the available detention orders that when extending his detention or refusing his applications for release the national courts were satisfied that the reasonable suspicion against the applicant persisted.

81. The Court reiterates, however, that while the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the assessment of the continued detention, with the lapse of time this no longer suffices. Thus, the Court must establish whether the other grounds given by the authorities continued to justify the deprivation of liberty (see *McKay v. the United Kingdom* [GC], no. 543/03, § 44, ECHR 2006-X). The national authorities must establish the existence of specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighed the rule of respect for individual liberty laid down in Article 5 of the Convention (see, among other authorities, *Bykov v. Russia* [GC], no. 4378/02, §§ 62 and 63, 10 March 2009). Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings.

82. By way of a preliminary observation, the Court notes that the applicant's arrest and the initial period of detention until July 2001 was neither ordered nor reviewed by a judicial authority. The first judicial review of the applicant's detention was made in July 2001, when the national court rejected an application for release. In fact, Russia issued a reservation in respect of certain aspects of Article 5 §§ 3 and 4 of the Convention. The reservation referred, among other things, to the provisions of the RSFSR Code of Criminal Procedure, under which a person could be detained on a decision of the investigating authorities without there being any requirement for judicial supervision of the detention. The Court examined the validity of the reservation and found it to be compatible with the requirements of Article 57 of the Convention (see paragraph 44 above, and *Labzov v. Russia* (dec.), no. 62208/00, 28 February 2002).

83. However, the Court notes that no relevant and sufficient reasons were provided for the applicant's detention from September 2001 to July 2002. The reasoning and the legal grounds mentioned in the detention orders concerned the applicant and his co-accused indiscriminately. The Court also considers that the applicant's not-guilty plea, as noted in the detention decisions of 16 June and 2 October 2002, could not be considered relevant and sufficient justification for a period of detention.

84. In addition, the domestic courts justified their decisions by reference to the gravity of the charges. On several occasions they also mentioned the risk that, if released, the applicant would evade justice, obstruct the course

of the proceedings or continue his criminal activity. The Court will examine these aspects of the courts' reasoning.

1. Risks of evading justice or otherwise obstructing the proceedings

85. The risk of reoffending, if convincingly established, may lead the judicial authorities to place and leave a suspect in detention in order to prevent any attempts to commit further offences. It is however necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned (see *Clooth v. Belgium*, 12 December 1991, § 40, Series A no. 225, and *Paradysz v. France*, no. 17020/05, § 71, 29 October 2009). It should suffice to mention here that the domestic courts' decisions did not contain any specific assessment of this risk and therefore did not rebut the presumption in favour of release.

86. Furthermore, the Court reiterates that the risk of flight should be assessed with reference to various factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted (see *Neumeister v. Austria*, 27 June 1968, § 10, Series A no. 8). The Court is ready to accept that the applicant did not have a place of residence in Bratsk which could be qualified as "permanent" by the Russian courts. However, the mere absence of a fixed residence does not give rise to a danger of absconding (see *Pshevecherskiy v. Russia*, no. 28957/02, § 68, 24 May 2007, and *Sulaoja v. Estonia*, no. 55939/00, § 64, 15 February 2005).

87. The risk of flight decreases as the time spent in detention increases, because the probability that the length of detention on remand will be deducted from (or will count towards) the period of imprisonment which the person concerned may expect if convicted is likely to make the prospect seem less daunting to him and reduce the temptation to abscond. In the present case, since the trial judgment had ordered that the five-year prison term be counted from the day of the applicant's arrest on 29 January 2001, in 2005 the national court ordered his early release, noting that he had already served most of his sentence and "had a permanent place of residence" (see paragraph 28 above, and *Arefyev v. Russia*, no. 29464/03, § 71, 4 November 2010).

88. The Court has also noted the Government's arguments relating to the risk of the applicant obstructing the proceedings. As to the domestic courts' findings that the applicant was liable to pervert the course of justice, in particular by putting pressure on victims, the Court notes that in the initial stages of the investigation the risk that an accused person may pervert the course of justice could justify keeping him or her in custody. However, after the evidence has been collected, that ground becomes less justified (see

Shteyn (Stein) v. Russia, no. 23691/06, § 108, 18 June 2009). In particular, as regards the risk of pressure being put on witnesses, the Court reiterates that the domestic courts should demonstrate that a substantial risk of intimidation existed and continued to exist during the relevant period of the applicant's detention; it does not suffice merely to refer to an abstract risk unsupported by any evidence. The courts should have analysed pertinent factors, such as the advancement of the investigation or judicial proceedings, the applicant's personality, his behaviour before and after the arrest and any other specific indications justifying the fear that he might abuse his regained liberty by carrying out acts aimed at falsifying or destroying evidence or manipulating victims (see *W. v. Switzerland*, 26 January 1993, § 36, Series A no. 254-A, and *Yudayev v. Russia*, no. 40258/03, § 70, 15 January 2009).

89. It appears from the case file that in December 2002 two unsigned type-written letters, apparently addressed to two victims of the crime, were admitted to the criminal case file (see paragraph 12 above). The Court observes in this connection that on an unspecified date one of the victims of the armed robbery made a written statement indicating that she refused to participate in the trial hearings because she had received a letter containing threats. Two other persons made written statements indicating that they refused to participate in the trial hearings for unspecified reasons.

90. The Court's assessment is necessarily based on the detention decisions taken by the national authorities and other documents that both or one of the parties submit in the proceedings before it, such as applications for release, verbatim records of hearings or the prosecution's applications to extend the detention. It should be noted that the national courts, in their decisions relating to the applicant's detention between December 2002 and June 2003, did not expressly rely on the above-mentioned information to justify the risk.

91. Furthermore, the Court notes that the pre-trial investigation in respect of the applicant was completed in 2001. Thereafter, he remained in custody for more than two years, during most of which time the proceedings were pending before the trial court. It thus appears that the domestic authorities had sufficient time to take statements from the victims in a manner which could have excluded any doubt as to their veracity and eliminated the need to keep the applicant in detention on that ground (see, for similar reasoning, *Solovyev v. Russia*, no. 2708/02, § 115, 24 May 2007).

2. Special diligence

92. Finally, the Court is not satisfied that the national authorities displayed due diligence in the conduct of the proceedings. The applicant spent nearly four years in detention pending investigation and trial. The Court fully appreciates that the right of an accused in detention to have his

case examined with particular expedition should not unduly hinder the efforts of the courts to carry out their tasks with proper care (see *Shenoyev v. Russia*, no. 2563/06, § 56, 10 June 2010). However, the available material shows, as acknowledged at the national level (see paragraph 27 above), that the proceedings in this case were not conducted with the necessary diligence.

3. Conclusion

93. Having regard to the above, the Court concludes that the applicant's right to trial within a reasonable time pursuant to Article 5 § 3 of the Convention was violated.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

94. The applicant complained that he had not been brought to a number of hearings in 2003 and 2004 concerning his detention and that his appeals against the relevant detention orders had not been examined speedily.

95. The Court will examine these complaints under Article 5 § 4 of the Convention (see *Lebedev v. Russia*, no. 4493/04, § 73, 25 October 2007). Article 5 § 4 reads as follows:

> "...4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

96. The Government submitted that from 26 March to 30 September 2003 and from 26 June to 31 August 2004 the applicant had been kept in a psycho-neurological dispensary and had subsequently received in-patient treatment in a hospital. Although during these periods the applicant had not been taken to the detention hearings, he had been represented at them by counsel, both at first instance and on appeal.

97. The applicant maintained his complaints.

A. Admissibility

98. The Court reiterates that it is not open to it to set aside the application of the six-month rule solely because a Government have not made a preliminary objection to that effect (see *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III).

99. The Court first observes in this connection that the complaint relating to the speediness of review was raised before it in February 2008, that is more than six months after the close of all relevant detention proceedings. It follows that this complaint was introduced out of time and

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

100. As to the complaint relating to the personal presence of the applicant at the detention hearings, it was raised before the Court on 24 August 2004, when the Moscow office of the International Protection Centre forwarded the applicant's letter dated 11 August 2004 to the Court. Thus, by application of the six-month rule under Article 35 § 1 of the Convention, the Court should have jurisdiction to examine the complaint in so far as it relates to two sets of detention proceedings: (i) the decision of 26 March 2004 by the Town Court, as upheld on appeal by the Regional Court on 21 June 2004, and (ii) the decision of 28 June 2004 by the same court, as upheld on 31 August 2004.

101. Similarly, the complaint in relation to the court decision of 29 September 2004, as upheld on 29 November 2004, was raised before the Court on 16 March 2005, that is within the six-month time-limit.

102. The Court considers that the complaints in relation to the fairness of the above three sets of detention proceedings are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring them inadmissible has been established. Thus they should be declared admissible.

B. Merits

1. General principles

103. The Court reiterates that proceedings conducted under Article 5 § 4 of the Convention should be adversarial and ensure equality of arms (see, as a recent authority, *Mooren v. Germany* [GC], no. 11364/03, § 124, 9 July 2009). Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Reinprecht v. Austria*, no. 67175/01, § 31, ECHR 2005-XII). The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203, 19 February 2009).

104. As to Article 5 of the Convention, the Court has affirmed on numerous occasions that the possibility for a detainee to be heard either in person or through some form of representation features among the fundamental guarantees of procedure applied in matters of deprivation of liberty (see, among other authorities, *Kampanis v. Greece*, 13 July 1995, § 47, Series A no. 318-B, and *Allen v. the United Kingdom*, no. 18837/06, § 38, 30 March 2010). The Court considered that an oral hearing may be

necessary in cases of detention on remand (see *A. and Others* [GC], cited above, § 204, referring to *Nikolova v. Bulgaria* [GC], no. 31195/96, § 58, ECHR 1999-II). In some cases the Court stated that where detention falls within the ambit of Article 5 § 1 (c) of the Convention, as a general rule, a detainee should have a right to participate in a hearing where his detention is discussed (see *Lebedev*, cited above, § 113, and *Sorokin v. Russia*, no. 7739/06, § 80, 30 July 2009).

2. Application of the principles in the present case

105. Turning to the present case, the Court notes, and it is not in dispute between the parties, that the applicant was absent from the court hearings on 26 March, 28 June and 29 September 2004, at which a public prosecutor sought extension of the applicant's detention in view of the approaching expiry of the period determined in the earlier detention order. The absent applicant was represented by counsel at these hearings.

106. It is also noted that on 26 March and 28 June 2004 the applicant was detained in another town for the purpose of a psychiatric examination. As can be seen from the record of these hearings, counsel unequivocally agreed that the hearings proceed in the applicant's absence. Nor did she put forward any arguments concerning the detention matter which would plead strongly in favour of the applicant's presence at the hearings. Moreover, there is no indication that the proceedings were otherwise unfair. It is unclear why counsel did not attend the appeal hearings. It does not appear, however, that her absence was imputable to the State (see, by contrast, *Kuptsov and Kuptsova v. Russia*, no. 6110/03, § 101, 3 March 2011). Thus, the Court considers that Article 5 § 4 of the Convention was not violated in relation to these two sets of detention proceedings.

107. As to the detention hearing on 29 September 2004, the Court observes that on that date the applicant was in Bratsk, where the competent court was located. Moreover, it should be noted that on 23 September 2004 the applicant had been taken to that court for a hearing concerning his allegation of ill-treatment (see paragraph 37 above). Thus, it appears that there was no serious practical obstacle to the applicant being taken to a remand hearing on 29 September 2004 (see, by contrast, *Shulenkov v. Russia*, no. 38031/04, §§ 51, 17 June 2010).

108. It may be that the issues which had been previously discussed in the applicant's presence before March 2003 remained the same and that the applicant had had an opportunity to describe his personal situation to the court and advance arguments in favour of his release (see, in a similar context, *Sorokin*, cited above, § 82). However, it should be emphasised that Article 5 § 4 is first and foremost a guarantee of a fair procedure for reviewing the lawfulness of detention – an applicant is not required, as a precondition to enjoying that protection, to show that on the facts of his case

he stands any particular chance of success in obtaining his release (see *Waite v. the United Kingdom*, no. 53236/99, § 59, 10 December 2002).

109. As noted in the Court's reasoning in the context of Article 5 § 3 of the Convention, with the passage of time certain factual elements and/or legal grounds for detention are susceptible of evolving to a larger or lesser extent, depending on the circumstances of a given case. In the present case, the detention courts relied on the alleged threats to witnesses in the criminal case. In the Court's view, the applicant's personal testimony was essential for dealing with this aspect of the case. Importantly, while bearing in mind the above findings in respect of the earlier detention hearings, the Court should observe that the applicant was not brought before a detention judge for a long period of time – that is between 25 March 2003 and 29 September 2004. By late September 2004 the applicant had already spent more than three and a half years in detention and the criminal case was at an advanced stage of the trial.

110. In view of the above, the Court is not satisfied that, in the circumstances, counsel's presence was sufficient to ensure that the proceedings were adversarial and that the principle of equality of arms was respected. The above shortcoming was not cured on appeal. While the applicant had legal assistance in the appeal proceedings, counsel did not attend the appeal hearing for unspecified reasons.

111. Taking the third set of detention proceedings as a whole, the Court concludes that there has been a violation of Article 5 § 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

112. Lastly, the applicant complained of the allegedly excessive use of force against him in January 2001, placement in a punishment cell, the unfairness of the trial against him, the outcome and length of the civil proceedings and the unlawfulness of his arrest and detention. He referred to Articles 3, 5, 6 and 13 of the Convention.

113. The Court has examined these allegations, as presented by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they 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 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. 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

115. The applicant claimed 355,243 euros (EUR) in respect of non-pecuniary damage and EUR 1,719 in respect of pecuniary damage in relation to unpaid disability allowances.

116. The Government contested the claims.

117. The Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. At the same time, the Court notes that it has found several violations of the Convention, in particular under the substantive and the procedural heads of Article 3 of the Convention on account of the applicant's ill-treatment and the authorities' failure to carry out an effective investigation into the matter. In these circumstances, the Court considers that the pain, humiliation and frustration caused to the applicant cannot be compensated for by the mere finding of a violation. Having regard to the nature of the violations found and making its assessment on an equitable basis, the Court awards the applicant EUR 18,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

118. Since no claim was made, there is no call for the Court to make any award under this head.

C. Default interest

119. 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 complaints concerning ill-treatment on 1-2 January 2004, length of detention pending investigation and trial, and the fairness of

three sets of detention proceedings relating to the detention orders of 26 March, 28 June and 29 September 2004 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention as regards the alleged beating of the applicant by the prison staff on 1-2 January 2004;

3. *Holds* that there has been a violation of Article 3 of the Convention as regards the effectiveness of the investigation into the applicant's allegation of ill-treatment inflicted on 1-2 January 2004;

4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

5. *Holds* that there has been no violation of Article 5 § 4 of the Convention in relation to the detention orders of 26 March and 28 June 2004;

6. *Holds* that there has been a violation of Article 5 § 4 of the Convention in relation to the detention order of 29 September 2004;

7. *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 18,000 (eighteen thousand euros), plus any tax that may be chargeable, 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;

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

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President