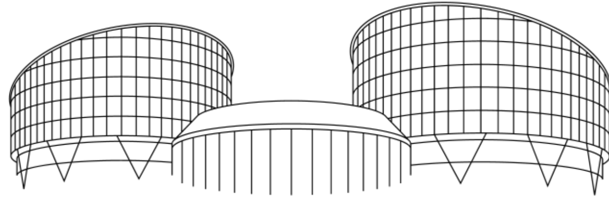

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NITSOV v. RUSSIA

(Application no. 35389/04)

JUDGMENT

STRASBOURG

3 May 2012

FINAL

24/09/2012

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

In the case of Nitsov 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,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 10 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 35389/04) 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 Valentin Mikhaylovich Nitsov ("the applicant"), on 19 July 2004.

2. The applicant, who had been granted legal aid, was represented by Ms V. Ilyukhina, a lawyer from the Centre of Assistance to International Protection situated in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been ill-treated by the police and that there had been no effective investigation into the matter. He also complained that he had been deprived of any effective remedy in respect of those violations. Lastly, he complained of various irregularities in the criminal proceedings against him. The applicant relied on Articles 3, 6 and 7 of the Convention.

4. On 5 March 2010 the application was communicated 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

5. The applicant was born in 1964 and lives in Goryunok, Kirov Region.

A. Alleged ill-treatment of the applicant

6. On 26 August 2003 the applicant was arrested on suspicion of attempted murder and delivered to the Organised Crime Control Division of the Kirov Regional Department of the Interior ("the Division") where, in his submission, he voluntarily confessed to the imputed offence. According to the applicant, despite his confession he was beaten up and tortured by police officers for several hours. He found out from one of the officers that the victim was their colleague, an officer of the same Division.

7. On the same date at around 5.30 p.m. the applicant was transferred to a temporary holding facility of the Kirov Regional Department of the Interior ("the IVS"). According to a letter from the acting head of the Kirov Regional Department of the Interior dated 25 May 2010, no injuries had been observed on the applicant upon his arrival at the IVS, as followed from an extract of the IVS register of medical examinations of detainees (a copy of the extract was enclosed). The letter also stated that during his detention in the IVS the applicant had made no complaints concerning his health.

8. In the applicant's submission, upon his transfer to the IVS the same police officers tortured him again.

9. On 28 August 2003 at around 9.15 a.m. the applicant was transferred to the Kirov IZ-43/1 remand centre, where he underwent a medical examination which attested to the presence of a large haematoma on the inside of his left thigh and two bruises on the left side of his forehead. The applicant was furnished with a certificate reflecting the results of the examination. He explained that he had sustained his injuries as a result of the beatings by the police; this information was then forwarded to the prosecutor's office of the Pervomayskiy District, Kirov ("the district prosecutor's office") for examination.

10. It appears that upon receipt of the aforementioned information, an inquiry was opened into the applicant's allegations, and in a decision of 29 August 2003 the investigator in charge ordered a medical forensic examination of the applicant.

11. On 2 September 2003 the applicant underwent a medical forensic examination. During that examination he submitted that he had been beaten by police officers on 26 August 2003 with the result that for a short period he had lost consciousness. He complained of headache and chest pain. The examination identified three abrasions on his face, which had been inflicted approximately ten to fifteen days before, and bruises on the applicant's left

forearm and thighs, measuring from 3 x 2 cm to 10 x 18 cm, as well as an abrasion on the right wrist joint, which had been inflicted approximately six to eight days before. The relevant expert report also stated that those injuries had been inflicted by hard blunt object(s), and that they had not caused any harm to the applicant's health.

12. On 11 September 2003 the district prosecutor's office took a decision to dispense with criminal proceedings in connection with the applicant's allegations of ill-treatment, owing to the absence of evidence of a crime. The decision confirmed that on 28 August 2003 the applicant had been delivered to the IZ-43/1 remand centre with bodily injuries. He had explained that he had been beaten by police officers in the Division for Organised Crime Control of the Kirov Region Department of the Interior on 26 August 2003. The decision further referred to statements by police officers F. and Ye. and those of the investigator in charge, Zh., all of them having been interviewed during the inquiry into the applicant's allegations. In particular, officer F. had stated that he had delivered the applicant to the premises of the Division where the latter had undergone a body search, had written a voluntary confession and had given certain explanations. Officer Ye. stated that he, along with officer F., had interviewed the applicant on the date in question. Both officers denied beating the applicant or applying any other unlawful methods of investigation. Investigator Zh. stated that he had interviewed the applicant on 26 August 2003, that the applicant had not complained about any violence on the part of the police officers, and that there had been no visible injuries on him.

13. The decision further relied on a medical record made in the IVS, according to which no injuries were identified on the applicant when he was delivered to that facility. It was also stated that on 26 August 2003 investigative actions in respect of the applicant had been carried out from 9 a.m. until 12.10 p.m., that is before his transfer to the temporary holding facility. The decision thus concluded that no evidence had been obtained during the inquiry to confirm that the injuries to the applicant identified upon his arrival in the IZ-43/1 remand centre had been inflicted on him as a result of unlawful actions on the part of the police officers.

14. The applicant received the decision of 11 September 2003 on 17 September 2003 and challenged it with the prosecutor's office of the Kirov Region.

15. On 24 October 2003 the criminal case against the applicant was sent to a court for trial.

16. On 18 December 2003 a supervising prosecutor set aside the decision of 11 September 2003, stating that it was unfounded, as it had been established that the applicant had had injuries at the time of his transfer to the IZ-43/1 remand centre. The prosecutor's office instructed the investigator in charge to establish the circumstances in which those injuries had been sustained by the applicant.

17. In a decision of 1 March 2004 the district prosecutor's office again refused to institute criminal proceedings in connection with the applicant's allegations, owing to the absence of any evidence that a criminal offence had been committed. The decision was very similar to that of 11 September 2003. It gave a more detailed description of the injuries established on the applicant upon his transfer to the IZ-43/1 remand centre and contained his own submissions. It further relied on statements from police officers F. and Ye. and those of investigator Zh., all of them taken almost word for word from the decision of 11 September 2003. The decision then stated that investigative actions in the applicant's respect had been carried out from 9 a.m. until 12.10 p.m., that is before his transfer to the temporary holding facility, and that, according to a medical record made in the IVS, the applicant had not made any complaints after his transfer there. It therefore concluded that it was impossible to establish in what circumstances the applicant had received bodily injuries and that there was no evidence that the police officers had applied unlawful violence to the applicant.

18. The decision also stated that in accordance with Articles 124 and 125 of the Russian Code of Criminal Procedure it could be challenged before a higher prosecutor or appealed against in court. The applicant obtained a copy of that decision on 17 March 2004. It does not appear that he attempted to lodge any appeal against the decision.

B. The applicant's conviction

19. On 4 December 2003 the Oktyabrskiy District Court of Kirov convicted the applicant of unlawful possession of firearms and attempted murder and sentenced him to ten years' imprisonment.

20. At the trial the applicant argued that he had acted in a state of powerful emotional distress and also that he had shot at his victim with no intention of killing him. The court critically assessed and rejected these statements as they contradicted the oral evidence given by the victim and two other witnesses. The court also relied on various expert reports, including that on the results of the applicant's forensic psychiatric examination, which confirmed that during the incident the applicant had been fully in control of his actions.

21. In his appeal against the first-instance judgment the applicant complained, *inter alia*, that he had been beaten by police following his arrest.

22. On 13 January 2004 the Kirov Regional Court upheld the applicant's conviction on appeal, reducing the sentence to nine years and six months' imprisonment. As regards the applicant's allegations of ill-treatment, the court stated that those were unfounded, as by a decision of 11 September 2003 the district prosecutor's office had refused to institute criminal proceedings in this connection in the absence of evidence of a crime.

23. By a decision of 1 November 2004 the Verkhnekamskiy District Court of the Kirov Region further reduced the applicant's sentence to eight years' imprisonment in view of recent changes in the criminal law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

24. The Russian Code of Criminal Procedure of 2002 ("the Code") in its Article 125 (court examination of complaints) provides that the decision of an investigator or prosecutor to dispense with or terminate criminal proceedings, and other decisions and acts or omissions which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a district court, which is empowered to examine the lawfulness and grounds of the impugned decisions.

25. Article 144 § 1 (examining information on criminal offences) of the Code provides that an inquirer, inquiring body, investigator or investigating body have an obligation to check information on any committed or planned criminal offence and, acting within their competence, to take a decision in this respect. During such a check, the inquirer, inquiring body, investigator or investigating body is entitled to carry out documentary checks and inspections, to study the relevant documents and objects and any human remains and to involve specialists in those checks.

26. Article 145 § 1 (decisions taken based on the results of the examination of information on criminal offences) of the Code states that on the basis of the results of the examination of information on criminal offences, the inquirer, inquiring body, investigator or investigating body shall decide whether to institute criminal proceedings or whether to send information about a criminal offence for investigation by other competent authorities.

27. It is clear from various provisions of the Code that a number of investigative measures, such as confrontations, can only be carried out in the context of pending criminal proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

28. The applicant complained that he had been ill-treated by the police and there had been no adequate investigation into the matter, therefore he had been deprived of any effective remedies and, in particular, he would have been unable to obtain compensation for the damage he had sustained

as a result of that treatment. The complaints fall to be examined under Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

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

A. Submissions by the parties

1. The applicant

29. The applicant insisted that he had been subjected to treatment in breach of Article 3 of the Convention. He maintained his version of events and argued that on 26 August 2003 he was subjected to inhuman and degrading treatment by police officers who were taking revenge on him because he had shot their colleague. He also submitted that neither the authorities at the domestic level nor the Government in the proceedings before the Court had provided any plausible explanations as to the origin of his injuries.

30. He further argued that the inquiry into his allegations of ill-treatment had not met the standards of adequate and effective investigation required by Article 3 of the Convention. He stated that in his complaints to a prosecutor's office he had described in detail the circumstances of the ill-treatment to which he had been subjected, and requested that a number of witnesses who had seen injuries on him be interviewed. The investigating authorities, however, on two occasions refused to institute criminal proceedings into his allegations.

31. The applicant contended that the inquiry into his allegations had been formalistic and incomplete. A medical examination of 2 September 2003 had been superficial, and had failed to establish or duly assess all the injuries he had sustained. Also, the authorities had only interviewed the police officers and investigator in charge and had not questioned any other witnesses, such as those who had been detained with him in the IVS at the relevant time. The applicant also argued that since no criminal proceedings had been instituted in respect of his complaints, he had not been granted victim status and had had no opportunity to avail himself of any procedural rights; also a number of important investigative actions, such as identification parades, confrontations and so on, which could only have taken place in the context of pending criminal proceedings (see paragraph 27 above), had never been taken.

32. The applicant also stated that he had raised his arguments of ill-treatment before the trial and appellate court during the examination of the criminal case against him, but those courts had failed to address the matter; they had merely referred to the decision of 11 September 2003 to dispense with criminal proceedings concerning the applicant's complaint, and had stated that it had not been established that the applicant had been subjected to ill-treatment as he had alleged had happened.

33. Lastly, the applicant argued that in the absence of any effective investigation into his allegations his claim for damages in the civil courts would have had no prospects of success. He therefore claimed that he had been deprived of any effective remedies, in breach of Article 13 taken in conjunction with Article 3 of the Convention.

2. The Government

34. The Government argued that the applicant had had effective domestic remedies in respect of his complaint of ill-treatment under Article 3 of the Convention, as required by its Article 13, but he had not availed himself of those remedies. In particular, they contended that he could have challenged the decisions of 11 September 2003 and 1 March 2004 before a court, in accordance with Article 125 of the Russian Code of Criminal Procedure, but he had never used that remedy. They also argued that the applicant would be able to receive compensation for pecuniary and non-pecuniary damage in criminal or civil proceedings if the guilt of those responsible for inhuman treatment in his respect was established by a final and binding court decision.

35. The Government further acknowledged that injuries had been observed on the applicant upon his transfer to the IZ-43/1 remand centre on 28 August 2003 in respect of which he had explained that he had been beaten by the police two days before. According to the Government, during a later inquiry it had been established that the applicant had been arrested on 26 August 2003 and delivered to the Division for Organised Crime Control of the Kirov Region Department of the Interior of the Kirov Region, where he had been searched and interviewed and had confessed. The applicant had then been placed to the IVS of the Kirov Region Department of the Interior, where, according to an extract from the medical register, no injuries had been identified on him, nor had he made any complaint concerning his health. According to the Government, on the basis of that information the investigator in charge of the inquiry into the applicant's allegations had not been able to establish the circumstances in which the applicant had sustained the injuries which had been observed in the IZ-43/1 remand centre.

36. The Government also pointed out that the report of the medical forensic examination, which the applicant had undergone on 2 September 2003, had attested to the presence of various injuries on the applicant but

stated that those injuries had not caused any damage to the applicant's health (see paragraph 11 above). They seem to have argued, with reference to this latter finding, that the treatment alleged by the applicant had not attained the minimum level of severity to bring Article 3 into play.

37. The Government further submitted that an inquiry into the applicant's allegations of ill-treatment had been commenced on the day on which the relevant information had been received by the authorities. They pointed out that in the context of that inquiry a medical forensic examination of the applicant had been carried out without undue delay. Also, during that inquiry the authorities had interviewed police officers who had been involved in the applicant's arrest, and had examined the medical register of the IVS of the Department of the Interior of the Kirov Region. The Government also argued that the inquiry had been carried out by a body independent of the officials against whom the applicant's allegations were directed. They stated that no evidence had been obtained as a result of the inquiry to enable the authorities to institute criminal proceedings in connection with the applicant's allegations. In their opinion, the domestic inquiry met the requirements of Article 3 of the Convention.

38. Overall, the Government insisted that there had been no violation of Article 3 of the Convention, either in its substantive or procedural limb, in the present case.

B. The Court's assessment

1. Admissibility

39. The Government pointed out that the applicant had not appealed to a court, under Article 125 of the Russian Code of Criminal Procedure (see paragraph 24 above), against procedural decisions by which the district prosecutor's office had refused to institute criminal proceedings into his allegations of ill-treatment.

40. In this respect, the Court reiterates that, in principle, an appeal against a decision to dispense with or discontinue criminal proceedings may offer a substantial safeguard against the arbitrary exercise of power by the investigating authority, given a court's power to annul such a decision and indicate the defects to be addressed (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). Therefore, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution has decided not to investigate the claims. The Court, however, has doubts that this remedy would have been effective in the present case. It observes that, following the applicant's complaint about beatings by the police, the district prosecutor's office carried out a certain inquiry which resulted in a decision of 11 September 2003 to dispense with criminal proceedings owing to the absence of evidence that any crime had been

committed (see paragraph 12 above). This latter decision was then quashed by a supervising prosecutor, who instructed the investigating authorities to carry out an additional inquiry (see paragraph 16 above). That inquiry resulted in the decision of 1 March 2004 not to institute criminal proceedings, which was identical to that of 11 September 2003 (see paragraph 17 above).

41. In these circumstances, the Court is not convinced that an appeal to a court, which could only have had the same effect, that is one more reopening of the inquiry, would have offered the applicant any redress. Furthermore the Government have not provided any arguments which could lead to any other result. The Court considers, therefore, that such an appeal in the particular circumstances of the present case would be devoid of any purpose. The Court finds that the applicant was not obliged to pursue that remedy and holds that the Government's objection should therefore be dismissed (see *Khatsiyeva and Others v. Russia*, no. 5108/02, § 151, 17 January 2008, or *Esmukhambetov and Others v. Russia*, no. 23445/03, § 128, 29 March 2011).

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

2. *Merits*

(a) Alleged ill-treatment of the applicant

43. The Court has observed on many occasions that Article 3 of the Convention enshrines one of the fundamental values of democratic societies and as such prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see, for example, *Aksoy v. Turkey*, 18 December 1996, § 62, *Reports of Judgments and Decisions* 1996-VI, and *Aydın v. Turkey*, 25 September 1997, § 81, *Reports* 1997-VI). The Court further indicates, as it has held on many occasions, that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused. Otherwise, torture or ill-treatment may be presumed in favour of the claimant and an issue may arise under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

44. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). 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 *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

45. The Court further reiterates that, while it is sensitive to the subsidiary nature of its role and cautious about taking on the role of a first-instance tribunal of fact, it is nevertheless not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case (see, for example, *Matyar v. Turkey*, no. 23423/94, § 108, 21 February 2002, and, by contrast, *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B, and *Vidal v. Belgium*, 22 April 1992, §§ 33-34, Series A no. 235-B).

46. Turning to the present case, the Court observes that the Government stated that on the day of the applicant's arrest, 26 August 2003, there were no injuries on the applicant, according to the medical records of a temporary holding facility were the applicant had been placed (see paragraph 7 above). At the same time, they acknowledged that two days after the applicant's arrest, namely on 28 August 2003, it was established that he had injuries (see paragraph 9 above). Their presence was, moreover, attested by a report on a forensic medical examination of the applicant carried out on 2 September 2003, which also confirmed that they could have been inflicted within the period indicated by the applicant (see paragraph 11 above). It falls therefore to the Government to provide a plausible explanation as to the origin of those injuries.

47. In this connection, the Court notes first of all that the applicant's allegations of ill-treatment were investigated in the course of the internal inquiry which resulted in two decisions, 11 September 2003 and 1 March 2004, not to institute criminal proceedings in the absence of any evidence of a crime (see paragraphs 12 and 17 above). While acknowledging the presence of injuries on the applicant, the authorities rejected as unfounded his allegations that they had been inflicted as a result of ill-treatment by the police. The decisions mainly relied on the statements of the police officers against whom the applicant's allegations were directed and those of the investigator in charge in the criminal case against him. They also referred to the medical records of the temporary holding facility where the applicant had been held from 26 to 28 August 2003, which apparently stated that there were no injuries on the applicant at the time of his transfer to that facility on 26 August 2003 (see paragraph 13 above). The authorities made

no attempt to question an official who had examined the applicant upon his transfer to the temporary holding facility, or an official who had examined the applicant upon his transfer to the IZ-43/01 remand centre, when injuries had been found on him. Moreover, it does not appear that any attempt was made to explain the discrepancy in the medical records drawn up by the former and the latter and, in particular, to investigate whether the applicant had been subjected to any ill-treatment after his transfer to the temporary holding facility, as he alleged had happened. In such circumstances the Court cannot accept the conclusion drawn by the authorities at the domestic level, that the applicant's allegations were groundless.

48. The Court further notes that the Government advanced no other explanation in the above connection than the domestic authorities' inability to establish in course of an internal inquiry into the applicant's allegations of ill-treatment the circumstances in which the applicant had sustained those injuries. In the light of its findings in paragraph 46 above, the Court cannot accept that explanation as satisfactory.

49. On the basis of the materials before it, the Court finds that neither the authorities at the domestic level nor the Government in the proceedings before the Court advanced any plausible explanation as to the origin of the applicant's injuries (see, by contrast, *Klaas v. Germany*, 22 September 1993, §§ 29-31, Series A no. 269). It therefore concludes that the Government have not satisfactorily demonstrated that those injuries were caused otherwise than – entirely, mainly or partly – by the treatment the applicant underwent while under the control of the police (see *Ribitsch*, cited above, § 34).

50. In the light of the foregoing considerations, the Court accepts the applicant's account of events in so far as he alleged that he had been beaten up by the police after his arrest at some point between 26 and 28 August 2003.

51. As to the seriousness of the acts of ill-treatment complained of, the Court reiterates that in order to determine how a particular form of ill-treatment should be qualified it must have regard to the distinctions embodied in Article 3 (see *Aksoy*, cited above, § 64; *Aydın*, cited above, §§ 83, 84 and 86; *Selmouni*, cited above, § 105; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; and, among more recent authorities, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-IV (extracts), as well as *Menesheva v. Russia*, no. 59261/00, § 55, ECHR 2006-III).

52. Furthermore, the Court reiterates its well-established case-law that 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 rights set forth in Article 3 of the Convention (see *Tomasi*, § 115, and *Ribitsch*, §§ 38-40, both cited above).

53. Turning to the circumstances of the present case, the Court takes into account the information contained in the relevant documents and the applicant's own description of events, and finds that the beatings inflicted on the applicant caused him physical suffering. It cannot accept the Government's argument that the treatment in question had not attained the minimum level of severity, as, according to the report of 2 September 2003 the injuries sustained by the applicant had not caused any damage to his health. In this respect, the Court observes that the said report had attested to the presence of various injuries on the applicant, including bruises measuring up to 10 x 18 cm, which had been inflicted by hard blunt object(s) (see paragraph 11 above). The Court has accepted above the applicant's version of events, as regards his allegations that he had been beaten by the police. It further has no doubt that beatings resulting in bruises, particularly bruises of such a large size as those established on the applicant, constitute a treatment attaining the minimum level of severity for the purpose of Article 3 of the Convention.

54. Given these considerations and in view of the Convention case-law in this respect and, in particular, the criteria of severity and the intention behind the ill-treatment, the Court concludes that the accumulation of acts of physical violence inflicted on the applicant, as established by the Court, amounted to inhuman treatment within the meaning of Article 3 of the Convention.

55. Accordingly, there has been a breach of Article 3 of the Convention on that account.

(b) Alleged ineffectiveness of the investigation

56. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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 official investigation. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. 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 (see *Jasar v. the former Yugoslav Republic of Macedonia,* no. 69908/01, § 55, 15 February 2007; *Matko v. Slovenia*, no. 43393/98, § 84, 2 November 2006; *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII; and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

57. The minimum standards of "effectiveness" defined by the Court's case-law also require that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005, and *Menesheva*, cited above, § 67).

58. The Court observes, as it has already noted in paragraph 47 above, that the applicant's allegations of ill-treatment were examined during the internal inquiry which, it appears, was started after a medical examination he underwent in the IZ-43/1 remand centre revealed the presence of injuries on him.

59. The existence of injuries on the applicant, as confirmed by a forensic medical examination of 2 September 2003 (see paragraph 11 above), was never called into question. Nevertheless, the inquiry into the circumstances in which those injuries could have been sustained was, in essence, limited to interviewing two police officers against whom the applicant had made his allegations and the investigator in charge who had investigated the criminal case against the applicant. It comes as no surprise that these officials denied the applicant's allegations of ill-treatment. Moreover, it does not appear that, after the inquiry was reopened following a supervising prosecutor's instruction to that effect in a decision of 18 December 2003, the aforementioned officials were interviewed again. Indeed the decision of 1 March 2004, which was taken as a result of that additional inquiry, appear merely to take those officials' statements word for word from the similar decision of 11 September 2003 (see paragraph 17 above).

60. It does not appear that the authorities made any attempts to investigate the applicant's relevant complaints any further or to check the credibility of the aforementioned officers' statements by, for instance, organising confrontations between them and the applicant. The Court accepts the applicant's argument that a number of important procedural steps, such as identifications or confrontations, simply could not have been taken by the authorities, as criminal proceedings which would have enabled the authorities to take those actions were never instituted (see paragraph 27 above). For the same reason, it does not appear that, as alleged by the applicant, he could have in any meaningful way participated in the inquiry in question, or at the very least have had access to its materials. The Court notes in this respect that it falls to the State to have recourse to a procedure which would enable it to take all measures necessary for it to comply with its positive obligation to investigate imposed by Article 3 of the Convention.

61. The Court furthermore notes that the authorities never interviewed important witnesses such as an official of the temporary holding facility who had examined the applicant upon his delivery there and had found no injuries on him, and a medical official who had established injuries on the

applicant upon his transfer to the IZ-43/1 remand centre. Also, as the Court has already noted in paragraph 47 above, there is no evidence that any attempts were made to resolve the conflict in the medical records drawn up by the former and the latter.

62. The Court also accepts the applicant's argument that the authorities had not interviewed any of the applicant's cellmates, who could in principle have provided information relevant to the establishment of the circumstances in which the applicant had sustained his injuries.

63. Overall, it does not appear that the investigating authorities took meaningful steps to establish the circumstances in which the applicant had sustained his injuries, despite a clear indication to that effect in a supervising prosecutor's decision of 18 December 2003 (see paragraph 16 above)

64. The Court thus considers that the inquiry into his allegations of ill-treatment had been superficial and formalistic. The aforementioned failings and shortcomings are sufficient to enable the Court to conclude that the inquiry into the applicant's allegations of ill-treatment was inadequate and ineffective.

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

(c) Alleged absence of effective domestic remedies

66. The Court observes that, when alleging the lack of domestic remedies under Article 13, the applicant complained, in essence, that in the absence of any effective investigation into his allegations his claim for damages in the civil courts would have had no prospects of success. It considers that such a situation may potentially be problematic, regard being had to the Government's argument that the applicant could have obtained compensation for pecuniary and non-pecuniary damage for the inhuman treatment allegedly inflicted on him only if those responsible were convicted of that criminal offence by a final and binding court decision. The Court also reiterates that it has already found a violation of Article 13 taken in conjunction with Article 3 of the Convention in a similar situation, where by operation of provisions of the domestic law, the applicant was barred from suing officials, who ill-treated him, on the ground that criminal proceedings against them had been discontinued owing to the absence of evidence that any crime had been committed (see *Chember v. Russia*, no. 7188/03, § 72, ECHR 2008).

67. However, unlike the applicant in the case quoted above, the applicant in the present case never attempted to institute any proceedings for compensation. Against this background, and having regard to its finding of a violation of Article 3 in its procedural limb, the Court does not consider it necessary to examine the applicant's complaint under Article 13, taken in

conjunction with Article 3 of the Convention, as raising no separate issue in the circumstances of the present case.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

68. The applicant relied on Articles 6 and 7 of the Convention, complaining that the domestic courts had assessed the adduced evidence incorrectly, and in particular that they had not given due consideration to his argument that he had committed the imputed offence in a state of powerful emotional distress, or to his voluntary confession.

69. Having regard to the materials in its possession, the Court finds that this part of the application does not disclose any appearance of a violation of the Convention provisions. It follows that this part of the application is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

71. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

72. The Government contested that amount as excessive and argued that the applicant had not presented any documentary evidence confirming that the alleged ill-treatment had had any negative consequences on his health.

73. The Court observes that it has found a violation of Article 3 of the Convention on account of the treatment to which the applicant was subjected while in police custody and on account of the lack of an effective investigation into the matter. The applicant must have suffered anguish and distress on account of those infringements of his rights. Having regard to these considerations and judging on an equitable basis, the Court finds it reasonable to award the applicant EUR 15,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

74. The applicant also claimed EUR 1,200 for costs and expenses incurred before the Court.

75. The Government stated that, according to the Court's case-law, an applicant is entitled to reimbursement of their costs and expenses only in so far as it has been shown that they were actually incurred and are reasonable as to quantum. They insisted that the applicant's claim in that respect should be rejected.

76. The Court reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes that the applicant issued a power of attorney in respect of Ms V. Ilyukhina, who then represented him throughout the proceedings before the Court. It is therefore satisfied that the expenses in question were actually incurred. It further considers their amount to be reasonable. The Court therefore awards EUR 1,200, the full amount claimed, under this head, less EUR 850 already received by way of legal aid from the Council of Europe, plus any tax that may be chargeable to the applicant on this amount.

C. Default interest

77. 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 under Articles 3 and 13, taken in conjunction with Article 3 of the Convention, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of beatings inflicted on the applicant by the police after his arrest;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to carry out an effective investigation into the applicant's allegations of ill-treatment;

4. *Holds* that there is no need to examine separately the applicant's complaint under Article 13, in conjunction with Article 3 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 350 (three hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

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

Søren Nielsen
Registrar

Nina Vajić
President