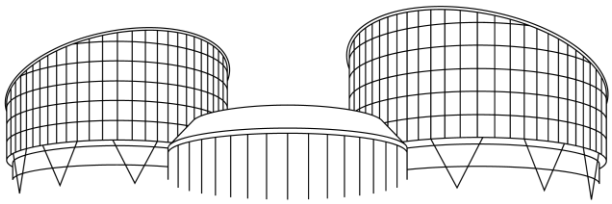

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF VALYAYEV v. RUSSIA

(Application no. 22150/04)

JUDGMENT

STRASBOURG

14 February 2012

FINAL

14/05/2012

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

In the case of Valyayev 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 24 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 22150/04) 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 Vadim Anatolyevich Valyayev ("the applicant"), on 30 May 2004.

2. The applicant, who had been granted legal aid, was originally represented by Ms I. Gundina, a lawyer practising in Yaroslavl, and then by Ms O. Mikhaylova, a lawyer from the International Protection Centre, practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had been subjected to torture, that there had been no effective investigation into his allegations of torture and that he did not receive a fair hearing of his complaints in that respect.

4. On 25 June 2009 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

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Pereslavl-Zalesskiy, Yaroslavl Region. He is serving a prison sentence in Rybinsk.

6. On 24 July 2000 the applicant was arrested in Pereslavl-Zalesskiy on suspicion of organised murder and robbery. He was placed in a temporary detention facility at the police station (*ИВС при УВД* – IVS) in Pereslavl-Zalesskiy. On 27 July 2000 he was remanded in pre-trial custody.

7. According to the applicant, at about 6 p.m. on 31 July 2000 the applicant was checked out of the IVS in Pereslavl-Zalesskiy; he was handcuffed with his hands behind his back, blindfolded with a canvas bag pulled over his head, and put on the floor of a police minibus. Several police officers and two other detainees were in the same vehicle. As soon as the vehicle drove off the policemen began punching and kicking the applicant to force him to confess to the murder and to make him sign some documents. They hit him on the body and head, twisted his fingers, pulled on the handcuffs and tightened them behind his back. This lasted for at least ten minutes, until they arrived at a place described by the applicant as "somewhere in a forest". The applicant was taken out of the vehicle and the beatings resumed. The applicant was spread on the ground, strangled with a rope or a belt, then his shoes were taken off and the police officers hit him on the heels with a wooden baton. The applicant claimed that he passed out several times, but when he regained consciousness the beating resumed; he was hit in the head and on the body, kicked on the groin, and strangled again. The applicant claimed that the ill-treatment in the forest lasted between thirty minutes and one hour. After that the policemen put the applicant back into the van and drove on. In the van they continued to beat and intimidate him. The applicant remained blindfolded the whole time. When they arrived at the Regional Department of the Interior in Yaroslavl the bag was removed from his head and he was checked into the Department's IVS. He was placed in cell no. 23.

8. The applicant remained in the IVS in Yaroslavl until 3 August 2000. He allegedly requested to see a doctor, but this was refused. On the latter date the applicant was brought back to Pereslavl-Zalesskiy and released there.

9. On 4 August 2000 the applicant saw a doctor at Central District Hospital in Pereslavl-Zalesskiy; he reported the ill-treatment and complained of headaches, vertigo, pain in the chest and abdomen and injuries to his feet and wrists. He was diagnosed with a head injury, possible concussion, and bruises on the chest and on the left foot.

10. On an unidentified date between 6 and 9 August 2000 the applicant requested the prosecutor's office of the Pereslavl-Zalesskiy District to investigate the ill-treatment in criminal proceedings. On 9 August 2000 the applicant was questioned by the police about the alleged ill-treatment. The case was then assigned to the assistant prosecutor who questioned the applicant on 14 August 2000. Both times the applicant spoke in detail about the episode of 31 July 2000.

11. On 14 August 2000 the assistant prosecutor ordered a medical examination by forensic experts to identify the applicant's injuries, establish their origin and the time of their occurrence. On the same day he was examined by the forensic expert who then requested the applicant's medical file from the Central District Hospital.

12. On 15 August 2000 the assistant prosecutor questioned the guard who was on duty at the IVS when the applicant was checked out. He submitted that on 31 July 2000 the applicant was checked out at about 5.30 p.m. by two police officers from the special squadron. After the applicant had been signed out they picked up his belongings, handcuffed the applicant and pulled a canvas bag over his head. Two other detainees were checked out at the same time and were taken away in the same vehicle. As far as he could tell, nobody ill-treated the applicant before the group left the IVS.

13. On 16 August 2000 the assistant prosecutor questioned two detainees, M.A. and S.A., who were transferred to Yaroslavl on 31 July 2000 with the applicant, and on 17 August 2000 he questioned one of the convoy policemen. M.A. and S.A. both said that they did not see anything because they were blindfolded, and that they did not hear any violence during the transfer. The convoy officer submitted that he and other policemen had carried three detainees in the minibus and that they had made no stops on the way and had not used any force during the transfer.

14. On the same day the applicant was detained again, and remained in detention pending trial.

15. On 4 September 2000 the chief medical officer of the Central District Hospital replied to the enquiry from the prosecutor's office, stating that on 4 August 2000 the applicant had been examined by a traumatologist and had been sent for an X-ray, after which he did not come back to the admissions office. He stated that the applicant had indicated that the injuries were caused on 31 July 2000 and were the result of a domestic accident.

16. On the same day the prosecutor's office refused to open a criminal investigation into the allegation of ill-treatment, on the grounds that they were unsubstantiated.

17. On 15 September 2000, having received the applicant's medical file from the hospital, the forensic expert drew a report stating, in so far as relevant, as follows:

"*Patient examination*

On the right side of the abdomen, covering a total area of 10 cm x 7 cm, barely visible, are healing multiple abrasions ..., an abrasion on the outside of the right wrist 1 cm x 0.3 cm ..., on the same level below the elbow bone there is a healing abrasion 5 cm x – 0.4-0.5 cm ... On the inner left wrist there is an abrasion of 1 cm x 0.5 cm ..., on the outside there is a stripe-like abrasion of 3 cm x 0.5 cm. Reports pain during palpation of the right side of the chest at the level of the seventh and the eighth ribs, on the line between the front and armpit, also reports pain when inhaling sharply or coughing. According [to the applicant], he has pain in the soft tissues of the left foot; no injury [can be seen] there. Sought medical aid at the admissions office of the Central District Hospital on 4 and 5 August 2000, [was examined by] traumatologist. Medical files requested.

Data from the medical files

On 5 August 2000, [record made by] traumatologist. Complains of pain in the right side of the chest, headaches, nausea and vertigo. Beaten up a week ago. Objective finding: condition of medium gravity ... Abdomen soft, painful when palpated. Reports pain during palpation of the left side of the chest ... Diagnosis: bruise on the left side of the chest, bruise on the left foot. On 4 August 2000. Headaches, vertigo ... Diagnosis: closed craniocerebral injury, concussion, bruise on the chest. On 11 August 2000, [record made by] traumatologist. Complains of pain in the fingers. Diagnosis: bruise on the chest. No other records made. The X-ray of the right side of the chest made on 4 August 2000 reveals no bone fractures. ... The X-ray of hands and wrists in straight projection reveals no bone fractures. The X-ray of heel bones in two projections reveals no bone fractures. Treatment by traumatologist continues ... .

Conclusion

1. On 14 August 2000 a medical examination established that Mr Valyayev had healing abrasions on the abdomen and the right and left wrist, caused by blunt hard object(s). The abrasions on the wrists could have been caused by objects like handcuffs. These injuries could have dated back to ten to fifteen days prior to the examination.

2. These injuries caused no damage to health.

3. The clinically established diagnosis of concussion is not supported by objective clinical data, and therefore its gravity is not susceptible to evaluation."

18. The applicant was not informed of the results of the forensic examination and was not provided with a copy of the report.

19. On 30 October 2000 the applicant received a letter informing him of the decision dispensing with a criminal investigation into the alleged ill-treatment. On 2 November 2000 he lodged a complaint with the prosecutor of Pereslavl-Zalesskiy contesting that decision.

20. On 16 November 2000 the Central District Hospital provided the prosecutor's office with an extract from the applicant's medical file. It stated that on 4 August 2000 the applicant complained of pains in the head

and chest and was sent for X-ray screening. On 5 August 2000 he was examined by a traumatologist. The chest and head X-ray did not reveal any pathology. He was diagnosed with bruises on the chest and left foot. On 11 August 2000 he was again examined by the traumatologist, with the same diagnosis, and by the neurologist who diagnosed him with a head injury and possible concussion.

21. On 28 November 2000 the applicant requested the prosecutor's office to send him a copy of the forensic report.

22. On 6 December 2000 the prosecutor's office issued another decision refusing to institute criminal proceedings into the alleged ill-treatment. It relied on the statements of the IVS staff and the cellmate denying that force had been applied to the applicant at the IVS.

23. As he had received no reply to his letter of 28 November 2000, on 28 December 2000 the applicant reiterated his request for a copy of the forensic report.

24. On 30 January 2001 the applicant's cellmate at the IVS in Yaroslavl, S., wrote to the prosecutor's office of Pereslavl-Zalesskiy confirming the applicant's allegations of ill-treatment. He contended that on 31 July 2000 at about 9 p.m. the applicant was placed in cell no. 23; that he was bleeding and bruised, his clothes were torn and bloodstained and he was unable to move around the cell without help. He had confirmed that the applicant had apparently been tortured by the special squadron police during his transfer from Pereslavl-Zalesskiy and stated that no medical help was provided to the applicant at the detention facility.

25. On an unspecified date the same assistant prosecutor requested a further report on the applicant. On 14 February 2001 an expert drew up the report. The applicant himself was not present, and the expert studied only a one-page extract of the applicant's medical file issued on 16 November 2000. He concluded that it contained insufficient information and that, in the absence of the original medical documents, he could not establish whether the applicant had suffered any injuries.

26. On the same day the prosecutor's office refused again to institute criminal proceedings into the alleged ill-treatment, referring to the statements of S.A. and M.A. and to the fact that the expert had been unable to establish any injuries in the report of 14 February 2001.

27. On 23 February 2001, following complaints by the applicant, the Prosecutor's Office of the Yaroslavl Region quashed the decision of 14 February 2001 and ordered the inquiry to be continued. She gave detailed instructions to the prosecutor's office of Pereslavl-Zalesskiy to carry out a number of steps to verify the allegations, including questioning of the medical personnel who examined the applicant on 4 and 11 August 2000, obtaining the original medical records, establishing the identity of the staff members who had made or required the extracts of the medical files, and questioning IVS staff and cellmates about the applicant's injuries.

28. On 23 April 2001 the prosecutor's office of Pereslavl-Zalesskiy took a new decision refusing to institute criminal proceedings into the alleged ill-treatment. The decision essentially reiterated the preceding ones and concluded that the applicant's allegations were unsubstantiated. The applicant complained to the prosecutor's office about the refusal to hold an investigation and requested access to the file.

29. On 20 July 2001 S.A. wrote to the applicant to apologise for the false statement he had made to the office of the prosecutor conducting the ill-treatment inquiry. He explained that although he had remembered the "monstrous" beatings the applicant was subjected to during the transfer, he felt that telling about it would put him at risk.

30. On 23 July 2001 the Yaroslavl Regional Court held a hearing in the applicant's criminal case and gave judgment. The applicant was found guilty of burglary and aggravated murder and sentenced to twenty years' imprisonment. During the trial the applicant complained of ill-treatment, and several witnesses testified that he been injured. The court did not examine the issue further.

31. Following requests by the applicant, on 5 December 2001 and 6 February 2002 the prosecutor's office refused to grant him access to the inquiry file. The applicant challenged the refusal before the Pereslavl District Court. On 14 August 2002 the court granted the applicant's claim and ordered the prosecutor's office to give the applicant access to the case file. Sixty-five pages of copies of the documents were sent to the applicant on 10 November 2002. They did not include the expert report of 15 September 2000.

32. On an unidentified date the applicant challenged the decision of 23 April 2001 refusing the investigation of his ill-treatment before the Pereslavl District Court. Among other arguments he referred to the forensic examination that he underwent on 14 August 2000 and requested that the results be included in the case file. On 28 July 2003 the court returned his complaint, stating that it could not examine the matter while a similar complaint was under examination by the prosecutor's office. The applicant appealed.

33. On 30 September 2003 the Deputy President of the Yaroslavl Regional Court replied to the applicant that the Pereslavl District Court had never received the applicant's complaint challenging the decision of 23 April 2001, and that in any event the latter was not amenable to judicial review because the applicant's arguments had already been examined in substance in the criminal proceedings against the applicant which had ended in his conviction.

34. Despite the above letter, the applicant's complaint was subsequently accepted for examination by the Pereslavl District Court, and the applicant requested to attend the hearing. He also requested that his lawyer be

informed about the date of the court hearing. The applicant claims that neither he nor his lawyer were notified of when the hearing was scheduled.

35. On 9 July 2004 the court examined the complaint. Neither the applicant nor his counsel were present, but the public prosecutor took part in the hearing. The court upheld the decision of 23 April 2001 dispensing with a criminal investigation. The applicant appealed.

36. On 17 December 2004 the Yaroslavl Regional Court examined the applicant's appeal and upheld the decision of 9 July 2004, finding the allegations of ill-treatment unsubstantiated and the prosecutor's decision well-founded. It appears that neither the applicant nor his lawyer were present at the hearing, while the prosecutor was.

37. On 25 June 2009 the Court gave notice of this application to the respondent Government.

38. On 21 August 2009 the Prosecutor of the Yaroslavl Region submitted a request to the Yaroslavl Regional Court to have the decisions of 9 July 2004 and 17 December 2004 quashed in supervisory-review proceedings. The ground for the request was the absence of the applicant from the proceedings at both levels of jurisdiction. On 2 September 2009 that request was granted, and the applicant's complaint was remitted for fresh examination by the district court.

39. On 16 September 2009 the Yaroslavl Department of the Interior issued a report on the internal inquiry relating to the applicant's complaints of ill-treatment. Having referred to the previous decisions by the prosecutor's office and the courts, it stated that the applicant's allegations of ill-treatment were unsubstantiated.

40. On 17 September 2009 the Pereslavl District Court scheduled a hearing on 23 September 2009 and ordered that the applicant be brought from the correctional facility to take part in the proceedings. The applicant requested three times that the hearing be postponed. The requests were granted, the first time to allow him time for preparation, the second time following the replacement of his counsel and the third time to allow him more time to read the file. The hearing was postponed until 27 October 2009, then until 10 November 2009, and finally until 20 November 2009.

41. On the latter date the court began examining the applicant's claim. The applicant was present at the hearing and made oral submissions. The hearing continued until 30 November 2009, when the court held a judgment dismissing the claims. The applicant appealed.

42. On 2 April 2010 the Yaroslavl Regional Court granted the applicant's appeal, reversed the judgment of 30 November 2009 and remitted the case for fresh examination by the district court.

43. On 2 June 2010 the district court examined the applicant's claims in fresh proceedings and granted them in full. It noted that the prosecutor's office had not taken all the measures necessary to enable a reasoned, lawful and well-grounded decision, in particular that it had failed to take into

account the results of the forensic examination that took place on 14 August 2000. It therefore declared the refusal to investigate the applicant's allegations of ill-treatment in criminal proceedings unlawful and ordered the prosecutor's office to rectify the omissions.

44. On 23 July 2010 the Yaroslavl Regional Court upheld the judgment of 2 June 2010.

45. The parties did not inform the Court what follow-up measures had been taken by the prosecutor's office, if any.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

46. The applicant complained that he had been tortured by the police on 31 July 2000 and that there had been no effective investigation following his complaint of ill-treatment. He relied on Article 3 of the Convention, which reads as follows:

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

47. The Government contested the applicant's allegations of ill-treatment. In their observations submitted in October 2009 they adhered to the reasons given by the domestic authorities to refuse the investigation of the alleged ill-treatment in criminal proceedings. They relied, in particular, on the decision by the prosecutor's office dated 23 April 2001 and the judicial decisions of 9 July and 17 December 2004. They claimed that the applicant's complaints had been examined by the Russian authorities and found unsubstantiated. In their observations they made no mention of the fact that these decisions had been quashed by the Yaroslavl Regional Court on 2 September 2009. When the Government later made additional submissions informing the Court about the judicial decisions taken in 2010 declaring the refusal of the investigation unlawful, they did not seek to supplement their observations on that point.

48. The applicant maintained his complaints, citing the same grounds as in his original application.

A. 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.

B. Merits

1. Alleged ill-treatment in police custody

50. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. 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). 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 under 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 *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

51. Turning to the circumstances of the present case, the Court observes that the forensic examination on 14 August 2000 established the presence of abrasions on the applicant's abdomen and wrists and indicated that these injuries dated back to ten to fifteen days before the examination. The Court notes that the timing indicated by the expert fell mostly within the period of the applicant's detention that began on 24 July and ended on 3 August 2000. The Court further notes that the medical files submitted to the expert by the Central District Hospital reveal that on 4 and 5 August 2000 the applicant sought medical help for bruises and injuries on his head, chest and heels, and that he had reported to the traumatologist that those injuries had been caused by beatings a week earlier. While the expert found that the traumatologist's records lacked objective clinical data to estimate the gravity of the cerebral trauma or to confirm the diagnosis of a concussion, the Court finds that those records are capable of adding weight to the applicant's account of his injuries. The existence of the applicant's injuries and the date they occurred are also supported by the statement from S., the applicant's cellmate at the IVS in Yaroslavl, which he put in writing to the prosecutor's office on 30 January 2001.

52. The Court therefore considers it established that the applicant sustained injuries while in detention between 24 July and 3 August 2000. In the absence of any indication to the contrary it will assume that they occurred on 31 July 2000, as the applicant alleges.

53. The Court observes that neither the authorities conducting the inquiry nor the Government have explained the origin of these injuries (see, by contrast, *Klaas v. Germany*, 22 September 1993, §§ 29-31, Series A no. 269). The Court notes, in particular, that the extensive abrasions on the applicant's wrists were identified by the expert as likely handcuff marks.

However, no explanation was given as to why the use of handcuffs was necessary or why they were used in such a way as to make cuts in the wrists. The applicant's account of the events, by contrast, is corroborated by the letter of 20 July 2001 written by S.A., one of the detainees transported in the same vehicle as the applicant, stating that he remembered the applicant being brutally beaten during the transfer. The Government did not contest the authenticity or the content of this letter, and the Court therefore considers it relevant and of important probative value. The Court therefore concludes that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than - entirely, mainly, or partly - by the treatment he underwent while in police custody (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336)

54. In the light of the above the Court concludes that the applicant had indeed been beaten up by police during his transfer on 31 July 2000.

55. 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 v. Turkey*, 18 December 1996, § 64, *Reports of Judgments and Decisions* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83, 84 and 86, *Reports* 1997-VI; *Selmouni v. France* [GC], no. 25803/94, § 105, ECHR 1999-V; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; and, among recent authorities, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-IV (extracts), and *Menesheva v. Russia, no*. 59261/00, § 55, ECHR 2006-III).

56. 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 v. France*, 27 August 1992, § 115, Series A no. 241-A, and *Ribitsch*, cited above, § 38-40).

57. Turning to the circumstances of the present case, the Court takes into account the information contained in the forensic report and the medical records of the Central District Hospital, as well as the applicant's own description of the events, and finds that the ill-treatment inflicted on the applicant caused physical suffering which required inpatient treatment by the hospital traumatologist. Given the duration and the brutality of the beatings, as well as of the purpose of the ill-treatment, the Court is persuaded that the accumulation of the acts of physical violence inflicted on the applicant amounted to torture with meaning of Article 3 of the Convention.

58. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb.

2. Alleged failure to carry out an effective investigation

59. 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).

60. 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, that it must secure the involvement of the victim or the next-of-kin to the extent necessary to safeguard his or her legitimate interests, 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; *Menesheva*, cited above, § 67, and *Denis Vasilyev v. Russia*, no. 32704/04, § 126, 17 December 2009).

61. Turning to the circumstances of the present case, the Court notes that the applicant complained to the prosecutor's office without undue delay after his release from the detention facility, within a few days of the ill-treatment. It considers that the matter was appropriately brought before the competent authorities at a time when they could reasonably have been expected to investigate the circumstances in question. The applicant's allegations, which were detailed and consistent, placed the domestic authorities under an obligation to conduct an effective investigation satisfying the above requirements of Article 3 of the Convention.

62. In response to the applicant's complaint, he was interviewed shortly afterwards by the assistant prosecutor, who ordered a forensic examination of the applicant with a view to establishing his injuries. The forensic expert examined the applicant immediately after the order was issued. It then took the expert a month to finalise the report, because he had to wait for the medical file from the Central District Hospital, which he had requested.

63. The Court observes, next, that the forensic report commissioned by the prosecutor's office was issued on 15 September 2000. While it was

being prepared the prosecutor's office questioned two detainees, M.A. and S.A., who were transferred to Yaroslavl on 31 July 2000 with the applicant, and one of the convoy police officers. None of them corroborated the applicant's allegations of violence. In addition, on 4 September 2000 it also obtained a statement from the chief medical officer of the Central District Hospital indicating that the applicant had been examined by a traumatologist because of the injuries that were alleged to have been caused on 31 July 2000. The chief medical officer indicated that the applicant had reported a domestic accident as the cause of his injuries, a statement contradicting the hospital's own records submitted to the forensic expert and incompatible with the fact that the applicant had been in detention since 24 July 2000. On 4 September 2000 the prosecutor's office decided, on the basis of the aforementioned documents, that the applicant's allegations were unsubstantiated and did not merit a criminal investigation.

64. The Court finds it striking that the prosecutor's office, after commissioning the forensic examination, did not wait for the report, and then decided to dispense with criminal proceedings without taking it into account. Even more alarming is the fact that after its receipt the prosecutor's office did not include it in the inquiry file and did not inform the applicant of its content.

65. The Court observes next that the forensic report contained records of injuries found on the applicant on 14 August 2000, as well as references to the medical file of the Central District Hospital relating to the applicant's consultations of 4 and 5 August 2000. The forensic report indicated clearly that the applicant had indeed sustained injuries to the chest and wrists, and quoted other injuries recorded by the hospital, although it stated that it could not confirm the exact diagnosis made by the traumatologist for lack of further clinical data. However, the prosecutor's office, when it received this report, did not reconsider the inquiry conclusions in the light of this new information. Even when the inquiry resumed in 2001 on the superior prosecutor's order this forensic report was not referred to.

66. Neither the Government nor the authorities acting in the domestic proceedings offered any explanation why the forensic report of 15 September 2000 had not been included in the inquiry file. Having regard to the evidence of the applicant's reminders to the prosecutor's office (in particular, of 28 November 2000 and 28 December 2000) the Court rules out that it had simply been forgotten. It notes that the prosecutor's office instead commissioned another forensic examination, which was conducted on 14 February 2001 without the applicant being present and without his original medical files made available to the expert. The examination was completed on the basis of a brief extract from the medical file and the expert, predictably, did not have sufficient information to establish the applicant's condition at the given time. The materials before it leave the Court no other choice than to conclude that the forensic report of

15 September 2000 was intentionally omitted from the inquiry file and then substituted with another report commissioned from an expert who was not provided with adequate data to investigate.

67. Of further concern is the domestic courts' lack of attention to this point when they decided on the lawfulness of the decision dispensing with criminal investigation. The judicial decisions of 9 July 2004 and 17 December 2004 contain no answer to the applicant's detailed written pleadings in which he described the forensic examination he underwent on 14 August 2000 and complained that the result had been concealed from him. The first time the Russian authorities acknowledged the existence of the original forensic report was in the observations submitted by the Government in response to the Court's specific question, and only then did the applicant receive a copy as an attachment to those observations.

68. The importance of this forensic report for the inquiry cannot be overestimated, particularly in view of the judicial decisions of 2 June and 23 July 2010, which considered its omission from the file unlawful and quashed the decisions dispensing with criminal investigation on this ground. The Court therefore concludes that the mishandling of this forensic report at the crucial early stages of the inquiry constituted a serious procedural flaw incompatible with the notion of an effective investigation.

69. The Court also does not overlook other deficiencies in the inquiry. It observes in this connection that on 23 February 2001 the Prosecutor's Office of the Yaroslavl Region ordered that the inquiry be resumed, and gave detailed instructions to the prosecutor's office of Pereslavl-Zalesskiy on the investigative steps to be taken. Specifically it required a number of individuals to be questioned, including medical personnel, and the original medical files to be studied. However, these instructions were not complied with.

70. In the light of the foregoing the Court adheres to the assessment of the Pereslavl District Court given in its judgment of 23 July 2010, upheld by the Yaroslavl Regional Court on 2 June 2010, that the prosecutor's office did not take all the necessary investigative steps, and that its refusal to open a criminal investigation fell short of being lawful and well-founded.

71. The parties have not informed the Court whether the prosecutor's office took any measures pursuant to the aforementioned judicial decisions which quashed the refusal to investigate. The Court will therefore assume that even if the inquiry resumed it has not produced any tangible results. In any event, it notes that eleven years have elapsed since the applicant first brought his complaint of ill-treatment before the attention of the domestic authorities. This length of time is unacceptable to the Court, considering that the case concerned a serious instance of police violence and thus required a swift reaction by the authorities (see *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 59, 20 December 2007).

72. In such circumstances the Court concludes that the authorities failed to comply with the requirements of promptness, thoroughness and effectiveness. It considers that there has been no effective investigation into the applicant's allegations of ill-treatment, as required by Article 3 of the Convention.

73. Accordingly, the Court finds that there has been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

74. The applicant complained of a violation of Article 6 of the Convention, alleging lack of a fair hearing in the proceedings before the Pereslavl District Court on 9 July 2004 and before the Yaroslavl Regional Court on 17 December 2004. In these proceedings he had challenged the refusal of the prosecutor's office to institute criminal proceedings into the alleged ill-treatment, but the courts did not ensure his or his counsel's presence at the hearings. Article 6 provides in so far as relevant as follows:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

75. The Government considered that Article 6 was applicable to the proceedings in question under its civil limb. However, they considered that the applicant had lost victim status in respect of this part of the application, because the judicial decisions complained of were quashed on 2 September 2009 and fresh proceedings took place. They further argued that the new proceedings had complied with the guarantees of Article 6 § 1 of the Convention, at least in the first-instance proceedings. At the time their observations were submitted the appeal hearing was still pending, but the Government claimed that it could already be said that the new hearing had afforded the applicant sufficient redress in respect of his claim under Article 6 § 1 of the Convention.

76. The applicant maintained his complaints.

Admissibility

77. The Court notes in the outset that these proceedings concerned the lawfulness of the decision dispensing with a criminal investigation of the applicant's allegations of ill-treatment. The applicant did not bring a claim for damages or other claims that could be characterised as civil under the Court's case-law relating to the applicability of Article 6 of the Convention (see, by contrast, *Kovalev v. Russia*, no. 78145/01, §§ 26-29, 10 May 2007). In essence, these complaints fell within the ambit of the guarantees of Article 3 of the Convention, relating to the procedural obligation on the part

of the State to conduct an effective investigation into an arguable complaint of ill-treatment. In this respect the Court refers to its finding above, that the authorities were in breach of Article 3 of the Convention on account of their failure to ensure an effective investigation in the applicant's case. It further considers that it is not necessary to resolve the question whether the instant complaint raises yet another, separate, issue under Article 6 of the Convention, because it considers that this part of the application is in any event inadmissible, because of the loss of victim status. For the same reason it will dispense with a ruling on the applicability of Article 6 to the proceedings in question.

78. The Court observes that the decisions in question have indeed been quashed, that a fresh hearing of the applicant's complaint has taken place, and that the applicant was able to participate in those proceedings, as the Government correctly pointed out. Moreover, it notes the recent developments which occurred after the submission of the Government's observations, notably that the applicant's claim was fully granted in the final instance on 23 July 2010.

79. In view of the foregoing the Court considers that the authorities have acknowledged the breach of the Convention and have afforded redress for it. The Court concludes that the applicant can no longer claim to be a victim of the alleged violation of Article 6 § 1 within the meaning of Article 34 of the Convention (see, among many other authorities, *Scordino v. Italy* (*no. 1*) [GC], no. 36813/97, §§ 180-82, ECHR 2006-V, and *Sakhnovskiy v. Russia* [GC], no. 21272/03, §§ 76-84, 2 November 2010).

80. It follows that the complaint under Article 6 § 1 is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed 300,000 euros (EUR) in respect of non-pecuniary damage.

83. The Government contested the applicant's eligibility for just satisfaction because they considered this application manifestly ill-founded. They also contested the amount claimed by the applicant as excessive,

unsubstantiated and inconsistent with the Court's case-law under Article 41 of the Convention. They considered that an acknowledgement of a violation, if any were found by the Court, would of itself constitute sufficient just satisfaction for the applicant.

84. The Court notes that it has found a violation under the substantive and procedural limbs 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, fear and frustration caused to the applicant cannot be compensated for by the mere finding of a violation. Having regard to the nature of the violation and making its assessment on an equitable basis, the Court awards the applicant EUR 35,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

85. The applicant also claimed compensation of the costs and expenses incurred before the Court, but he has not indicated the amount claimed under this head and has not attached any relevant documents.

86. The Government referred to the Court's case-law providing for the requirements applicable to reimbursement of costs and expenses. The Court understood that they were implicitly asking the Court to reject the claims.

87. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, as well as to the fact that the applicant has been granted legal aid, the Court rejects the claim for costs and expenses.

C. Default interest

88. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the alleged ill-treatment on 31 July 2000 and the alleged lack of an effective investigation into it admissible and the remainder of the application inadmissible;

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

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 35,000 (thirty-five 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;

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

Done in English, and notified in writing on 14 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President