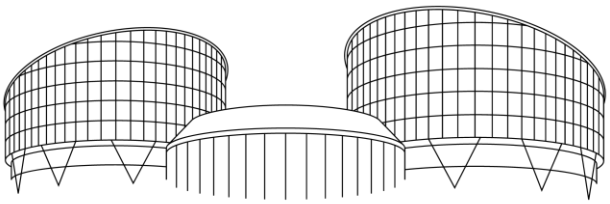

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF ANTIPENKOV v. RUSSIA

(Application no. 33470/03)

JUDGMENT

STRASBOURG

15 October 2009

FINAL

15/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

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

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 24 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 33470/03) 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 Roman Vladimirovich Antipenkov ("the applicant"), on 2 October 2003.

2. The Russian Government ("the Government") were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives 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 at the police station and that the investigation into his complaints of ill-treatment had been ineffective.

4. On 23 October 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1980 and lived until his arrest in the town of Dyatkovo in the Bryansk Region. He is serving his sentence in the correctional colony in the village of Kamenka in the Bryansk Region.

A. Use of force during the applicant's arrest and a prosecutor's decision of 30 December 2002

7. On 14 December 2002 the police arrested the applicant and brought him to the Dyatkovskiy District police station.

8. On the same day a police officer, I., who had taken part in the applicant's arrest, drew up a report, informing the chief of the Dyatkovskiy District police station that a man had approached him and his fellow officers in a street, complaining that he had been beaten up and robbed. The applicant had passed by and the victim had identified him as the robber. The applicant had tried to escape but he had been apprehended and taken to the police station. The report did not indicate whether force or special means had been used during the arrest.

9. The applicant lodged a complaint with the Dyatkovo Town Prosecutor's office, seeking institution of criminal proceedings against the arresting police officers. In particular, he alleged that the police officers had unlawfully applied force against him during the arrest.

10. On 30 December 2002 a deputy Dyatkovo Town Prosecutor issued a decision, finding that there was no case to answer and dismissing the applicant's complaint. The decision stated that on 14 December 2002, after the applicant had committed the robbery, police officers had stopped him in a street and had ordered him to get into a police car. The applicant had refused, had punched police officer Ka. in the face and had attempted to escape, threatening the officers with a knife. Police officer I. had hit the applicant with a rubber truncheon on the arm, forcing him to drop the knife. Subsequently, the police officers had forced the applicant into the car. The deputy prosecutor concluded that there had been no indication of a criminal offence in the police officers' actions. The applicant was served with a copy of that decision.

B. Alleged ill-treatment in the police station, after the arrest and ensuing investigation into the applicant's complaints

11. According to the applicant, after being taken to the Dyatkovskiy District police station on 14 December 2002, he had been placed in a cell. An assistant police officer on duty, P., had approached the applicant and hit him with a rubber truncheon approximately ten times on the left side of the body and once in the face. An officer on duty, S., had entered the cell and had started beating the applicant as well. The beatings had continued for an hour and a half. The applicant had subsequently been placed in the detention facility of the Dyatkovskiy District Police Department.

12. The Government, relying on the information provided by the Prosecutor General's office, submitted that on 14 December 2002 the applicant had been taken in a state of alcoholic intoxication to the duty unit of the Dyatkovskiy District police station. After being placed in a cell for administrative detainees, he had started kicking the door, using obscene language and ignoring the police officers' orders to stop the unlawful behaviour. Police officer P. had entered the cell and hit the applicant a number of times in the back with a rubber truncheon. After officer P. had left, the applicant had stripped to the waist and started pushing the door. The police officers, using force, had transferred him to another cell. While he was being escorted to the new cell and was passing the desk of an officer on duty, the applicant had started spitting on the desk communication board. Officer P. had thus been forced to hit the applicant with a rubber truncheon. In the new cell the applicant had continued kicking the door. The police officers had had no choice but to handcuff the applicant to a metal bar, so he could not reach the door. Shortly after, when the applicant had calmed down, the handcuffs had been removed. No force had been applied against the applicant after that incident.

13. On 15 December 2002, on admission to the detention facility of the Dyatkovskiy District Police Department, an officer on duty examined the applicant and drew up a report, recording the following injuries on his body: bruises on the chest, numerous injuries on the back, bruises on the left hip and buttock, injuries on the forehead, face and left cheek. As shown by the documents presented by the parties, on 16 December 2002 an emergency doctor was called to attend to the applicant in response to his complaints about severe pain in the jaw and chest. The doctor examined the applicant, noted his injuries and, suspecting that he could have had a rib fracture, recommended an examination by a traumatologist.

14. Five days later the applicant complained to the head of the detention facility about the beatings in the police station and sought the institution of criminal proceedings against the police officers.

15. On 20 December 2002 the applicant was examined in the medical division of the Dyatkovskiy District Police Department and a report was

drawn up. According to the report, he had a hypodermic injury on the left side of the chest. The injury measured 15 centimetres in length and 5 centimetres in width and resulted from a blow by a rubber truncheon.

16. Ten days later the applicant, being diagnosed with encephalomyelopolyneurotis, was admitted to the hospital of the Dyatkovskiy District Police Department where he stayed until his transfer, on 22 January 2003, to Bryansk prison hospital no. OB-21/2. He remained in that hospital until 4 February 2003 with a diagnosis of "consequences of neuritis of the left fibular nerve".

17. In the meantime the applicant lodged a complaint with the Dyatkovo Town Prosecutor, describing the beatings in the police station on 14 December 2002 and asking for an investigation into the incident.

18. On 23 January 2003 a deputy Dyatkovo Town Prosecutor refused to institute criminal proceedings against police officers P. and S., finding that their actions, in a situation where the applicant had behaved in an unruly manner, had been lawful and proportionate.

19. On 4 April 2003 a deputy Bryansk Regional Prosecutor annulled the decision of 23 January 2003 and authorised a re-examination of the applicant's ill-treatment complaints. The relevant part of the decision read as follows:

> "The decision [of 23 January 2003] was manifestly ill-founded and premature, as the investigation had been incomplete; the circumstances in which the injuries to [the applicant] had been caused were not fully examined; [the applicant] was not questioned and [he] did not undergo an examination by a medical expert; administrative and criminal arrestees detained in [the police station] were not questioned about the events; the traffic police officers who had brought [the applicant] to the [police station] were not questioned; therefore [the decision] should be annulled."

The deputy prosecutor also drew up a list of measures which should be taken in the course of the new round of the investigation, including a medical examination and questioning of the applicant, and the establishment and questioning of possible eyewitnesses among those persons who had been detained with the applicant.

20. On 14 April 2003 a deputy Dyatkovo Town Prosecutor, in a decision worded identically to the one issued on 23 January 2003, once again refused to institute criminal proceedings against officers S. and P., confirming the lawfulness of their actions.

21. On 6 August 2003 the Bryansk Regional Prosecutor informed the applicant that the decision of 14 April 2003 had been quashed, that an additional investigation into his complaints was to be conducted and that the case file had been sent back to the Dyatkovo Town Prosecutor's office. When quashing the decision of 14 April 2003, the Bryansk Regional Prosecutor's office repeated the list of investigative steps to be taken.

22. On 22 August 2003 an assistant Dyatkovo Town Prosecutor dismissed the applicant's complaints against police officers S. and P., finding no case of ill-treatment. The decision of 22 August 2003 was similar in its wording to those issued on 23 January and 14 April 2003.

23. In October 2003 a neuropathologist examined the applicant and diagnosed him with asthenovegetative syndrome related to a head injury.

24. On 21 October 2003 the Dyatkovo Town Prosecutor annulled the decision of 22 August 2003, finding that the investigation had been incomplete. A new round of investigation was authorised.

25. Three days later, on 24 October 2003, an investigator of the Dyatkovo Town Prosecutor's office once again dismissed the applicant's complaint, repeating the findings made in the decision of 22 August 2003. In addition, the investigator recounted statements made by the applicant, by an investigator who had interviewed him on 14 December 2002, by a doctor who had examined the applicant on 16 December 2002, by two persons who had been detained with the applicant on 14 December 2002, and by the victim whom the applicant had robbed. The applicant had maintained his complaints. The investigator had testified that he had not seen any injuries on the applicant and that the latter had not made any complaints. The doctor had stated that she had been called to attend to the applicant who had complained about pain in the jaw and on the left side of the chest. She had examined the applicant and recorded injuries on the chest and lower jaw. She had presumed that the applicant had had a rib fracture. She had indicated that the applicant had to be examined by a traumatologist. The inmates had testified that the applicant had been placed in their cell in the second half of the day on 14 December 2002. He had shown them injuries on his back and complained that he had been beaten up by the police officers. The victim had testified that he had not seen any injuries on the applicant's body on the day of the robbery.

The investigator concluded that officers S. and P. had acted in full compliance with requirements of Articles 13 and 14 of the Police Act.

26. On 19 May 2004 the Dyatkovo Town Court, acting on the applicant's appeal against the decision of 24 October 2003, confirmed the findings made by the investigator. The Town Court noted that the officers' actions had been beyond reproach, the lawfulness and proportionality of their actions being manifest.

27. On 23 July 2004 the Bryansk Regional Court quashed the decision of 19 May 2004 and remitted the case for re-examination to the Town Court. The Regional Court held, in particular, as follows:

> "At the same time it is impossible to conclude that the decision of the investigator refusing institution of criminal proceedings was lawful and well-founded, taking into account the following considerations.
>
> As shown by the material from investigation no. 1-13 opened upon the [applicant's] complaint, the investigator's conclusions drawn up in the decision [of 24 October

2003] do not correspond to the circumstances of the case which were established in the course of the investigation. Moreover, the investigation was incomplete.

The fact of [the applicant's] arrest and [his] placement in the detention facility of the Dyatkovskiy District Police Department on 14 December 2002, at 7.20 p.m., was confirmed by an extract from the registration log of persons brought to the police department... According to an extract from the record of medical examinations of persons detained in the detention facility of the Dyatkovskiy District Police Department, on 15 December 2002, at the time of the placement, [the applicant] had injuries on the left and right sides of the body, the left and right buttocks, injuries on the forehead, the bridge of his nose, the left cheek, and numerous injuries on the back.

As is apparent from the statements by [the victim of the robbery], on 14 December 2002, at about 7 p.m., [the applicant] had no visible injuries.

The decision [of 24 October 2003] did not indicate whether it had been established that [the applicant] had been injured by officers of the police department during his arrest.

Therefore, in the course of the investigation the investigator of the prosecutor's office did not establish the time, place, extent, or method and means of infliction of the injuries which [the applicant] had been found to have during his examination on 15 December 2002; the severity [of those injuries] was likewise not established.

Accordingly, [the court] cannot regard as rightful and substantiated the investigator's finding that [the applicant] received injuries as a result of the two blows to his back made by Mr P. and by [the applicant's] knocking on the door and walls and by his being handcuffed.

The investigator did not examine, and thus did not evaluate, the [applicant's] statements concerning the effect of the injuries which had led to his having obtained a leg disease... accordingly, [an investigator] did not check information concerning [the applicant's] stay in hospital; a diagnosis which had been pronounced at the end of the treatment; the severity of the damage caused to [the applicant's] health leading to the diagnosis; the existence of a causal link between the injuries which he had been found to have on 15 December 2002 and his illness.

In the decision the investigator refers to statements by Mr K. and Mr G., from which it transpires that they were arrested and detained in cell no. 7, when on 14 December 2002 after dinner, [the applicant] was placed there, allegedly in a state of intoxication; [he had] injuries and explained that they had been caused by the police officers when he had offered resistance to the arresting officers.

At the same time, as is apparent from the material in investigation file no. 1/13, on 14 December 2002, at 11.50 p.m., [the applicant] was placed in a cell where Mr Sh., Mr T., and Mr D. were being held. On 15 December 2002, at 4 p.m., [the applicant] was placed in cell no. 7 with Mr G. and Mr K.

In these circumstances, the [Regional] Court considers that the conclusions of the [Town] Court about the lawfulness and rightfulness of the investigator's decision of 24 October 2003, concerning the refusal to institute criminal proceedings, do not correspond to the circumstances of the case, and thus the decision of [19 May 2003] should be quashed and the case should be remitted for a new court examination."

28. On 4 November 2004 the Dyatkovo Town Court accepted the applicant's complaint and annulled the investigator's decision of 24 October 2003, endorsing the reasoning of the Regional Court. The decision of 4 November 2004 was upheld on appeal on 24 December 2004.

29. On 19 November 2004 the investigator of the Dyatkovo Town prosecutor's office refused to institute criminal proceedings against officers S. and P. The wording of that decision was similar to that of the decision of 24 October 2003, but with an additional paragraph which read as follows:

> "[The applicant] in his numerous complaints stated that, as a result of being beaten by the police officers, his legs had been paralysed; however, his statement is refuted by the conclusions of a forensic medical examination which had been performed [in compliance with the Town Court's decision of 4 November 2004] on the basis of [the applicant's] medical records from facilities nos. IZ-32/1 [detention facility of the Police Department] and OB-21/2...; on the basis of which it was established that the illnesses with which [the applicant] had been diagnosed in those facilities...do not have a pathogenetic causal link to his injuries and that [the illnesses] are independent diseases of a non-traumatic character. When [the applicant] asked for medical assistance on 15 December 2002, he had an injury on the forehead and the nose bridge, an injury on the left cheek-bone, bruises on the left and right sides of the chest, and bruises on the back and buttocks. Those injuries were caused by numerous applications of firm blunt objects to those parts [of the body], which could have been carried out by blows with those objects or by his being hurled against those objects. Those injuries, taken together or separately, caused 'slight' damage to the health ... During the examination and treatment of [the applicant], immediately after the injuries had been caused or in a subsequent period of time, [the investigation] did not establish any data which could have shown that [the applicant] had had a head injury, a rib fracture, a spinal injury or any other injuries of a traumatic character."

30. On 1 December 2006 a deputy Bryansk Regional Prosecutor quashed the decision and authorised the Dyatkovo Town Prosecutor's office to open an additional investigation into the applicant's complaints.

31. According to the Government, three days later the Dyatkovo Town Prosecutor closed the investigation, finding no criminal conduct in the police officers' actions. The Government did not produce a copy of the decision of 4 December 2006. However, they submitted that officers S. and P. had been questioned and had confirmed the statements they had made during the previous rounds of the investigation. In particular, the officers had stressed that the use of rubber truncheons had been an adequate and proportionate response to the applicant's unlawful behaviour. The Government further noted that in his decision of 4 December 2006 the prosecutor had relied on the results of the applicant's medical examination of 4 November 2004. The examination had established that the applicant's illnesses had had no causal link to the injuries recorded on 15 December 2002. The prosecution authorities had also questioned four persons who had been detained together with the applicant on 14 and 15 December 2002. According to those individuals, the applicant had not complained about being beaten in the police station.

32. The Government further noted that the Prosecutor General's office of the Russian Federation had thoroughly studied the conclusions of the investigation conducted by the Dyatkovo Town prosecutor's office between 1 and 4 December 2006, and in the Government's view the investigation had been comprehensive. The applicant's injuries had been "caused as a result of his unlawful actions". The Prosecutor General's office had conceded that officers S. and P. had not overstepped the boundaries of their professional responsibilities in applying force against the applicant.

C. Conviction

33. On 29 May 2003 the Dyatkovo Town Court found the applicant guilty of robbery and assault and sentenced him to eight years and three months' imprisonment. On 11 July 2003 the Bryansk Regional Court, on appeal, reduced the sentence by one year.

II. RELEVANT DOMESTIC LAW

A. Investigation of criminal offences

34. The Code of Criminal Procedure of the Russian Federation (in force since 1 July 2002, "the CCrP") establishes that a criminal investigation can be initiated by an investigator or a prosecutor on a complaint by an individual or on the investigative authorities' own initiative, where there are reasons to believe that a crime has been committed (Articles 146 and 147). A prosecutor is responsible for overall supervision of the investigation (Article 37). He can order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. If there are no grounds to initiate a criminal investigation, the prosecutor or investigator issues a reasoned decision to that effect which has to be notified to the interested party. The decision is amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction within a procedure established by Article 125 of the CCrP (Article 148). Article 125 of the CCrP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

B. Use of force and special measures in detention facilities

1. *Custody Act (no. 103-FZ of 15 July 1995) (Федеральный закон «О содержании под стражей подозреваемых и обвиняемых в совершении преступлений»)*

35. Rubber truncheons may be used in the following cases:

- to repel an attack on a staff member of a detention facility or on other persons;
- to repress mass disorder or put an end to collective violations of the detention rules and regulations;
- to put an end to a refusal to comply with lawful orders of facility administration and warders;
- to release hostages and liberate buildings, rooms and vehicles taken over by a detainee;
- to prevent an escape;
- to prevent a detainee from hurting himself (section 45).

2. *Police Act (no. 1026-1 of 18 April 1991) (Закон РФ «О милиции»)*

36. Police officers are only entitled to use physical force, special means and firearms in the cases and within the procedure established by the Police Act; staff members of police facilities designated for temporary detention of suspects and accused persons may only use such force and special means in cases and within the procedure established by the Custody Act (section 12).

37. Section 12 of the Police Act provides that a police officer resorting to physical force, special means or a firearm, should warn an individual that force/special means/firearms are to be used against him. In cases when a delay in the use of force, special means or firearms may endanger the life and health of civilians or police officers or cause other serious damage such a warning is not necessary. Police officers should ensure that damage caused by the use of force/special means/firearms is minimal and corresponds to the character and extent of the danger that an unlawful conduct and a perpetrator pose and the resistance that the perpetrator offers. Police officers should also ensure that individuals who have been injured as a result of the use of force/special means/firearms receive medical assistance.

38. By virtue of section 13 of the Police Act police officers may use physical force, including combat methods, to prevent criminal and administrative offences, to arrest individuals who have committed such offences, to overcome resistance to lawful orders, or if non-violent methods do not ensure compliance with responsibilities entrusted to the police.

39. Sections 14 and 15 of the Police Act lay down an exhaustive list of cases when special means, including rubber truncheons and handcuffs, and firearms may be used. In particular, rubber truncheons may be used to repel

an attack on civilians or police officers, to overcome resistance offered to a police officer and to repress mass disorder and put an end to collective actions disrupting work of transport, means of communication and legal entities. Handcuffs may only be used to overcome resistance offered to a police officer, to arrest an individual caught when he is committing a criminal offence against life, health or property and if he is attempting to escape, and to bring arrestees to police stations, to transport and protect them if their behaviour allows the conclusion that they are liable to escape, cause damage to themselves or other individuals or offer resistance to police officers.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ALLEGED ILL-TREATMENT AFTER ARREST

40. The applicant complained that after his arrest he had been subjected to beatings by the police in violation of Article 3 of the Convention and that the authorities had not carried out a prompt and effective investigation into that incident. The Court will examine this complaint from the standpoint of the State's obligations under 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

41. The Government, citing the Prosecutor General's office, confirmed that on 14 December 2002, after the applicant had been brought to the Dyatkovo District police station, police officer P. had hit him several times on the back with a rubber truncheon. They stressed, however, that the force used was no more than the adequate and proportionate response to the applicant's unruly and unlawful behaviour, in particular on account of his kicking the cell door, using obscene language and refusing to comply with lawful orders of the police officers. The Government submitted that police officer P. had been forced to use the rubber truncheon again when the applicant had been transferred to another cell and had started spitting on the communication board. They further noted that the applicant had been handcuffed to a metal bar in the cell and had been left in that position for a very limited period of time until he had calmed down.

42. The Government observed that when resorting to physical force the police officers had had no intention of causing the applicant physical or

moral suffering or of degrading his human dignity. The officers had merely performed their duties. Their actions had been in conformity with the requirements of the Police Act, in particular sections 13 and 14. At the same time, the Government reminded the Court that the applicant had acted violently and aggressively and had provoked the police officers.

43. The applicant maintained his complaints, disputing the Government's version of events. In particular, invoking medical evidence, he argued that the quantity and position of the injuries confirmed that he had been hit more than once.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

(i) As to the scope of Article 3

45. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports* 1998-VIII).

46. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are

compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudla v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

47. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-... (extracts); *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

(ii) As to the establishment of facts

48. 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 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 *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

49. 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 *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, § 32).

(b) Application of the above principles in the present case

(i) Establishment of facts and assessment of the severity of ill-treatment

50. Having examined the parties' submissions and all the material presented by them, the Court finds it established that on 14 December 2002 the applicant was arrested and taken to the Dyatkovskiy District police station. On the following day he was admitted to the temporary detention facility in the police station. On admission to the facility an officer on duty examined the applicant and recorded numerous injuries on his chest and back, bruises on the left and right buttocks, and injuries on the forehead, the bridge of the nose and left cheek. On 16 December 2002 an emergency doctor, called to attend to the applicant, also recorded injuries to his jaw and chest and recommended an examination by a traumatologist. Four days later, as a result of yet another medical examination, a report was issued by the medical division of the Dytakovskiy District Police Department, recording a hypodermic injury on the left side of the applicant's chest and confirming that that injury originated from a blow administered by a rubber truncheon (see paragraphs 13 and 15 above).

51. In this respect the Court observes that it was not disputed by the parties that the applicant's injuries as shown by medical reports were sustained at the Dyatkovskiy District police station. The Court attributes particular weight to the fact that neither the applicant nor the Government argued that the injuries had been caused during the arrest or that they could have been self-inflicted by the applicant as he allegedly kicked and hurled himself against the door and walls of the cells during his detention in the Dyatkovskiy District police station. It was likewise uncontested that the police officers had used rubber truncheons on the applicant. It has therefore been established “beyond reasonable doubt” that the applicant was hit a number of times with rubber truncheons by the police officers.

52. Against this background, given the serious nature of the applicant's injuries, the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive (see *Zelilof v. Greece*, no. 17060/03, § 47, 24 May 2007).

53. The Court observes that the exact circumstances and the intensity of the use of force against the applicant were disputed by the parties and were subject to somewhat conflicting evaluations by the prosecution and judicial authorities. The applicant argued that the police officers had initiated the beatings immediately after his placement in a cell in the police station. He gave a detailed account of the events which had allegedly occurred on 14 December 2002, describing the chain of the events, indicating the time, location and duration of the beatings, naming the alleged perpetrators and showing the methods used by them. The Government disputed the applicant's description, insisting that the use of force had been strictly proportionate and necessary as the applicant had kicked the cell door, had

used obscene language and had spat on the communication board. They submitted that the acts of violence against the applicant had been committed by the police officers in the performance of their duties.

54. The Court notes the Government's argument that force had been used lawfully in response to the applicant's unruly conduct. The Court is mindful of the potential for violence that exists in penitentiary institutions and of the fact that disobedience by detainees may quickly degenerate into a riot (see *Gömi and Others v. Turkey*, no. 35962/97, § 77, 21 December 2006). The Court accepts that the use of force may be necessary on occasion to ensure prison security, to maintain order or prevent crime in penitentiary facilities. Nevertheless, as noted above, such force may be used only if indispensible and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007, with further references). Recourse to physical force which has not been made strictly necessary by the detainee's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.

55. In the present case, however, even proceeding on the assumption that the Government's version of events is the more accurate one, the Court is not convinced that the use of rubber truncheons against the applicant either had a legal basis or was necessitated in the circumstances of the case. In particular, the Court reiterates the Government's argument that the force was used in compliance with the requirements of the Police Act. The Court observes that the Police Act and Custody Act prescribe that the police may resort to force only in an exhaustive number of situations and only when non-violent methods have not ensured the desired result (see paragraphs 36 to 39). While noting the Government's argument that the police officers resorted to special means to put an end to the applicant's refusal to comply with their orders, the Court is mindful of the fact that there is no indication in the Government's submissions that the police officers tried to resort to non-violent methods before using truncheons against the applicant. In any event, the manner in which the domestic law regulates the use of force against detainees does not absolve Russia from its responsibilities under the Convention (see, *mutatis mutandis*, *Ribitsch*, cited above, § 34, and *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 64, 12 April 2007). The Court must scrutinise the alleged breach of Article 3 with heightened vigilance, irrespective of the applicant's conduct (see *Ribitsch*, cited above, § 32).

56. The Court observes that, as it follows from the Government's submissions, after being placed in a cell for administrative arrestees the applicant, using obscene language, started kicking and pushing the door. The police officers ordered the applicant to stop his unruly behaviour, but the applicant refused to comply. The Court accepts that in these circumstances the officers may have needed to resort to physical force to prevent further disruptions and calm the applicant down. However, the Court is not convinced that hitting a detainee with a truncheon was

conducive to the desired result. In this connection, the Court does not lose sight of the fact that the applicant's handcuffing, of which he did not complain, was, as is apparent from the Government's submissions, more effective in facilitating the police officers' task of restoring order. The Court reiterates that the use of handcuffs or other instruments of restraint does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the danger of the person's absconding or causing injury or damage (see *Raninen v. Finland*, 16 December 1997, *Reports* 1997-VIII, § 56, and *Mathew v. the Netherlands*, no. 24919/03, § 180, ECHR 2005). However, the manner in which the applicant is subjected to the measure in issue should not go beyond the threshold of a minimum level of severity envisaged by the Court's case-law under Article 3 of the Convention (see, *mutatis mutandis*, *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 94, ECHR 2005). Turning to the facts of the present case, the Court observes that the applicant did not contend that the handcuffing had affected him physically. Nor has he alleged that the handcuffing was aimed at debasing or humiliating him. Given the nature of the applicant's complaints and assessing the Government's description of the events which allegedly occurred in the police station on 14 December 2002, the Court finds it striking that, in the circumstances, as described by the Government, the police officers used truncheons against the applicant without examining the possibility of using other less intrusive means to obtain the desired result. The Court thus rejects the Government's argument that the use of truncheons was inevitable or even beneficial.

57. Furthermore, the Court notes that the applicant was not beaten up in the course of a random operation which might have given rise to unexpected developments to which the police officers would have been obliged to react without prior preparation. The Government did not deny that the police officers serving in the duty unit of the police station, including those involved in the incident of 14 December 2002, had received the necessary training and were well-equipped to deal with the type of behaviour allegedly demonstrated by the applicant. It is also evident from the parties' submission that a group of officers were involved and that they clearly outnumbered the applicant, who was alone in the cell at that time.

58. In addition, the Court takes into account the Government's submission regarding the police officers' reaction to the applicant's alleged behaviour during his transfer to another cell. It finds it disturbing that another series of blows was administered in response to the applicant's spitting on the communication board when he was taken out of the cell. In the Court's view, in that situation truncheon blows were merely a form of reprisal or punishment.

59. As to the seriousness of the acts of ill-treatment, the question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI).

60. As noted above, the use of rubber truncheons on the applicant was, at least partly, retaliatory in nature. The Court does not discern any necessity which might have prompted the use of rubber truncheons against the applicant. On the contrary, the actions by the police officers were disproportionate to the applicant's alleged misconduct and inconsistent with the goals they sought to achieve. The purpose of that treatment was to punish the applicant and drive him into submission. In addition, the Court finds that the use of rubber truncheons, to which the applicant was subjected, must have caused him mental and physical suffering, even though it did not apparently result in any long-term damage to his health (see paragraph 29 above).

61. Accordingly, having regard to the nature and extent of the applicant's injuries, the Court concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected in the police station on 14 December 2002 and that there has thus been a violation of that provision.

(c) Alleged inadequacy of the investigation

62. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this

standard (see, among many authorities, *Mikheyev*, cited above, § 107 et seq., and *Assenov and Others v. Bulgaria*, 28 October 1998, *Reports* 1998-VIII, § 102 et seq.).

63. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 for the ill-treatment of the applicant (see paragraph 61 above). The applicant's complaint in this regard is therefore "arguable". The authorities thus had an obligation to carry out an effective investigation into the circumstances in which the applicant sustained his injuries (see *Krastanov v. Bulgaria*, no. 50222/99, § 58, 30 September 2004).

64. In this connection, the Court notes that the prosecution authorities who were made aware of the applicant's beating carried out a preliminary investigation which did not result in criminal proceedings against the perpetrators of the beating. The applicant's ill-treatment complaints were also included in the examination of the case by the domestic courts at two levels of jurisdiction. In the Court's opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there had been one, but whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was "effective".

65. The Court reiterates that the applicant was entirely reliant on the prosecutor to assemble the evidence necessary to corroborate his complaint. The prosecutor had the legal powers to interview the police officers, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for the purpose of establishing the truth of the applicant's account. His role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offences but also to the pursuit by the applicant of other remedies to redress the harm he had suffered (see paragraph 34 above).

66. The Court will therefore first assess the promptness of the prosecutor's investigation, viewed as a gauge of the authorities' determination to prosecute those responsible for the applicant's ill-treatment (see *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V). In the present case the applicant complained of ill-treatment to the Dyatkovo Town Prosecutor in January 2003 (see paragraph 17 above). It appears that the prosecutor's office opened its investigation immediately after being notified of the alleged beatings.

67. However, with regard to the thoroughness of the investigation, the Court notes some discrepancies capable of undermining its reliability and effectiveness. Firstly, a thorough evaluation was not carried out with respect to the quantity and nature of the applicant's injuries. The Court finds it striking that an examination of the applicant by a forensic expert was ordered for the first time two years after the events under consideration (see paragraph 29 above). The Court further reiterates that proper medical

examinations are an essential safeguard against ill-treatment. The forensic doctor must enjoy formal and *de facto* independence, have been provided with specialised training and have been allocated a mandate which is sufficiently broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). In the instant case, the Court notes that a delay in requesting an expert opinion led, among other things, to inconclusive findings by the forensic medical expert.

68. The Court also considers it extraordinary that in delivering their decisions of 23 January, 14 April and 22 August 2003 the investigating authorities did not make any reference to medical evidence collected during the investigation and merely dismissed the applicant's complaints because there had been no criminal conduct in the police officers' actions (see paragraphs 18, 20 and 22 above). It was not until 24 October 2003 when an investigator of the Dyatkovo Town Prosecutor's office included in his decision statements by an emergency doctor who had examined the applicant on 16 December 2002. However, the investigator confined himself to mere reiteration of the doctor's statements (see paragraph 25 above) and did not attempt to examine the medical evidence before him or to draw conclusions on that basis. Furthermore, the Court finds it particularly striking that despite direct orders from higher-ranking prosecutors to perform an expert medical examination of the applicant (see paragraphs 19 and 21 above), no steps were taken until November 2004. In this connection the Court is concerned that the lack of any "objective" evidence of criminal conduct - which could have been provided by medical or expert reports – was subsequently relied on by the investigator as a ground for his decision not to institute criminal proceedings against the police officers. Furthermore, the Court considers it peculiar that in the absence of any X-rays or scans of the applicant or any medical experts' findings to that effect, the investigating authorities were able to conclude that the applicant had not received any injuries of a traumatic nature, for example a head injury or rib fracture (see paragraph 29 above).

69. Secondly, the Court observes a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authorities. It is apparent from the decision submitted to the Court that the prosecution authorities based their conclusions mainly on the testimonies given by the police officers involved in the incident. Although excerpts from the applicant's testimony were included in the decisions not to institute criminal proceedings, the prosecution authorities did not consider that testimony to be credible, apparently because it reflected a personal opinion and constituted an accusatory tactic by the applicant. The Court finds it necessary to note that the investigating authorities, when assessing the testimonies given by the applicant, deemed them to be subjective. However, the credibility of the police officers' testimonies should also have been questioned, as the prosecution investigation was supposed to establish

whether the officers were liable on the basis of disciplinary or criminal charges (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

70. The Court further observes that it was not until 24 October 2003 that the investigating authorities added to the file statements by witnesses who were not police officers. At the same time the Court does not lose sight of the fact that the witnesses whose statements had been finally taken could not, as such, provide any valuable information in addition to that which had already been in the investigators' possession (medical reports, etc.). While the investigating authorities may not have been provided with the names of individuals who could have seen the applicant at the police station and might have witnessed his alleged beatings, they were expected to take steps on their own initiative to identify possible eyewitnesses. The Court therefore finds that the investigating authorities' failure to look for corroborating evidence and their deferential attitude to the police officers must be considered to be a particularly serious shortcoming in the investigation (see *Aydın v. Turkey*, 25 September 1997, *Reports* 1997-VI, § 106).

71. Furthermore, the Court finds it particularly striking that at least three of the six decisions by the investigators refusing institution of criminal proceedings against the police officers were identically worded and issued within days after the higher-ranking prosecutors had quashed the previous decisions. The Court entertains doubts that in such short periods of time the investigating authorities could have taken any additional steps to establish the true circumstances of the case. The inertia displayed by the authorities in response to the applicant's allegations was inconsistent with their procedural obligation under Article 3 of the Convention. It further appears that the reaction of the investigating authorities to the applicant's ill-treatment complaints was no more than an attempt to find some justification for the police officers' actions. In fact, the Court is of the opinion that the investigating authorities did not make any meaningful attempt to bring to account those responsible for the ill-treatment.

72. Having regard to the above-mentioned failings of the Russian authorities, the Court finds that the investigation into the applicant's allegations of ill-treatment was not thorough, adequate or effective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED ILL-TREATMENT DURING THE ARREST

73. The applicant complained of a violation of Article 3 of the Convention on account of the force used during his arrest and the

authorities' alleged failure to investigate properly his complaint related to that incident. Article 3 of the Convention is cited above.

74. The Government did not comment.

75. The Court observes that it is not required to decide whether or not the applicant's complaints pertaining to the use of force during his arrest disclose an appearance of a violation of Article 3 of the Convention. It reiterates that, according to Article 35 of the Convention, the Court may only deal with the matter within a period of six months from the date on which the final decision was taken. It observes that the applicant's complaint related to the circumstances of his arrest was dismissed by a decision of the deputy Dyatkovo Town Prosecutor on 30 December 2002. The applicant who, as shown by his submissions, had been duly notified of that decision did not challenge it before any domestic authority. Furthermore, there is no indication that the prosecution authorities or domestic courts, during the proceedings related to the applicant's maltreatment at the police station, also examined, on their own initiative, the issue of the use of force against the applicant during his arrest. The Court further observes that the applicant lodged his application with the Court on 2 October 2003, which is more than six months after the decision of 30 December 2002 had been issued.

76. It follows that this complaint was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

77. Lastly, the applicant complained under Articles 5, 6 and 13 of the Convention that the criminal proceedings against him had been unfair as the domestic courts had incorrectly assessed evidence and applied the domestic law. Furthermore, invoking the same Convention provisions, the applicant complained in his observations lodged with the Court on 9 July 2007 that he had been unlawfully arrested and detained, and that the domestic authorities had not served him with certain documents and had committed various procedural violations.

78. However, having regard to all the material in its possession, 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 must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed 250,000 Russian roubles (RUB) in respect of non-pecuniary damage.

81. The Government submitted that the sum claimed was unsubstantiated and excessive.

82. The Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court further considers that the applicant must have suffered pain and distress on account of the ill-treatment inflicted on him. His suffering cannot be sufficiently compensated for by a finding of a violation. In addition, he did not benefit from an adequate and effective investigation into his complaints and the domestic award of compensation did not constitute sufficient redress. Having regard to the claim submitted and to the violation found, the Court awards the applicant 6,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

83. The applicant did not claim any amount for the costs and expenses incurred before the domestic courts or before the Court. Consequently, the Court does not make any award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the ill-treatment of the applicant in the police station after his arrest and the ineffectiveness of the investigation into the incident 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 the inhuman and degrading treatment to which the applicant was subjected on 14 December 2002 in the Dyatkovskiy District police station;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the applicant's complaint about the inhuman and degrading treatment to which he was subjected in the Dyatkovskiy District police station;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;

(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.

Done in English, and notified in writing on 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President