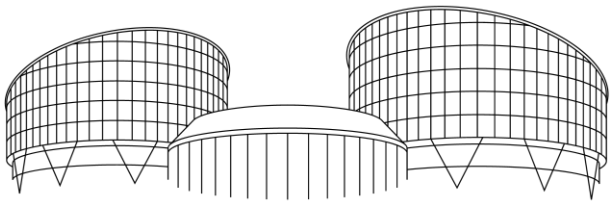

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF NIKIFOROV v. RUSSIA

(Application no. 42837/04)

JUDGMENT

This version was rectified on 2 July 2010
under Rule 81 of the Rules of the Court

STRASBOURG

1 July 2010

FINAL

22/11/2010

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

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

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 10 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 42837/04) 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 Vyacheslav Aleksandrovich Nikiforov ("the applicant"), on 30 September 2004.

2. The applicant, who had been granted legal aid, was represented by Ms Ye. Muravyova (Yefremova) and Mr M. Rachkovskiy from the International Protection Centre, a Moscow-based human-rights NGO. The Russian Government ("the Government") were represented Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been beaten in police custody.

4. On 6 November 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1972 and is now serving a sentence in Kostroma.

A. Alleged ill-treatment of the applicant

7. On 28 December 2003 the applicant was apprehended, allegedly in an inebriated state, on the railway line by Mr S. and Mr L., police officers from Nerekhta station police department (*линейный пост милиции станции Нерехта*). Subsequently he was transported to Nerekhta district police station (*Нерехтский ГРОВД*) and placed in a temporary detention cell.

8. After a while a police officer took the applicant from his cell to the second floor of the police station. The officer pointed to a young man and woman in one of the offices and asked the applicant whether he knew them. The applicant said that he knew the woman. The officer then noticed a blood stain on the sleeve of the applicant's jacket and allegedly accused him of having robbed the man and woman. The applicant was taken to the officer on duty and his jacket was seized as material evidence.

9. The applicant spent the night in the temporary detention wing.

10. On the morning of 29 December 2003 another police officer who did not introduce himself took the applicant from his cell to an office on the third floor of the police station. He told the applicant to write a confession statement which the applicant refused to do. The officer left and then returned with his colleagues. Together they beat the applicant up and later took him back to the cell.

11. Later on that day the applicant was brought before the Justice of the Peace of the 19th Court Circuit who found him guilty of disturbing public order and sentenced him to five days' detention.

12. On 30 December 2003 the applicant was interviewed as a witness in a robbery case. He refused to make any statements and asked for his injuries to be recorded and for an inquiry to be opened into the beatings he had received.

13. On 31 December 2003 an investigator from Nerekhta district police station, Mr S., commissioned a forensic examination of the applicant's injuries with a view to determining their extent and origin.

14. On 19 February 2004 the expert returned the following findings:

> "Mr Nikiforov had a fractured nose, abrasions and a bruise on his face [measuring 7 x 4 cm]. The injuries could have been caused by the impact of a hard blunt object or as a result of falling on such an object... It is impossible to establish when Mr Nikiforov's nose was broken because of his belated request for it to be X-rayed..."

15. On 20 February 2004 an investigator of Nerekhta District Prosecutor's Office, Mr V., refused to institute criminal proceedings into the alleged beatings. He found that since the applicant's jacket had been stained with blood at the moment of his arrival at the police station, the injuries must have been caused at some earlier point in time.

16. On 12 May 2004 the Nerekhta District Prosecutor quashed the investigator's decision and directed him to hear the arresting police officers and to examine the detainees' registration log.

17. On 16 May 2004 the investigator Mr V. again refused to institute criminal proceedings. On the basis of an entry in the registration log, he established that from 8.30 to 9.20 a.m. on 29 December 2003 the applicant had not been in the temporary detention wing but with police officer Mr A. However, since both Mr A. and the arresting police officers had denied using any force on the applicant, there were no indications of a criminal offence.

18. On 25 June 2004 a deputy prosecutor of the Kostroma Region quashed the investigator's decision as incomplete. He ordered, in particular, that the officers on duty be heard on the issue of whether any injuries had been present on the applicant's body at the time of his arrival at the police station.

19. On 4 July 2004 the investigator Mr V. refused to institute criminal proceedings for a third time. His decision was an exact repeat of his previous one, save for the statement of the officer Mr P. in which he had claimed that at the time of the applicant's arrival at the police station he had had no visible injuries.

20. On 5 August 2004 the Nerekhta District Prosecutor quashed the investigator's decision, further to the applicant's complaint, and ordered him to verify the origin of the blood stain on the applicant's jacket.

21. On 28 January 2005 the investigator Mr V. refused to institute criminal proceedings for a fourth time. He added the testimony of the officer Mr K. who could not remember whether the applicant had been held in the police station on 29 or 30 December 2003.

22. On 23 May 2005 the Nerekhta District Prosecutor quashed the investigator's decision, noting that the investigator had not established how the injuries had been caused or obtained statements from the applicant's co-detainees.

23. On 28 May 2005 the investigator Mr V. issued a fifth decision refusing to institute criminal proceedings. On 27 September 2005 the regional prosecutor quashed that decision and ordered an additional inquiry.

24. On 25 November 2005 the investigator Mr Ku. issued a sixth decision refusing to institute criminal proceedings, which was set aside by the Nerekhta District Prosecutor on the same day.

25. On 25 January 2006 the deputy Nerekhta district prosecutor, Ms P., refused to institute criminal proceedings for a seventh time. She noted the

testimony of the investigator Mr S., the applicant's partner Ms R. and the applicant's sister Ms E., who had all seen the applicant's swollen nose and bruised face on the morning of 29 December 2003. The Deputy Prosecutor acknowledged that light injuries had been inflicted on the applicant after his arrival at the police station on 28 December 2003, but declared the prosecution time-barred because the limitation period for the offence of light injuries was set at two years. The applicant complained to a court.

26. On 30 March 2006 the Nerekhta Town Court ruled in the applicant's favour, finding that the inquiry had been incomplete. It also noted that, although it was established that the applicant had been beaten at the police station, the investigation had failed to use all possible means to identify the perpetrators.

27. On 18 May 2006 the Kostroma Regional Court upheld the Town Court's decision on appeal.

28. On 18 March 2007 the investigator Mr L. from the Nerekhta District Prosecutor's Office issued the most recent decision refusing to institute criminal proceedings. He noted that, according to the arrest record and testimonies of many witnesses, the applicant had had no visible injuries at the time he was placed in the temporary detention wing at 11.50 p.m. on 28 December 2003. On 31 December 2003 a forensic expert had examined the applicant and recorded multiple injuries, including bruising to the eye, a broken nose, chipped tooth and abrasions on his face. Officer A. had admitted taking the applicant out of his cell on 29 December 2003 but denied having beaten him. The investigator thus confirmed that the applicant had suffered bodily injuries shortly after he was detained at Nerekhta district police station. However, the prosecution was time-barred because of the two-year limitation period and no evidence implicating officer A. or any other police officers had been obtained.

B. Criminal proceedings against the applicant

29. From 18 March to 2 April 2004 the Nerekhta District Court examined the case against the applicant on the charge of robbery.

30. On 2 April 2004 the District Court convicted the applicant as charged and sentenced him to seven years' imprisonment in a high-security colony. On 5 August 2004 the judgment was upheld on appeal by the Kostroma Regional Court.

II. RELEVANT DOMESTIC LAW

31. A criminal case may be instituted on the basis of a criminal complaint if there is sufficient evidence of elements of a crime (Article 140 of the Code of Criminal Procedure). A criminal case may be opened by a

prosecutor or by an investigator with the prosecutor's consent (Article 146 § 1 of the CCrP).

32. The victim is the individual who has suffered physical harm, emotional distress or pecuniary damage as a consequence of the crime. The victim has, in particular, the right to give statements, to take part in procedural acts, to put questions to experts, and to lodge requests (Article 42 of the CCrP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained under Article 3 of the Convention that he had been beaten by police officers on 29 December 2003 and that his complaint had not been properly investigated. Article 3 provides as follows:

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

A. Admissibility

34. The Government submitted that the applicant had not exhausted domestic remedies because he had not challenged the decisions refusing the institution of criminal proceedings before a court and because he had not voiced his disagreement with the decision of 18 March 2007.

35. The applicant replied that he had lodged appeals against the investigators' decisions with the Nerekhta District Court. He had not lodged an appeal against the most recent decision of 18 March 2007 because that remedy had proved to be ineffective.

36. The Court observes that, following the applicant's complaint against the decision of 25 January 2006 by which the institution of criminal proceedings was refused, the Nerekhta District Court and the Kostroma Regional Court determined that the investigation had been incomplete and insufficiently thorough. Although the inquiry was subsequently reopened, the institution of criminal proceedings was again refused on 18 March 2007 on the same grounds. As the Court has found in a similar case, a requirement to introduce further appeals against successive decisions refusing the institution of criminal proceedings would be over-formalistic and place an excessive burden on the applicant. Furthermore, owing to the time that has elapsed since the events complained of, another reversal of the refusal to open criminal proceedings would not constitute an effective

remedy (see *Samoylov v. Russia*, no. 64398/01, § 45, 2 October 2008). Accordingly, the Government's objection must be dismissed.

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

B. Merits

1. *Compliance with Article 3 as regards the alleged ill-treatment by police*

38. The Court has held on many occasions that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). 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 *Ribitsch*, § 34, and *Salman*, § 100, both cited above).

39. In their initial observations, the Government submitted that it had not been possible to establish the origin and timing of the applicant's injuries with sufficient certainty. The injuries may have occurred as a result of the applicant falling from his own height against hard objects with protruding elements. In such circumstances, the Russian authorities could not be held responsible for the applicant's alleged ill-treatment. In their additional observations, the Government acknowledged that the applicant's injuries had appeared after he was brought to Nerekhta police station. They claimed, however, that during the inquiry the applicant had deliberately misled the authorities by putting forward contradictory stories of the ill-treatment in an attempt to evade liability for the crimes he had committed.

40. The applicant submitted that on the day of his arrest he had had no visible injuries. The absence of any injuries had been noted in the arrest

record and also in the detainee registration log of the temporary detention wing. On the following day his wife and sister had visited him and seen his swollen and bruised face, broken nose and chipped tooth. Those same injuries had been recorded by the forensic expert on 31 December 2003. In the applicant's view, the Government's claim that the injuries had been self-inflicted was absurd and unrealistic. Had he indeed sustained his injuries during his detention, that incident would have been recorded in documents because the police officer on duty would have called an ambulance and drafted an incident report.

41. On the facts, the Court observes that on 28 December 2003 the applicant was taken into custody and placed in a cell in Nerekhta district police station. The domestic authorities (see paragraph 28 above) and the Government in their additional observations acknowledged that the applicant had been arrested in good health and that he had had no injuries.

42. Three days later, on 31 December 2003 a forensic expert had seen the applicant and noted multiple physical injuries, including abrasions and large bruises on his face and a broken nose.

43. According to the applicant, these injuries were a result of the ill-treatment inflicted on him by police officers at Nerekhta district police station who had attempted to extract a confession by force. Mr A. and other officers had repeatedly hit his face and body, and punched and kicked him. The Court notes that his account coincides with the findings of the forensic expert. Moreover, since he remained at the material time in custody within the exclusive control of the Russian police, strong presumptions of fact arise in respect of the injuries that occurred during his detention. However, the Government failed to provide a satisfactory and convincing explanation of how those injuries had been caused. Their version of the self-inflicted nature of the injuries is not supported by any evidence and does not appear plausible.

44. Having regard to the applicant's consistent and detailed allegations, corroborated by the medical report, and in view of the absence of any other plausible explanation as to the origin of the injuries found on the applicant by the forensic examination, the Court accepts that the applicant was subjected to ill-treatment by police.

45. As to the seriousness of the acts of ill-treatment, the Court reiterates that in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (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 of Judgments and Decisions* 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)).

46. In the instant case the Court finds that the existence of physical pain or suffering is attested by the medical report and the applicant's statements regarding his ill-treatment in the police station. Although his injuries were classified as "light injuries" in the domestic proceedings, the Court considers that his broken nose and multiple bruises and abrasions attest to the severity of the ill-treatment to which he was subjected. It is also relevant for the assessment of the seriousness of those acts that the pain and suffering were inflicted on him intentionally, with the view to extracting from him a confession to having committed the offence of which he was suspected. In these circumstances, the Court concludes that, taken as a whole and having regard to its purpose and severity, the ill-treatment at issue amounted to torture within the meaning of Article 3 of the Convention.

47. Accordingly, there has been a violation of Article 3 under its substantive limb.

2. Compliance with Article 3 as regards the effectiveness of the investigation

48. 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 requires by implication that there should be an effective official investigation. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The investigation into serious allegations of ill-treatment must be thorough. This 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 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 103 et seq., *Reports of Judgments and Decisions* 1998-VIII). They must take the 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, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov*, cited above, § 102 et seq.). Further, the investigation must be expedient. The Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV). It has

also given consideration to the promptness in opening investigations, delays in taking statements and to the length of time taken for the initial inquiry (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

49. The Government submitted that the investigation had been sufficiently thorough. The investigators had obtained statements from many witnesses, including the police officers, the forensic expert, the supervising prosecutor, the applicant himself, the applicant's family members and co-detainees, and examined the detention records and registration logs from Nerekhta district police station. The inquiry had been completed within the time-limits established by Russian law. However, no criminal case had been instituted because there had been insufficient evidence of the police officers' involvement in the alleged beatings.

50. The applicant pointed out that he had lodged a criminal complaint on 30 December 2003. However, the medical examination had not been completed until two months later, on 19 February 2004. The criminal case had not been instituted and a confrontation between him and the police officers had not been arranged. In his view, the inquiry had been too long and ineffective.

51. The Court considers that medical evidence of damage to the applicant's health, together with his allegations of having been beaten by the police, amounted to an "arguable claim" of ill-treatment. Accordingly, the authorities had an obligation to carry out an effective investigation into the circumstances of the alleged ill-treatment.

52. The forensic examination revealed signs on the applicant's face of having been beaten. The presence of such injuries was indicative of a criminal assault occasioning actual bodily harm or at least the criminal offence of battery. Under Russian law, the applicant's criminal complaint, supported by that information on the elements of a criminal offence, was sufficient grounds for opening a criminal case (see paragraph 31 above). However, a criminal case has never been opened and the institution of criminal proceedings was refused on no fewer than seven occasions. In the absence of a criminal case the applicant could not be granted the procedural status of victim, which restricted his participation in the investigation and prevented him from exercising the rights attached to that procedural status, including the right to lodge applications or the right to put questions to the medical expert (see paragraph 32 above). It cannot therefore be said that the applicant's right to participate effectively in the investigation was secured (compare *Denis Vasilyev v. Russia*, no. 32704/04, § 126, 17 December 2009).

53. The Court further observes that the manner in which the inquiry was conducted reveals the investigative authorities' determination to dispose of the matter in a hasty and perfunctory fashion (compare *Denis Vasilyev*, cited above, § 155). The inquiry was passed between authorities and investigators who routinely attempted to discontinue the proceedings on various grounds.

Over a period of three years, seven decisions refusing the institution of criminal proceedings were given, all of which – save for the last one – were set aside by supervising prosecutors or courts because the inquiry that had been carried out until then had been incomplete or deficient. The Court notes that the most fundamental investigative measures, such as inspecting the scene where the applicant alleged to have been beaten or arranging a confrontation between him and the police officers from Nerekhta district police station, were never carried out. These failures alone, for which no explanation has been provided to the Court, suffice to render the investigation ineffective.

54. The inquiry by the domestic authorities also fell short of the promptness and reasonable expedition requirements. It lasted more than three years and was marred by considerable periods of inactivity, such as that from 5 August 2004 to 28 January 2005 and the even longer period between the Regional Court's decision of 18 May 2006 and the most recent investigator's decision of 18 March 2007. The most serious consequence resulting from the excessive length of the inquiry was that the prosecution of those responsible became time-barred under domestic law.

55. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment. Accordingly, there has also been a violation of Article 3 under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

56. The applicant further complained that his administrative conviction of 29 December 2003 had been founded on forged evidence. The Court observes that more than six months elapsed between the end of the applicant's detention and the introduction of this complaint. It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

57. Lastly, the applicant complained that his trial had not been public, that the prosecutor had intimidated the witnesses and that the trial court did not prevent witnesses from leaving the courtroom after they had made their statements or from talking to each other. It appears, however, that the trial was held in open court where the witnesses gave testimony without any apparent pressure being put on them. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

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

60. The Government submitted that the amount claimed was excessive in the light of the Court's case-law in similar cases.

61. The Court considers that the applicant must have suffered physical pain, anxiety and frustration because of the ill-treatment inflicted on him at Nerekhta district police station and the ineffective investigation into his complaints. It considers, however, the applicant's claim excessive. Making its assessment on an equitable basis and having regard in particular to the extent of the applicant's injuries, it awards the applicant EUR 30,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

62. The applicant also claimed 2,720 Russian roubles (RUR) for postal expenses.

63. The Government pointed out that the receipts submitted by the applicant were unreadable.

64. 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, the sum of EUR 850 has already been paid to the applicant by way of legal aid. In such circumstances, the Court does not consider it necessary to make an award under this head.

C. Default interest

65. 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 alleged ill-treatment and effectiveness of the ensuing investigation admissible and the remainder of the application inadmissible;

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

3. *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 30,000 (thirty 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 on 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;

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

Done in English, and notified in writing on 1 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge G. Malinverni, joined by Judges C. Rozakis and S.E. Jebens, is annexed to this judgment.[1]

C.L.R.
S.N.

[1] Rectification: the words “joined by Judges C. Rozakis and S.E. Jebens” were added on 2 July 2010.

CONCURRING OPINION OF JUDGE MALINVERNI, JOINED BY JUDGES ROZAKIS AND JEBENS[1]

1. I voted in favour of finding that there had been a violation of Article 3. However, I wish to distance myself from the majority's conclusion that the ill-treatment suffered by the applicant should be described as torture (see paragraph 46 of the judgment).

2. While I am aware that the distinction between degrading treatment, inhuman treatment and torture is not always easy to establish, I consider that, to avoid trivialising the term, findings of torture should be reserved for the most serious violations of Article 3.

3. Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by or at the instigation of a public official for a specified purpose (for example, a confession, punishment or intimidation). This definition lays down the three constituent elements of torture: intensity of suffering, deliberate intention and specific aim.

4. The Court has elaborated on the three concepts referred to in Article 3 by focusing chiefly on the intensity of the suffering inflicted on the victims, so that a distinction can be made between the types of treatment falling within the scope of that Article. According to its case-law, the category of torture should be reserved for "deliberate inhuman treatment causing very serious and cruel suffering", to which it attaches "a special stigma" (see Selmouni v. France [GC], no. 25803/94, § 36, ECHR 1999-V).

5. The criteria it uses in its assessment of ill-treatment also enable the Court to classify instances of such treatment in concrete terms. Its assessment is based on "all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc." (ibid., § 100).

6. Admittedly, in recent years the concept of "torture" has been interpreted in an evolutive manner and acts previously classified as inhuman and degrading treatment are now in some cases described as torture (see Selmouni, cited above, §§ 101 and 105; Dikme v. Turkey, no. 20869/92, ECHR 2000-VIII; and İlhan v. Turkey [GC], no. 22277/93, ECHR 2000-VII).

7. In the present case, on 31 December 2003, a forensic expert had examined the applicant and recorded multiple injuries, including bruises to the eye, a broken nose, a chipped tooth, and abrasions on the face (paragraphs 14, 28 and 40).

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[1] Rectification: the words "joined by Judges Rozakis and Jebens" were added on 2 July 2010.

8. Admittedly, the blows received by the applicant were violent, and not necessary. I am not persuaded, however, that the present case involved gratuitous and premeditated violence, contrary to the position the Court held in other cases, such as Dedovskiy v. Russia (no. 7178/03, §§ 81-85, 15 May 2008), where the Court found that acts of torture had been committed since blows had been administered to the prisoners according to a predefined, calculated plan by a special-purpose squad, and where the use of rubber truncheons was retaliatory in nature.

9. Nor can the ill-treatment complained of by the applicant be compared to the treatment ("Palestinian hanging") suffered, for example, by Mr Aksoy (see Aksoy v. Turkey, 18 December 1996, Reports of Judgments and Decisions 1996-VI), which the Court found could only have been deliberately inflicted, since a certain amount of preparation and exertion would have been required to carry it out, and which led to a paralysis of both arms; or to that suffered by Mr Selmouni (see Selmouni, cited above), who was left with marks over almost all of his body after enduring repeated and sustained assaults over a number of days of questioning.

10. In conclusion, without wishing in any way to downplay the acts of violence for which the police were responsible in the present case, I consider that such acts should be described as inhuman treatment and not torture.

11. Once again, I am emphasising this point because I believe that, if it is not to be trivialised, the term "torture" must be reserved for the most serious instances of ill-treatment.