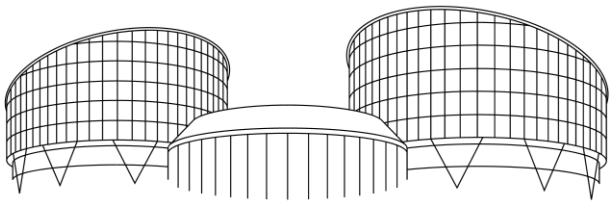

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FORMER FIRST SECTION

CASE OF NIKOLAY FEDOROV v. RUSSIA

(Application no. 10393/04)

JUDGMENT

STRASBOURG

5 April 2011

FINAL

05/07/2011

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

In the case of Nikolay Fedorov v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 15 March 2011,

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

PROCEDURE

1. The case originated in an application (no. 10393/04) 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 national of Belarus, Mr Nikolay Nikolayevich Fedorov ("the applicant"), on 30 January 2004.

2. The applicant, who had been granted legal aid, was represented by Ms M. Samorodkina, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk, the then Representative of the Russian Federation at the European Court of Human Rights.

3. On 21 February 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 § 1).

4. 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

5. The applicant was born in 1973 and is detained in Tver remand centre no. 69/1.

6. In April 2003 he was taken into custody on suspicion of armed robbery. He was detained in Smolensk remand centre no. 67/1. It appears that the medical record indicated that the applicant had had a brain contusion earlier in the same year.

A. Alleged ill-treatment on 20 June 2003

7. At 4 p.m. on 20 June 2003 two police officers from the Rudnyanskiy district police station (Rudnya, Smolensk Region) came to the remand centre to take the applicant and his co-defendant Mr P. to the temporary detention centre of the Rudnyanskiy police station, where they were to await the court hearing scheduled for 23 June 2003. According to the register of the temporary detention centre, the applicant had no visible injuries on 20 June 2003.

8. On arrival at the temporary detention centre officer Sh. told the applicant to go to a cell located across the corridor from the cell where Mr P. had been placed. Apparently, this was intended to prevent any communication between P. and the applicant.

9. The applicant refused to comply with Sh.'s order because from his previous stay at the detention centre he knew that that cell was only fit for short-term detention. There was no bed or mattress in the cell but only a wooden board.

1. The applicant's version of the subsequent events

10. Officer Sh. then brought in a very tall man in plain clothes. The officers addressed that man as “Dima”. The applicant unsuccessfully tried to explain to “Dima” why he did not want to be kept in the cell in question. Officer Sh. went out but immediately returned with a rubber truncheon and accompanied by three officers. He hit the applicant on his left leg with the truncheon and the applicant collapsed on the floor. Another officer began twisting the applicant's arms; another officer squeezed his scrotum; a third officer strangled him and pulled his head backwards. Sh. and “Dima” both punched him in the face. More blows then followed but the applicant closed his eyes and could not see who dealt them.

11. The beating lasted for a couple of minutes. The applicant cried out in pain. After they had stopped, another officer in uniform told him to go to the cell. The officer was blond and dumpy and had a golden finger-ring with a black stone. He reeked of alcohol. The applicant told him that he had acted lawlessly because he was drunk. The officer replied that his shift was over and he could allow himself to drink a bit after a hard working day. Then “Dima” intervened and told the officer not to make excuses to the applicant.

12. A few minutes later a short man entered. The applicant knew that the man worked in the investigations division of the police station. He asked the applicant to explain what had happened. The applicant told him about his

refusal to go to a cell without a bed and about the beatings. The man spoke to Sh. and the applicant was put in another cell.

2. The Government's version of the events

13. The Government relied on the findings made in the domestic proceedings (see below). In particular they referred to the statements made to their superiors by officers Sh., S., Pon. and Pod. in relation to the use of force against the applicant. Officers Sh. and S. reported that the applicant had grabbed at the officers' uniforms, used coarse language, shouted and threatened to self-inflict injuries; after his failure to comply with verbal orders physical force, a truncheon and handcuffing had been applied. Officers Pon. and Pod. made similar reports affirming that the applicant had shouted, used coarse language, threatened them with violence and grabbed at the officers' uniforms. They also stated that the applicant had hit his face against the floor in order to self-inflict injuries.

3. The investigation into the allegation of ill-treatment

14. On the night of 20 and 21 June 2003 the applicant felt ill and an ambulance was called. According to the medical record, the applicant complained about pain in the [unreadable] area, headache and dizziness. He was diagnosed with “vegetovascular dystonia” and given some medicine.

15. In the morning of 21 June 2003 the applicant made a complaint about the beatings to the head of the police station and the acting district prosecutor Z. The latter recorded the applicant's deposition (see paragraphs 10 - 12 above) and ordered an inquiry to be carried out by an investigator at the Rudnyanskiy district prosecutor's office.

16. On the same day, the investigator sought an expert examination of the applicant. The applicant was examined by medical expert G. in the temporary detention centre. It is stated, however, in the written report that the examination had been carried out in a civil hospital. The expert concluded that the applicant had two bruises on the back side of his left thigh (measuring 4.8 x 6.5 cm and 3 x 4.5 cm), a bruise on the right eyelid, bruises on the lips (1 x 2.5 cm, 2 x 2 cm and 2 x 3 cm); and a scratch on a finger on the left hand. The expert concluded that the injuries could have been caused by a hard blunt object or by hitting such an object approximately a day ago. He further stated that it was up to the investigating authority to determine the circumstances in which the injuries had been sustained. Later on the same day, a formal order was issued (see paragraph 24 below) asking G. to identify the injuries (their nature, origin and location), their timing and severity, as well as whether they could have been sustained by a fall to the ground from his own height or have been self-inflicted by a deliberate striking against metal bars or the floor.

17. At 9.30 a.m. on 22 June 2003 the applicant felt ill again, complaining of an acute headache, and vomited. He was examined by a medical assistant (or an emergency squad). According to the medical record (entry without number) the applicant suffered from arterial hypertension and a vascular crisis.

18. On 23 June 2003 the applicant and P. were brought to the hearing before the Rudnyanskiy District Court. The applicant had prepared a complaint about the ill-treatment and handed it over to the judge at the preparatory stage of the hearing. He then complained about an acute headache and was sent to the local hospital for examination. The doctors diagnosed cerebral concussion and issued a certificate stating that the applicant was unfit to take part in the hearing.

19. On 24 June 2003 the applicant was transferred back to the remand centre in Smolensk. He was examined by a medical assistant; a senior officer of the remand centre and Sh. were also present. The medical assistant recorded the presence of blue bruises under the applicant's eyes.

20. In addition to the investigative measures already taken (paragraphs 15-16 above), the investigator interviewed the officers. In line with their written reports (see paragraph 13 above), they claimed that the applicant had cursed obscenely at them, pulled at their clothing and shouted. They had all put the applicant on the floor and bent his arm behind his back. Sh. had taken out a truncheon and delivered a "relaxing blow" to the applicant's leg. The officers stated that he had threatened that he would accuse the officers of ill-treatment; the applicant had tried to hurt himself, banging his head against the floor and metal bars.

21. At the closure of the inquiry, by a decision of 24 June 2003 the investigator of the Rudnyanskiy district prosecutor's office refused to institute criminal proceedings against the officers. Having summarised their above statements and the findings of the expert examination, the investigator concluded as follows:

> "The medical examination revealed bruises and abrasions on the applicant's face that could have been caused by contact with hard blunt objects. The accessibility of those facial areas and other body parts to [the applicant's] own hands does not exclude the possibility that the injuries could have been [self-inflicted]."

Lastly, the investigator quoted the provisions of the domestic law on the application of physical force to detainees (see paragraph 38 below).

22. On 25 June 2003 the applicant complained of a headache and dizziness, and was examined by a physician of the remand centre. According to the preliminary findings of the physician, it was possible that the applicant had a closed craniocerebral injury. On 26 June 2003 the applicant was examined by a neurologist in the prison hospital. She confirmed a closed craniocerebral injury/a brain contusion.

23. The applicant and his lawyer contested the investigator's refusal in court. On 21 August 2003 the Rudnyanskiy District Court of the Smolensk Region granted their complaint, finding as follows:

> "... the decision refusing to institute criminal proceedings was given without adequate inquiry into the applicant's complaint and substantially breached the norms of the Code of Criminal Procedure. The court has established that the inquiry into the applicant's complaints was incomplete. Other individuals who were detained in the temporary detention centre have not been identified or examined. The scene of the events has not been inspected. Contradictions in testimonies – both in those of the police officers, and in that of the applicant – have not been removed. The decision does not indicate under what circumstances the injuries were caused to the applicant. Nor does it state the ground for refusing to institute criminal proceedings..."

Noting certain other procedural defects in the investigator's decision, the District Court declared it unlawful and not justified and sent the case file back to the prosecutor's office.

24. The matter was assigned to an assistant prosecutor. On 22 August 2003 he questioned an on-duty officer who had provided officer Sh. with the help from officers Po. and S. The assistant prosecutor also carried out a "crime scene inspection" and questioned expert G. in relation to his report of 21 June 2003. The expert explained that he had examined the applicant and then received the investigator's order concerning the commissioning of an expert report (see paragraph 16 above). The expert confirmed that on 21 June 2003 he had noted bruises on the applicant's face, left thigh and abrasions on his left wrist. Those injuries may have been caused by hard blunt objects.

25. The assistant prosecutor inferred from the above explanations that the medical expert had corroborated the statements of the police officers, who had legitimately applied physical force to the applicant. On 25 August 2003 the district assistant prosecutor issued a new decision refusing to institute criminal proceedings. It reads as follows:

> "The applicant stated that after he had refused to go to a cell the director of the detention centre hit him on his left leg with the truncheon. The applicant collapsed on the floor and other officers punched him in the face (on his head) and strangled him. He could not see who did what because his head was pulled backwards. All that time he was holding on to metal bars. He was then put on the ground. Someone twisted his arms and handcuffed him. Thereafter, the applicant had a headache and was examined by paramedics.
>
> It follows from the medical report that the applicant had bruises on his face and left thigh, a scratch on the left hand. These injuries do not amount to health damage. The applicant's allegations are refuted by other evidence.
>
> Officers Sh., S., Pon., Pod. and Zh. stated that Sh. had warned the applicant that physical force and constraints could be applied against him if he maintained his refusal to obey the lawful order. Instead, the applicant uttered threats of self-harm, used course language and grabbed the officers' uniforms. Sh. inflicted one relaxing blow to the applicant's thigh. The applicant started to hit himself against the ground

and metal bars. Sh. and Pod., as well the other officers, who had then arrived at the premises, put the applicant on the ground, twisted his arms, handcuffed him and put in a cell. The officers made written reports.

Under the Police Act, their statements should be examined together with all other factual information. The medical expert indicated that a bruise on the left thigh was caused by contact with a blunt object. The other injuries could be inflicted by a blow or contact with a blunt object. Thus, the injuries on the applicant's head and face could be caused in the circumstances described by the officers. In view of the conclusive and coherent nature of their statements, it should be concluded that the officers' actions were lawful."

26. On 10 September 2003 the Rudnyanskiy district prosecutor reviewed that decision and confirmed that the use of force against the applicant had been lawful and justified in the circumstances of the case. It stated as follows:

"Physical force and constraints were used against the applicant. The legal grounds and limits for their use were respected. The criminal inquiry had been carried out effectively and established the relevant factual and legal matters."

27. The applicant again complained to the court. On 27 November 2003 the Rudnyanskiy District Court rejected his complaint, finding as follows:

"The court has not established any breaches of the Code of Criminal Procedure in the conduct of the inquiry. The inquiry was comprehensive. All witnesses have been examined and their statements analysed in the decision. The lawfulness of the application of physical force to the applicant has been evaluated. The decision contains grounds for refusing to institute criminal proceedings. The grounds are corroborated with specific evidence: testimony by witnesses and written materials. The defects referred to in the District Court's judgment of 21 August 2003 have been removed."

The District Court found that the decision of 25 August 2003 was lawful.

28. Apparently, on 22 December 2003 the applicant submitted his statement of appeal against the judgment of 27 November 2003 to the correspondence unit of remand centre no. 67/1 for dispatch. It was recorded under no. Ф-108 in the outgoing correspondence log. By letter of 15 April 2004, the President of the Rudnyanskiy District Court informed the applicant that no statement of appeal had arrived at the registry of that court and that no appeal against the judgment of 27 November 2003 had been examined by the Smolensk Regional Court. Thus, this judgment was final.

29. While the inquiry had thus been completed in 2003, in 2007 the deputy prosecutor of the Smolensk Region considered that the district assistant prosecutor had not been competent to issue the decision of 25 August 2003, and that he had not taken full account of the available medical evidence, in particular the medical examinations of the applicant on 23-26 June 2003 (see paragraphs 14, 17-19 and 22 above).

30. On 17 May 2007 the Rydnyansky district prosecutor's office issued a new decision not to initiate criminal proceedings. The district prosecutor

relied on a medical report issued on the same day on the basis of an assessment of the case file. Apparently, the medical expert concluded that bruises on the applicant's face and left hip and scratches on the left wrist had been caused one day before the initial examination of the applicant, and that the subsequent indications concerning a possible brain contusion were not "confirmed by clinical data and thus could not be a subject-matter of an expert assessment". With reference to the report, the prosecutor considered that the head injuries could have been caused in the circumstances described by the officers.

31. On 17 December 2007 the deputy regional prosecutor annulled this decision, considering that the applicant should have been warned about criminal liability for false denunciation and that the lower prosecutor should have decided whether it was necessary to prosecute the applicant.

32. On 8 April 2010 an investigator in the Demidovskiy Investigations Unit of the Regional Prosecutor's Office issued a decision not to initiate criminal proceedings against any public official. The investigator considered that the use of force against the applicant had been lawful under the Custody Act (see paragraph 38 below) and did not constitute a criminal offence under Articles 285 or 286 of the Criminal Code concerning abuse or excessive use of power respectively. The investigator held as follows:

> "As was established during the inquiry,...after the applicant had refused to go to cell no. 2, Mr Sh. warned him several times that his refusal to comply with the order could lead to the use of restraint or physical force against him. The applicant did not react to the warning; he threatened to self-inflict injuries, used coarse language against the officers and touched their uniforms... Mr Sh. called more officers to help him and dealt a relaxation blow with a rubber truncheon to the applicant's hip. The applicant then started to intentionally hit his head against the floor and metal bars. Mr Sh. and others held the applicant down on the floor, handcuffed his hands behind his back and put him in the cell. The officers made their reports...The above-mentioned circumstances are confirmed by the medical report of 17 May 2007, which disclosed injuries of a mechanical nature that could have been caused in the circumstances described ...The use of restraint and physical force was lawful and does not disclose elements of offences under Article 285 and 286 of the Criminal Code ..."

B. Criminal proceedings against the applicant

33. The applicant was charged with several counts of armed robbery. As established by the national authorities, in April 2003 on their way from Vitebsk to Moscow the applicant, P. and his girlfriend Sch. stopped to see acquaintances of P.. While Sch. stayed sleeping in the car, the applicant accompanied P. to the acquaintances' house. During a quarrel which had broken out among them, the applicant ordered one of the victims to hand over to him a diamond ring, threatening him with a gun. When leaving the house he also picked up the telephone set.

34. The applicant pleaded that he had been in a different place on the relevant date. He alleged that he had received the ring from Sch. to sell but had then returned it to its owner.

35. During a pre-trial police line-up the victims identified the applicant as their assailant. Sch. stated to the investigator that on his return from the victims' home P. had told her about the quarrel and she had seen a telephone set in the car. She confirmed that P. and the applicant had not had any common purpose in going to the victims' house. Apparently, she confirmed her deposition at a face-to-face confrontation with the applicant. Sch. refused to come to the trial, referring to her residence in Belarus and her state of health.

36. P. stated at the trial that after he had left the house the applicant had remained inside. The applicant's girlfriend stated that she knew that the applicant had accompanied P. on the relevant date and that the applicant had later on asked her to return the ring to the victim. The trial court also heard witnesses on the applicant's behalf and dismissed their testimonies as contradictory and unreliable. With reference to Sch.'s pre-trial statement, the court rejected the prosecution's submission that the defendants had acted in concert to commit robbery.

37. On 16 October 2003 the Rudnyanskiy District Court of the Smolensk Region convicted the applicant as charged and sentenced him to seven years' imprisonment. On 16 December 2003 the Smolensk Regional Court upheld the judgment in substance.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Use of force against detainees

38. Under section 44 of the Custody Act, physical force may be used against a suspect or an accused in a detention facility in order to put an end to an offence or his resistance to lawful orders issued by public officials, if other means prove to be inefficient. Rubber truncheons may be used to stop a detainee assaulting a public official, to put an end to mass disorder or breaches of prison rules committed in a group, to put an end to unlawful actions on the part of the detainee if he resists a lawful order, or to prevent him from causing damage to others (section 45). Handcuffs may be used to put an end to unlawful actions on the part of the detainee if he resists a lawful order, or to prevent him from causing damage to himself or others (ibid).

B. Code of Criminal Procedure (CCrP)

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

40. In its Resolution of 10 February 2009 the Plenary Supreme Court of Russia considered that it was incumbent on the judges to verify before processing an Article 125 complaint whether the preliminary investigation has been completed in the main case (point 9). If the main case has already been set for trial or has been completed, the complaint should not be examined unless it was brought by a person who was not a party to the main case or if the complaint was not amenable to judicial review under Article 125 at the pre-trial stage of the proceedings. In all other situations, the complaint under Article 125 should be left without examination and the complainant be informed that he or she can raise the matter before the trial or/and appeal courts in the main case.

41. In the same vein, according to the interpretation given by the Constitutional Court, a complaint under Article 125 cannot be brought or pursued after the criminal case to which the complaint is connected has been submitted for trial. However, when it is established that a party to the proceedings (including a judge or a witness) has committed a criminal offence, thus seriously affecting the fairness of the proceedings, the Code exceptionally allows for a separate investigation of the relevant circumstances leading to a reopening of the case (see Decision no. 412-O-O of 17 November 2009; see also Ruling no. 13-П of 29 April 1998 and Ruling no. 5-П of 23 March 1999 concerning respectively Articles 113 and 218 of the RSFSR Code of Criminal Procedure before 1 July 2002).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

42. The applicant complained under Articles 3 and 13 of the Convention that he had been ill-treated on 20 June 2003 and that the investigation into his complaint had not been effective. The Court considers that the applicant's complaint should be examined under the substantive and

procedural aspects of Article 3 of the Convention only. This provision reads as follows:

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

A. Admissibility

43. The Government argued that the applicant had failed to appeal against the judgment of 27 November 2003 upholding the refusal, dated 25 August 2003, to prosecute the police officers. Besides, the applicant should have complained to a prosecutor against an investigator's decision or to a higher prosecutor in relation to a decision taken by a lower prosecutor.

44. The applicant submitted that his appeal had not been processed by the staff of the remand centre.

45. The Court reiterates that the purpose of Article 35 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see *Civet v. France* [GC], no. 29340/95, § 41, ECHR 1999-VI). Whereas Article 35 § 1 of the Convention must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of effective remedies designed to challenge decisions already given. It normally requires also that the complaints intended to be brought subsequently before the Court should have been made to those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among other authorities, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200).

46. The Court has doubts as to whether it was still open to the applicant to obtain a ruling on appeal against the judgment of 27 November 2003 after the completion of his own criminal proceedings in December 2003 (see the relevant domestic law and practice cited in paragraphs 40-41 above). In any event, the impugned refusal was annulled in 2007, and the applicant had already sought judicial review of the previous refusal to prosecute and was successful. He thus afforded the national authorities an adequate opportunity to carry out an inquiry and to establish the relevant facts. Therefore, in the circumstances of the case the Court cannot dismiss the complaint for non-exhaustion of domestic remedies. Thus, the Government's objection is rejected.

47. As regards hierarchical appeals, the Court has previously examined and dismissed a similar argument on a number of occasions (see, among others, *Belevitskiy v. Russia*, no. 72967/01, §§ 59 and 60, 1 March 2007). It finds no reason to reach a different conclusion in the present case.

48. The Court concludes 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. The parties' submissions

49. The Government argued that the applicant had failed to comply with a lawful order. Despite several warnings about the potential use of force against him, he persisted and tried to self-inflict injuries. The officers had been justified in using physical force against him, as well as a truncheon and handcuffs. The applicant's complaint had given rise to a prompt and thorough inquiry on the part of the national authorities in 2003. The facts of the case had not provided sufficient grounds for bringing criminal proceedings on account of any abuse of power or excessive use of power by a public official. Thus, the national decisions not to institute criminal proceedings had been lawful.

50. The applicant submitted that he had had no injuries during his stay in the remand centre before 20 June 2003. He alleged that he had been beaten by the officers in the temporary detention centre and that the force used against him had not been legitimate. His refusal to obey the order had not been capricious, since the cell which he had been assigned had had no proper facilities. The Government had failed to prove that the use of force had been absolutely necessary in response to his alleged use of coarse, insulting or threatening language or touching of the officers' uniforms. It was uncontested that he had sustained injuries on that date. The Government had failed to specify which injuries had been caused by the officers and which had been self-inflicted.

51. The applicant also contended that the investigation into his complaint had been ineffective in that the authorities had failed to comply with the court instructions of 21 August 2003. In particular, they should have carried out measures aimed at interviewing other persons in the detention centre; dispelling the contradictions between the applicant's and/or officers' statements, for instance by setting up a face-to-face confrontation between them or by organising a line-up to identify the officers; specifying the context in which the injuries had been inflicted and providing reasons for the refusals to prosecute the officers. The expert report of 21 June 2003 did not contain any indication of the methods used and omitted to identify a brain contusion; no further medical examination was commissioned. Moreover, the personnel of the prosecutor's office could not have been independent in their investigation since they had a double function of making inquires and ensuring the lawfulness of such inquires. The lack of

such independence had prejudiced the process of collecting and assessing the evidence. Lastly, the proceedings in 2007 could not and did not remedy the initial failure to assess the medical evidence.

2. The Court's assessment

(a) Alleged excessive use of force

52. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. In order to fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among others, *Ireland v. the United Kingdom*, judgment of 18 January 1978, § 162, Series A no. 25).

53. The Court observes, and it is not in dispute between the parties, that the applicant was brought to the temporary detention centre "in good health". As follows from the expert report of 21 June 2003, the applicant sustained in the temporary detention centre the following injuries: two bruises on the back side of his left thigh (measuring 4.8 x 6.5 cm and 3 x 4.5 cm), a bruise on the right eyelid, bruises on the lips (1 x 2.5 cm, 2 x 2 cm and 2 x 3 cm); and a scratch on a finger on the left hand. Some medical reports refer to bruises under both eyes and abrasions on the left wrist.

54. It is also noted that there are consistent indications in the present case that the applicant had a brain contusion (see paragraphs 14, 17, 18 and 22 above).

55. Although the above injuries did not constitute health damage by national standards (see paragraph 25 above), in the Court's view, those injuries were sufficiently serious to reach the "minimum level of severity" under Article 3 of the Convention. It remains to be considered whether the State should be held responsible under Article 3 for the injuries.

56. The Government's submissions are twofold: (i) "certain injuries" resulted from the legitimate use of force against the applicant; (ii) the "other injuries" were self-inflicted. In the applicant's submission, after a blow with a truncheon he was subjected to a gratuitous physical assault on the part of the officers who, *inter alia*, hit him on the head (see paragraph 10 above).

57. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the

authorities to provide a satisfactory and convincing explanation (see *Zelilof v. Greece*, no. 17060/03, § 44, 24 May 2007, and *Polyakov v. Russia*, no. 77018/01, §§ 25 and 26, 29 January 2009).

58. In the present case, the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive (see, *mutatis mutandis*, *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Matko v. Slovenia*, no. 43393/98, § 104, 2 November 2006).

59. The Court reiterates in that connection that where domestic proceedings have taken place, as in the present case, 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*, cited above, § 100). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny.

60. The Court observes, and it is not in dispute between the parties, that the applicant disobeyed an order given by a public official. Nothing in the file discloses that this order was unlawful or unreasonable. The Court further observes that, as it follows from the Government's submissions, being faced with the applicant's objections to go to a cell, the officers ordered the applicant to stop his unruly behaviour, but the applicant again refused to comply. The Court observes that, as established at the national level, the applicant's resistance to the lawful order consisted in verbal expression (threats of self-inflicted damage and coarse language directed at the officers) and "grabbing" at the officers' uniforms.

61. The Court accepts that in these circumstances the officers may have needed to take measures to prevent further disruptions and calm the applicant down. The mere dissatisfaction of the applicant with the conditions of detention did not justify his refusal to comply with the orders. The question before the Court is whether the use of force was in compliance with the requirements of Article 3 of the Convention.

62. 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). At the same time, the Court is also 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 has previously accepted that the use of force may be necessary to ensure prison security, to maintain order or prevent crime in penitentiary facilities. Nevertheless, as noted above, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007).

63. The applicant centred his grievance on the allegedly gratuitous use of force against him after the use of a truncheon and handcuffing in respect of him. According to the applicant, after he had collapsed on the floor, one of the officers twisted his arms; another officer strangled him and pulled his head backwards; two officers punched him in the face. More blows then followed but the applicant closed his eyes and could not see who dealt them.

64. As regards this chain of the events, referring to the findings of the national authorities the Government argued that the applicant had banged his head deliberately against the floor and/or metal bars.

65. It is uncontested that a rubber truncheon was used on the applicant in the temporary detention centre. It is questionable whether hitting the applicant with a truncheon was conducive to the desired result and whether the possibility of using other less intrusive means was considered (see *Antipenkov v. Russia*, no. 33470/03, §§ 56-61, 15 October 2009, and *Vladimir Romanov v. Russia*, no. 41461/02, §§ 64-70, 24 July 2008). It is observed in that connection that two bruises on the back side of the applicant's left thigh were recorded during the medical examination of the applicant.

66. The Court also reiterates that the investigator first considered that the accessibility of the facial areas and other body parts to the applicant's own hands did not exclude the possibility that the injuries could have been self-inflicted. However, the national court considered, among other things, that the investigator's decision had not removed contradictions in testimonies of the officers and in that of the applicant. Nor did this decision indicate under what circumstances the injuries had been sustained by the applicant. In addition, the Court notes that it was not argued before the investigator that the applicant had self-inflicted any health damage with his own hands.

67. After a number of investigative measures, a new decision was issued by an assistant prosecutor. He noted that the officers' statements were conclusive and coherent, and concluded that the injuries on the applicant's head and face could be caused in the circumstances described by the officers. This decision was then upheld by the district prosecutor and the district court. While the inquiry had thus been completed in 2003, in 2007 the deputy prosecutor of the Smolensk Region considered that the district assistant prosecutor had not been competent to issue the decision of

25 August 2003. Importantly, it was also considered that the assistant prosecutor had not taken full account of the available medical evidence, in particular the medical examinations of the applicant on 23-26 June 2003 (see paragraphs 14, 17-19 and 22 above). Despite the above considerations, the resumption of the inquiry between 2007 and 2010 did not reach any conclusions, which would amend the findings made in 2003.

68. Having regard to the above, the Court considers that the authorities have not provided a satisfactory and convincing explanation to show that some of the injuries were self-inflicted. Thus, the Court concludes that these injuries resulted from the use of force against the applicant. In this respect the Court takes note of these injuries as described in paragraphs 53 and 54 above, and reiterates that the force was used in order to make the applicant enter a particular cell.

69. Having regard to these considerations and having examined the available material before it, the Court considers that it has not been convincingly shown that the force used against the applicant was strictly necessary in the circumstances of the case (see, *mutatis mutandis*, *Alibekov v. Russia*, no. 8413/02, § 57 et seq., 14 May 2009; *Toporkov v. Russia*, no. 66688/01, § 45 et seq., 1 October 2009; and *Isayev v. Russia*, no. 20756/04, §§ 100-102, 22 October 2009).

70. For these reasons, the Court concludes that there has been a violation of Article 3 of the Convention as the applicant was subjected to treatment, which the Court considers to be inhuman and degrading in breach of the above provision.

(b) Alleged inadequacy of the investigation

71. The Court reiterates that where an individual raises an arguable claim that he has been ill-treated by agents of the State 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 investigation (see, among others, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

72. An obligation to investigate is an obligation of means: not every investigation should necessarily 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 (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

73. The investigation into “arguable” allegations of ill-treatment must be thorough. That means that the authorities must make a serious attempt to

find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including eyewitness testimony and forensic evidence (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Also, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time, consideration being given to the date of commencement of investigations, delays in taking statements and the length of time taken to complete the investigation (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV, and *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of the applicable standard.

74. Turning to the present case, the Court first observes that the officers made reports concerning the use of force against the applicant. It is also noted that the national authorities promptly opened and carried out an inquiry following his complaint. For unspecified reasons, the inquiry file was re-examined in 2007. The most recent decision was taken on 8 April 2010; no investigative measures were taken between 2007 and 2010.

75. Second, the applicant also argued that the medical examination had been carried out before receipt of a formal request containing sufficient details; that the expert report did not contain any indication of the methods used, omitted to identify a brain contusion while no further medical examination was commissioned.

76. The Court has doubts as to the quality of the expert examination carried out on 21 June 2003 before the investigator issued a formal decision on the matter with a list of questions to be dealt with by the expert. As noted by the applicant, the expert report does not shed light on whether the injuries could have been caused in the circumstances described by the applicant or the officers. It is further noted that the investigator's decision of 8 April 2010 referred to an expert report dated 17 May 2007 (see paragraph 30 above). Despite the instructions given by the deputy regional prosecutor in April 2007 concerning the need for the global assessment of the available medical evidence, the Court is not satisfied that the national authorities made such assessment, which could have allowed for a plausible conclusion regarding the self-infliction of "certain injuries". The Court reiterates in this connection that proper medical examinations are an essential safeguard against ill-treatment (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000-X).

77. Despite the fact that in late June 2003 the applicant was examined by various medical professionals in the temporary detention centre, in a civil hospital, in Smolensk remand centre and by an emergency squad, as well as

by medical expert G., none of the above persons, except for G., was interviewed in the course of the criminal inquiry.

78. It cannot be held on the basis of the available material that the relevant checks were carried out in respect of the applicant's grievances relating to a possible brain contusion. In addition, no detainee, for instance Mr P., who was present on 21 June 2003 in the temporary detention centre, was interviewed. Moreover, the Court finds it worrying that despite the presence of visible marks on the applicant's face his state of health was not a matter of concern or enquiry for a judge who saw him at the court hearing on 23 June 2003 (see paragraph 18 above).

79. Furthermore, the Court cannot but note that the domestic decisions focused on the lawfulness of the officers' actions under the Custody Act and whether the actions disclosed elements of criminal offences concerning abuse or excessive use of power by a public official. Such narrow scope of review did not meet the requirement for an effective and thorough investigation capable of giving a plausible explanation for the applicant's injuries. The Court reiterates in that connection that, in determining whether there has been a breach of Article 2 or 3, it is not assessing the criminal responsibility of those directly or indirectly concerned. The responsibility of a State under the Convention, arising from the acts of its organs, agents and servants, is not to be confused with the domestic legal issues of individual criminal responsibility under examination in national proceedings (see *Golubeva v. Russia*, no. 1062/03, § 98, 17 December 2009, with further references).

80. In view of the above, the Court concludes that the investigation into the complaint about the excessive use of force against the applicant did not comply with the requirements of Article 3 of the Convention. There has therefore been a violation of that provision in this respect.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

81. The applicant complained under Article 6 of the Convention that the trial court in his criminal case had misapplied the national law and had not been impartial; that he had not been afforded an opportunity to examine witness Sch.; that the trial court had rejected various motions and had convicted him on inadmissible evidence.

82. The Court has examined the remaining complaints as submitted by the applicant. Having regard to 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage and damage to his health.

85. The Government contested this claim.

86. Having regard to the nature of the violations found and making an assessment of an equitable basis, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

87. Since the applicant made no claim under this heard, no award is required.

C. Default interest

88. 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 excessive use of force and an ineffective investigation admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention as the applicant was subjected to treatment, which the Court considers to be inhuman and degrading in breach of the above provision;

3. *Holds* that there has been a violation of Article 3 of the Convention in that the investigation concerning the use of force did not comply with the requirements of that provision;

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 9,000 (nine thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 5 April 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President