FIRST SECTION

CASE OF RUDAKOV v. RUSSIA

(Application no. 43239/04)

JUDGMENT

STRASBOURG

28 October 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 **Rudakov 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 7 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 43239/04) 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 Vasiliy Yuryevich **Rudakov** ("the applicant"), on 9 November 2004.

2. The applicant was represented by Mr F. Bagryanskiy, Mr M. Ovchinnikov and Mr A. Mikhaylov, lawyers practising in Vladimir. The Russian Government ("the Government") were represented by Mrs **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 subjected to severe beatings by warders of a prison where he was serving his sentence and that the authorities had failed to carry out an effective investigation of the events.

4. On 5 July 2007 the President of the First Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lived until his arrest in the town of Ishim in the Tyumen Region. He is now serving a life sentence in the Vladimir OD-1/T-2 detention facility, known as Vladimirskiy Tsentral.

6. On 17 June 2003 the applicant was transferred to Vladimirskiy Tsentral to serve the first ten years of his sentence of life imprisonment. It appears that he was among 150 new inmates who had arrived at Vladimirskiy Tsentral in the summer of 2003 and one of five detainees sentenced to life imprisonment. On admission to the prison the applicant was examined by a prison doctor who found no injuries on his body.

A. The parties' versions of the events of 11 July 2003

7. In July 2003, at the request of the acting head of Vladimirskiy Tsentral, a group of officers of a special-purpose unit of the Vladimir Regional Directorate for the Execution of Sentences arrived at the prison for the purpose of "accompanying inmates in outdoor exercise, to shower rooms, and so on".

8. On 11 July 2003, at approximately 10.30 a.m., an officer of the special-purpose unit, Mr L., ordered the applicant and two other inmates to leave their cell. The applicant provided the following description of the subsequent events.

9. According to the applicant, he complied with Mr L.'s order, stepped out into a corridor, stood

with his face to the wall and put his hands above his head on the wall as required by internal prison regulations. Six other warders were in the corridor at the time. Mr L. started kicking the applicant and hitting him with a rubber truncheon. The applicant submitted that he had asked for an explanation but in response he had received an additional three blows to the neck with the rubber truncheon. The applicant fell to the floor and Mr L. continued hitting him with the rubber truncheon on the head, back, stomach and legs. The applicant crawled to the wall in an attempt to dodge the blows. He sat near the wall and tried to cover his head with his hands. Mr L. kicked him a number of times, ordering him to get up and go outside for exercise. When the applicant refused Mr L. shoved him into the cell and took the applicant's inmate, Mr Li., outside for exercise. The applicant asked for medical assistance. Twenty minutes later Mr L. again entered the cell and began hitting the applicant in the face and head using his fists and the rubber truncheon. Mr L. knocked out the applicant's front tooth when he cut a finger on his left hand. Trying to escape, the applicant jumped on to a bunk, where Mr L. continued hitting him on the legs. Mr L. grabbed the applicant by his clothes, dragged him to a punishment cell and locked him up.

10. The applicant felt dizzy and called for a doctor. A nurse came to the punishment cell and the applicant complained to her that Mr L. had beaten him up. He showed the nurse his injuries and complained that he was not feeling well. Half an hour later Mr L. took the applicant out of the punishment cell and dragged him back to his own cell, continuing to hit and kick him.

11. The Government, relying on written statements by prison warders, including Mr L., submitted that on 11 July 2003 the applicant and two fellow inmates had resisted the warders' attempt to take them outside for exercise. In particular, the applicant had grabbed Mr L. by his uniform, had threatened him with violence, and had tried to hit the other warders. Considering the applicant's conduct as an offence, the warders hit him a number of times with rubber truncheons to put a stop to his unlawful behaviour. The Government stressed that truncheons had been used in strict compliance with requirements of the Penitentiary Institutions Act (see paragraph 29 below). The blows were only administered to the applicant's hips and buttocks. The force was used for a very short period of time (ten to twelve seconds) with the intention of causing the least possible damage to the applicant's health.

B. Reports on the use of violence, the applicant's medical examinations and investigation of his complaints of ill-treatment

12. Immediately after the incident an entry was made in the prison log recording the confrontation between the warders and inmates and the use of special measures (rubber truncheons) in response to inmates' violence. The applicant was also examined by a prison nurse who recorded an elongated bruise on the right side of his lumbar region. The nurse concluded that the bruise measuring fifteen to five centimetres "did not present any danger to life or health". The nurse treated the applicant's injury with iodine and applied a cold compress.

13. In the aftermath of the events on 11 July 2003 Mr L. made a report which read as follows:

"[I] inform [you] that on 11 July 2003 at 10.50 a.m., when inmates sentenced to life imprisonment were being taken for outdoor exercise, I, officer... L., used a rubber truncheon... on a detainee, [the applicant], in compliance with Article 30 of the [Penitentiary Institutions Act]. The rubber truncheon was used because [the applicant] refused to comply with lawful orders of the administration and attempted to use physical resistance by grabbing my uniform. The rubber truncheon was not applied to vital body parts."

Two warders who had witnessed the incident wrote an identical report, adding that the applicant did not need medical assistance.

14. In the evening of 11 July 2003 the applicant experienced severe pain in the stomach and asked for a doctor. On hearing the applicant's complaints of severe headache, stomach pain, dizziness and vomiting, a medical assistant, Mr M., examined the applicant and gave him an injection of aminasin, suspecting that the applicant could have concussion. He also gave the applicant a

painkiller. Mr M. noted that the applicant had numerous abrasions and bruises on the stomach, waist and chest and recommended an examination by a surgeon.

15. On 14 July 2003 the applicant again applied for medical assistance, complaining of headache, dizziness, vomiting, loss of appetite and pain during urination. Ms B., a prison doctor, specialist in dermatology and venereology, examined him on the same day and discovered numerous bruises, each measuring approximately ten centimetres in diameter, "on the [applicant's] torso, upper part of the back, [and] upper and middle parts of the right thigh", and a swelling of the left cheek and of the left hip and knee. Ms B. noted that the applicant's left hip and knee had a hyperaemic appearance and that the applicant was walking differently, favouring his left leg. The doctor also discovered that the applicant was missing a part of the upper corner tooth on the left side. She was unable to establish however when the tooth had been broken, as there were no injuries to the mucous membrane of the applicant's lips and cheeks. Two days later an analysis of the applicant's urine sample established no pathology, thus eliminating the possibility of a kidney injury.

16. In the meantime, on 14 July 2003 the applicant lodged a complaint with a prosecutor's office, providing a detailed account of the events of 11 July 2003. The applicant also asked for an expert medical examination.

17. On 30 October 2003 a deputy of the Vladimir Town Prosecutor issued a one-page decision refusing to institute criminal proceedings against Mr L. The entire decision read as follows:

"[The applicant] is serving his sentence in Vladimir OD 1/T-2 detention facility. He was sentenced to life imprisonment on condition that he serve the first ten years of the sentence in prison.

On 11 July 2003, a convict, [the applicant], was taken for outdoor exercise: he defied the orders of the detention facility staff, tried to resist physically, and grabbed [warders] by their clothing. In these circumstances a special measure – a rubber truncheon – was used against [the applicant]. No traumatic injuries leading to health damage were caused. [The warders] drew up the required reports concerning the application of the special measure to [the applicant].

The special measure – a rubber truncheon – was applied to [the applicant] in accordance with Article 30 of the Federal Law "On facilities and bodies executing criminal sentences of imprisonment".

On the basis of the above stated and applying Article 25 § 1.1 of the Code of Criminal Procedure of the Russian Federation, [the deputy prosecutor] finds that [the request] for institution of criminal proceedings as a result of injuries being received by [the applicant] should be dismissed because [there is no indication] of a criminal offence."

The deputy prosecutor's decision was based on statements by six warders, Mr K., Mr Ku., Mr A., Mr P., Mr Ko. and Mr B., collected on 30 October 2003. In particular, two warders submitted that during an attempt to take inmates for outdoor exercise on 11 July 2003, a rubber truncheon had been used against a number of inmates sentenced to life imprisonment, including the applicant, because they had refused to comply with lawful orders. Two warders explained that the applicant had attempted to resist physically by "taking up a position as if ready to throw a punch". The remaining warders stated that the applicant had refused to submit to a body search, had "diverged from the route" and had intended to throw a punch.

18. On 24 December 2003 the Frunzenskiy District Court of Vladimir quashed the decision of 30 October 2003 and authorised an additional inquiry. The District Court noted that the applicant had asked the prosecutor's office to interview his fellow inmate, Mr Li., who had witnessed the beatings on 11 July 2003, the medical assistant, Mr M., who had examined the applicant in the evening of 11 July 2003 and had recorded his injuries, and the warder, Mr L., who had beaten the applicant up. However, the prosecutor's office had not complied with the applicant's request. The District Court also held that the decision of 30 October 2003 was only based on statements by the warders, that the prosecutor's inquiry was "incomplete and subjective" and that the prosecutor had unlawfully

refused to institute criminal proceedings applying Article 25 of the Code of Civil Procedure, although that Article only provided for such a refusal in the event of a friendly settlement.

19. On 2 March 2004 the deputy prosecutor of the Vladimir Town Prosecutor's office once again refused to institute criminal proceedings against Mr L. In addition to the statements previously taken from the six warders, the deputy prosecutor based his three-page decision on statements by Mr L. and the medical assistant, Mr M.

In particular, Mr L. informed the deputy prosecutor that on 11 July 2003 he and several other warders had attempted to take the applicant outside for daily exercise. The applicant had refused, had threatened the warders, including Mr L., and had taken up a boxing stance, trying to hit Mr L. In response Mr L. had used a rubber truncheon. He had hit the applicant on the buttocks and the middle part of the thighs. Mr L. insisted that he had only used the rubber truncheon; he had not kicked the applicant and had not hit him in the head or stomach.

The medical assistant, Mr M., stated that he had been called to the applicant on 11 July 2003 at approximately 8.00 p.m. The latter had complained of headache, stomach pain, nausea and vomiting blood. Mr M. had not seen any blood. He had examined the applicant and recorded numerous abrasions and bruises. The applicant had been provided with medical assistance and had been prescribed a consultation with a surgeon. Mr M. noted that he had not diagnosed concussion. He had not noticed a broken tooth.

The deputy prosecutor also interviewed the applicant's fellow inmate, Mr Li., who corroborated the applicant's version of events. However, the deputy prosecutor was not convinced by Mr Li.'s testimony because "it was only corroborated by the applicant's statements and was rebutted by the materials of the inquiry".

20. The applicant appealed to a court against the decision of 2 March 2004.

21. On 1 April 2004 the Frunzenskiy District Court of Vladimir quashed the deputy prosecutor's decision and ordered an additional investigation. The District Court noted that the deputy prosecutor had not interviewed the applicant or the nurse who had examined him after the beatings and had not analysed the statements given by Mr L. and Mr M., although those two persons had given contradictory statements as to "the localisation and character of the injuries" sustained by the applicant.

22. On 19 April 2004 a deputy prosecutor of the Vladimir Town Prosecutor's office dismissed the applicant's complaint, finding that Mr L.'s actions had been lawful. In addition to the statements by Mr L., the warders and medical assistant, Mr M., included in the decision of 2 March 2004, the deputy prosecutor based its decision on the medical record issued on 11 July 2003 by the nurse and on statements by the doctor, Ms B., who had examined the applicant on 14 July 2003. Ms B. confirmed her conclusions made in the medical report on 14 July 2003.

Relying on the medical record and the statements by Ms B., the deputy prosecutor found that the applicant could have sustained those injuries before or after the events on 11 July 2003. Furthermore, the deputy prosecutor held that the applicant's statements regarding the broken tooth were false because "a part of the upper incisor (*резец),* and not a part of a tooth *(зуб)* was missing from his mouth" and his lips and cheeks had not been injured.

23. The applicant appealed to a court against the decision of 19 April 2004.

24. On 13 May 2004 the Frunsenskiy District Court dismissed the applicant's complaint, finding that the rubber truncheon had been used lawfully in response to the applicant's behaviour and that there had been no indication of a criminal offence in Mr L.'s actions.

25. The applicant did not agree with that decision and appealed to the Vladimir Regional Court.

26. On 17 September 2004 the Vladimir Regional Court, endorsing the reasons given by the District Court, held that the prosecutor's office had completed its inquiry following the applicant's

ill-treatment complaint and had made lawful conclusions. The Regional Court upheld the decision of 13 May 2004.

II. RELEVANT DOMESTIC LAW

A. Use of force and special measures in detention facilities

1. Code on Execution of Punishments (no. 1-FZ of 8 January 1997) (Уголовно-исполнительный кодекс РФ)

27. Physical force, special means or weapons may be used against detainees if they offer resistance to officers, persistently disobey lawful demands of the officers, engage in riotous conduct, take part in mass disorders, take hostages, attack individuals or commit other publicly dangerous acts, escape from a penitentiary institution or attempt to harm themselves or others (Article 86 § 1). The procedure for application of these security measures is determined in Russian legislation (Article 86 § 2).

2. Penitentiary Institutions Act (no. 5473-I of 21 July 1993) (Закон РФ «Об учреждениях и органах, исполняющих уголовные наказания в виде лишения свободы»)

28. When using physical force, special means or weapons, the penitentiary officers must:

(1) state their intention to use them and afford the detainee(s) sufficient time to comply with their demands unless a delay would imperil the life or limb of the officers or detainees;

(2) ensure the least possible harm to detainees and provide medical assistance;

(3) report every incident involving the use of physical force, special means or weapons to their immediate superiors (section 28).

29. Rubber truncheons may be used for

(1) putting a stop to assaults on officers, detainees or civilians;

(2) quelling mass disorders or group violations of public order by detainees, as well as for detention (*задержание*) of offenders who persistently disobey or resist officers (section 30).

B. Investigation of criminal offences

30. 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained that on 11 July 2003 he had been subjected to beatings in violation of Article 3 of the Convention and that the authorities had not carried out a prompt and effective investigation of 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

32. The Government submitted that the medical records drawn up on 11 and 14 July 2003, by which the applicant's injuries had been recorded, entirely refuted the applicant's version of events. They stressed that the use of a rubber truncheon in the applicant's case had been lawful and justified. It therefore did not fall under the notion of "ill-treatment" prohibited by Article 3 of the Convention. The Government insisted that the force used against the applicant did not attain the minimum level of severity envisaged by Article 3 of the Convention as the injuries sustained by him had not led to "any serious consequences and [had not] caused short-term damage to his health". In addition, the Government noted that having used a rubber truncheon, the warder had not intended to humiliate or debase the applicant or to cause him physical or psychological suffering. The use of force constituted an adequate and lawful response to the applicant's unruly behaviour when he resisted the warders' lawful orders. The warders acted within their official powers and pursued lawful purposes. In the Government's opinion, the fact that the medical personnel which had examined the applicant on 11 and 14 July 2003 had found that in the aftermath of the incident the applicant's behaviour had been "adequate" demonstrated that he had not suffered the psychological trauma which usually accompanies inhuman and degrading treatment.

33. In their further observations, the Government stressed that having used force against the applicant the warders had not intended to punish him for making numerous complaints to various State bodies. The force was used in the specific situation pertaining to the applicant's aggressive behaviour directed against the warders. As no serious damage had been caused to the applicant's health, he continued serving his sentence, taking an hour and a half's outdoor exercise every day, and so on. He did not make any complaints about the state of his health. Citing the Court's case-law establishing the requisite standard of investigation of allegations of ill-treatment, the Government concluded that the investigation of the events of 11 July 2003 complied with the principles of the Court's case-law.

34. The applicant responded that the ill-treatment to which he had been subjected by an officer of the "Monomakh" special-purpose unit, Mr L., had been particularly cruel and had been administered for the purpose of punishing him for complaining about the conditions of detention in the prison. The applicant stressed that the official version that he had intended to attack the warders did not bear analysis. In particular, if the Government's version of events was true and he had in fact attempted to use violence against the warders, his actions constituted an offence and he should have been held, at a minimum, liable for disciplinary action. However, charges were never brought against him. Furthermore, while describing the events on 11 July 2003, the warders in their statements on 30 October 2003 provided contradictory descriptions. Several warders only mentioned his attempt to throw a punch by "taking up a boxing position". Others noted his alleged refusal to submit to a body search or his attempts to "diverge from the route". At the same time, the initial reports drawn up immediately after the beatings gave an entirely different description, stating that the applicant had used force by grabbing the warder's uniform. Furthermore, the version that he "diverged from the route" was entirely baseless, as the beatings were carried out in front of the applicant's cell in response to his refusal to proceed to outdoor exercise.

35. The applicant further stressed that the quantity and location of his injuries did not support the official version that the blows had only been administered to his hips and buttocks. The medical evidence showed that he had numerous injuries on his stomach, lumbar region, left cheek, left knee and back. His tooth was also broken. The applicant noted that despite the warders' statements that they had hit him on the buttocks, no injuries had been discovered on that part of his body. He further disputed the authenticity of the warders' reports drawn up on 11 July 2003. He also argued that while recording a long list of injuries on his body, the prison doctors refused to record all his injuries, merely limiting their observations to the largest bruises on his body. Furthermore, although there was evidence that blows were administered to, *inter alia*, his head (his left cheek was developing a swelling and a part of his tooth was missing), no specific medical examinations were performed to confirm or disprove his allegations.

36. The applicant drew the Court's attention to Mr L.'s official status. He stressed that Mr L. was an officer of a special-purpose unit which is usually called to detention facilities to restore order by carrying out demonstration beatings of inmates. Members of that unit undergo special training and are taught martial arts. The lengthy and intensive beatings to which the applicant was subjected were an exhibition of the successful training Mr L. had undergone.

37. Finally, the applicant addressed the quality of the investigation carried out by the prosecution authorities in respect of his complaints of ill-treatment. He submitted that the investigation had been performed in a hurry in an attempt to justify the officer's actions. Failure to question witnesses, to seize the applicant's and Mr L.'s clothes and examine them, to perform a crime-scene examination, to authorise a forensic medical examination of the applicant and to set up confrontation interviews between the applicant and warders were among the grossest mistakes committed by the investigation authorities. The applicant concluded that the inquiry itself, in the absence of a decision to institute criminal proceedings, left the prosecuting authorities with very limited powers, making it impossible to investigate the events in question effectively. The applicant explained that the Russian Code of Criminal Procedure does not allow a number of important investigative steps to be taken unless a criminal case is open. Moreover, the victim's rights are almost non-existent until criminal proceedings are instituted.

B. The Court's assessment

1. Admissibility

38. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and 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

39. 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.*** ***B****ulgaria*, 28 October 1998, § 93, *Reports* 1998-VIII).

40. 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).

41. 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

42. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

43. 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

44. Having examined the parties' submissions and all the material presented by them, the Court finds it established that on 17 June 2003, on the applicant's admission to Vladimirskiy Tsentral, a prison doctor examined him and found no injuries on his body. On 11 July 2003, immediately after the alleged confrontation between the officer of the special-purpose unit, Mr L., and the applicant, a prison nurse recorded an elongated bruise, fifteen centimetres long and five centimetres wide, on the applicant's hip. Later in the day a medical assistant, called to attend to the applicant, recorded abrasions and bruises on his stomach, waist and chest. On 14 July 2003, as a result of yet another medical examination by a prison doctor, a report was issued, recording numerous bruises, having approximately ten centimetres in diameter, on the applicant's torso, the upper part of his back and upper and middle parts of the right thigh. In addition, the prison doctor noted a swelling of the applicant's left cheek, hip and knee and a broken left upper corner tooth (see paragraphs 6, 12, 14 and 15 above).

45. The Court observes that it was not disputed by the parties that the applicant's injuries as shown by medical reports were sustained in the Vladimirskiy Tsentral prison. In response to the findings of the medical reports the Government, while accepting that the applicant had been hit a number of times with a rubber truncheon on the buttocks and hips, remained silent on the origin of the remaining injuries discovered on his body during the medical examinations on 11 and 14 July 2003. The Court remarks that it was open to the Government to provide their own plausible explanation as to how the applicant had acquired numerous injuries on his chest, upper part of the back, stomach, knee and face and to submit, for instance, witness testimony and other evidence to corroborate their version. They did not however put forward any version of events which could have led to the applicant sustaining injuries in addition to those discovered on his hips. Furthermore, although the effectiveness of the investigation into the applicant's ill-treatment complaints will be examined below, the Court would already stress at this juncture that it is struck by the fact that, despite the seriousness of the applicant's allegations, the investigating authority also did not advance any

explanation as to the nature of the majority of the applicant's injuries, while declining to institute criminal proceedings against the warders. It apparently did not occur to the investigators that the applicant's injuries should be accounted for.

46. In this respect the Court attributes particular weight to the fact that the Government did not argue that the applicant's injuries had been caused prior to or after the events on 11 July 2003. It further notes that the nature and distribution of the injuries on the applicant's body as recorded by medical reports on 11 and 14 July 2003 sit ill with the Government's submissions that officer L. had only hit the applicant on the buttocks and hips and had only used the rubber truncheon for that purpose. In particular, the Court does not lose sight of the nurse's discovery of an elongated bruise, measuring fifteen to five centimetres, on the right side of the applicant's lumbar region. The location of that skin lesion reflecting the shape of a rubber truncheon supports the applicant's argument that Mr L. had not restricted the blows to his hips and buttocks. Furthermore, the doctor who had examined the applicant on 14 July 2003 discovered numerous circular bruises measuring approximately ten centimetres in diameter on various parts of his body. The Court notes that this description corresponds to physical sequelae from beatings with a fist or the toe of a boot rather than to injuries sustained as a result of a beating with the rubber truncheon, thus corroborating the applicant's version that in addition to hitting him with the truncheon, Mr L. had hit the applicant with his fists and kicked him.

47. In these circumstances, bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody, and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court considers that it can draw inferences from the Government's conduct and finds it established to the standard of proof required in the Convention proceedings that the injuries sustained by the applicant were the result of the treatment to which he had been subjected by officer L. in the prison and for which accordingly the Government bore responsibility (see *Selmouni* ***v.*** *France* [GC], no. 25803/94, § 88, ECHR 1999-V; *Mehmet Emin Yüksel* ***v.*** *Turkey*, no. 40154/98, § 30, 20 July 2004; *Mikheyev*, cited above, §§ 104-105; and *Dedovskiy and Others* ***v.*** ***Russia***, no. 7178/03, §§ 78-79, 15 May 2008).

48. 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).

49. The Court observes that the exact circumstances 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 officer L. had initiated the beatings immediately after he had left the cell for outdoor exercise. He gave a detailed account of the events which had allegedly occurred on 11 July 2003, describing the chain of the events, indicating the time, location and duration of the beatings, naming the alleged perpetrator and showing the methods used by him. The Government, relying on the written statements by officer L. and warders who had witnessed the events on 11 July 2003, disputed the applicant's description, insisting that the use of force had been strictly proportionate and necessary, as the applicant had grabbed the warders by their clothing, had threatened them with violence and had attempted to punch them. They submitted that the acts of violence against the applicant had been committed by the officer in the performance of his duties in full compliance with the domestic legal requirements.

50. The Court notes the Government's argument that force had been used lawfully in response to the applicant's unruly conduct. It 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.

51. In the present case, the Court is not convinced by the Government's description of the applicant's behaviour in view of the particularly confusing and inconsistent versions of events adduced by officer L. and warders (see paragraphs 13, 17 and 19 above). However, even proceeding on the assumption that the Government's description of the circumstances surrounding the application of force to the applicant is the more accurate one, the Court does not discern any necessity which might have prompted the use of rubber truncheons or of violence of such a degree, as confirmed by the materials of the case file, against the applicant (see paragraph 46 above). On the contrary, the actions by the officer L. were grossly disproportionate to the applicant's alleged misconduct and manifestly inconsistent with the goals he sought to achieve. Thus, it follows from the Government's submissions that, having entered the corridor, the applicant refused to proceed to outdoor exercise and attempted to punch the warders, taking up a boxing position, using threats and grabbing their clothes. The Court accepts that in these circumstances the officers may have needed to resort to physical force to put a stop to the applicant's unruly behaviour. However, the Court is not convinced that hitting a detainee with a truncheon or kicking him a number of times was conducive to the desired result.

52. 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 warders would have been obliged to react without prior preparation. The Government did not deny that the officers of the special-purpose unit and warders, including those involved in the incident of 11 July 2003, 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' submissions that a group of officers and warders was involved and that they clearly outnumbered the applicant. The Court thus rejects the Government's argument that the use of truncheons, as well as other forms of violence, was inevitable.

53. In addition, the Court finds it particularly disturbing that a series of blows and kicks was administered in response to the applicant's behaviour. In the Court's view, the extent of the force used against the applicant shows that it was merely a form of reprisal or corporal punishment. This finding is further supported by the Government's argument that the truncheon blows had been administered to the applicant's buttocks, a highly unlikely action if the force was used merely to prevent an attack on the warders. The punitive nature of the use of truncheons is even more salient in such a situation. This sort of mental and physical invasion was intended precisely to demean the applicant, render him passive and ashamed, to subdue him, to deter the dissent and to reinstate the authority of the warders.

54. As to the seriousness of the acts of ill-treatment, in determining whether a particular form of ill-treatment should be characterised as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. The Court has already noted in previous cases 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. In addition to the severity of the treatment, there is a purposive element which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidation (see *Salman* ***v.*** *Turkey* [GC], no. 21986/93, § 114, ECHR 2000-VII). According to the Court's consistent approach, treatment is considered "inhuman" if it is premeditated, applied for hours at a stretch and causes either actual bodily injury or intense physical or mental suffering. It is deemed to be "degrading" if it is such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92). 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).

55. As noted above, the use of rubber truncheons and violence on the applicant was retaliatory in nature. It was not conducive to facilitating the execution of the tasks the warders had set out to achieve. The punitive violence to which the officer deliberately resorted was intended to arouse in the applicant feelings of fear and humiliation and to break his physical or moral resistance. The purpose of that treatment was to debase the applicant and drive him into submission. In addition, the Court finds that the use of violence 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.

56. 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 prison on 11 July 2003 and that there has thus been a violation of that provision.

(ii) Alleged inadequacy of the investigation

57. 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.).

58. 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 56 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).

59. In this connection, the Court notes that the prosecuting 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. 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".

60. 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 warders, 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 30 above).

61. 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*], cited above, §§ 78 and 79). In the present case the applicant made a complaint of ill-treatment to the Vladimir Town Prosecutor's office on 14 July 2003. While the parties did not indicate the date when the deputy prosecutor issued a formal decision initiating the inquiry into the applicant's complaint, it appears that no investigative steps were taken until 30 October 2003, when the deputy prosecutor interviewed the six warders (see paragraph 17 above). On the same day he issued his first decision, dismissing the applicant's complaints of ill-treatment. In this respect the Court finds it striking that for a period of more than three months between 14 July and 30 October 2003, that is during the period immediately after the incident which usually proves to be crucial for the establishment of the truth in cases similar to the one at hand, there were no developments in the inquiry (see, for similar reasoning, *Vladimir Fedorov* ***v.*** ***Russia***, no. 19223/04, § 69, 30 July 2009, and *Maksimov* ***v.*** ***Russia***, no. 43233/02, § 87, 18 March 2010). The Government failed to provide any explanation for the protraction of the proceedings. In the Court's view, the belated commencement of the inquiry resulted in the loss of precious time, which could not but have a negative impact on the success of the investigation (see *Mikheyev* ***v.*** ***Russia***, no. 77617/01, § 114, 26 January 2006).

62. Further, 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 unexplainable that an examination of the applicant by a forensic expert has never been authorised. It 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). When a doctor writes a report after a medical examination of a person who alleges having been ill-treated, it is extremely important that he states the degree of consistency with the history of ill-treatment. A conclusion indicating the degree of support to the alleged ill-treatment history should be based on a discussion of possible differential diagnoses (non-ill-treatment-related injuries – including self-inflicted injuries – and diseases) (see *Barabanshchikov* ***v.*** ***Russia***, no. 36220/02, § 59, 8 January 2009).

63. That was not done in the present case. Neither the applicant's medical examinations by the prison nurse or medical assistant on 11 July 2003, nor his examination by the prison doctor on 14 July 2003 complied with the above-mentioned requirements. The sole purpose of those examinations was to respond to the applicant's health complaints. The medical specialists who had examined the applicant were not equipped to identify the nature and origin of his injuries or even to determine the period when they had occurred. In addition, the Court is not convinced that the prison medical personnel enjoyed the requisite level of independence from the authorities implicated in the ill-treatment of the applicant. In this respect, the Court notes with concern that a failure to request an expert opinion led, among other things, to the loss of opportunities to collect evidence of the ill-treatment.

64. The Court also considers it extraordinary that in delivering his decision of 30 October 2003 the deputy prosecutor did not make any reference to the records of the applicant's medical examinations and merely dismissed the applicant's complaints because there had been no criminal conduct in the officer's actions (see paragraph 17 above). It was not until 2 March 2004 that the deputy prosecutor included in his decision statements by medical assistant M., who had examined the applicant on 11 July 2003. The medical records drawn up on 11 and 14 July 2003 and statements by doctor B. appeared for the first time in the decision of 19 April 2004. However, the deputy prosecutor confined himself to mere reiteration of the records and medical specialists' statements (see paragraph 19 above) and did not attempt to examine the medical evidence before him or to draw conclusions on that basis. 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 deputy prosecutor as a ground for his decision not to institute criminal proceedings against the officer. Furthermore, the Court considers it peculiar that in the absence of any evidence, such as medical experts' findings to that effect, the deputy prosecutor was able to conclude that the applicant had received injuries prior or after the incident on 11 July 2003 (see paragraph 22 above).

65. 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 statements given by the warders involved in the incident. The applicant's right to participate effectively in the investigation was not secured. It transpires from the deputy prosecutors' decision that he only heard the applicant in person some time after 1 April 2004, when the Frunzenskiy District Court had quashed his decision of 2 March 2004. In any event, although excerpts from the applicant's complaints to the prosecution authorities were included in the first decisions not to institute criminal proceedings, the prosecution authorities did not consider the applicant's statements to be credible, apparently, because they reflected a personal opinion and constituted an accusatory tactic by the applicant. However, the investigator did regard the warders' testimonies as credible, despite the fact that their statements could have constituted defence tactics, could have been called forth by corporate solidarity and have been aimed at damaging the applicant's credibility. In the Court's view, the prosecuting investigation applied different standards when assessing the statements, as those made by the applicant or, for that matter by his inmate Mr Li., were deemed to be subjective, but not those given by the warders. The credibility of the latter statements should also have been questioned, as the prosecuting investigation was supposed to establish whether the warders were liable on the basis of disciplinary or criminal charges (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

66. The Court further observes that it was not until 2 March 2004, that is only after the District Court's direct order to that effect, that the investigating authorities added to the file statements by the applicant's inmate, Li. Although it appeared from the warders' statements that other inmates had been taken for outdoor exercise at the same time as the applicant, and therefore could have witnessed the incident, no steps were taken to identify those possible witnesses. While the investigating authorities may not have been provided with the names of individuals who could have seen the applicant and might have witnessed his alleged beatings, they were expected to take steps on their own initiative to identify possible eyewitnesses. The investigating authorities also failed to respond to the applicant's argument that officer L. had injured his hand when he had broken the applicant's tooth. Furthermore, it appears that the investigators took no meaningful steps to search the premises where the applicant had allegedly been ill-treated. The Court therefore finds that the investigating authorities' failure to look for corroborating evidence and their deferential attitude to the warders must be considered to be a particularly serious shortcoming in the investigation (see *Aydın v. Turkey*, 25 September 1997, *Reports* 1997-VI, § 106).

67. 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. 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 officer L.'s actions.

68. Having regard to the above-mentioned failings of the Russian authorities, the Court finds that the investigation of 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. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

69. The Court has examined the other complaints submitted by the applicant. However, having

regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it 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

70. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

71. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

72. The Government stated that the applicant's claim was excessive and ran contrary to the Court's case-law.

73. The Court observes that it has found a particularly grievous violation in the present case. The Court accepts that the applicant suffered humiliation and distress on account of the ill-treatment inflicted on him. In addition, he did not benefit from an adequate and effective investigation of his complaints about the ill-treatment. In these circumstances, it considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant the sum claimed in full, plus any tax that may be chargeable on that amount.

B. Costs and expenses

74. The applicant, relying on the contract with his lawyers, also claimed EUR 5,000 for legal fees incurred during the proceedings before the Court.

75. The Government argued that the applicant had failed to produce any documents in support of his claim. They further submitted that the expenses claimed had, in any event, been unnecessary and unreasonable.

76. According to the Court's case-law, an applicant is entitled to reimbursement of his 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. The Court observes that in January 2008 the applicant issued the lawyers, Mr F. Bagryanskiy, Mr M. Ovchinnikov and Mr A. Mikhaylov, with authority to represent his interests in the proceedings before the European Court of Human Rights. Counsel acted as the applicant's representatives following the communication of the case to the respondent Government. It is clear from the length and detail of the pleadings submitted by the applicant that a great deal of work was carried out on his behalf. Having regard to the information in its possession, the Court is satisfied that the sum claimed is reasonable. The Court therefore awards the applicant EUR 5,000 in respect of costs and expenses incurred before the Court, together with any tax that may be chargeable to him on that amount.

C. Default interest

77. 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 prison 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 11 July 2003 in the Vladimirskiy Tsentral prison;

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 Vladimirskiy Tsentral prison;

4. *Holds*

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

(i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros) in respect of costs and expenses;

(iii) any tax that may be chargeable to him on the above amounts;

(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 28 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Christos Rozakis
Registrar President

RUDAKOV v. **RUSSIA** JUDGMENT