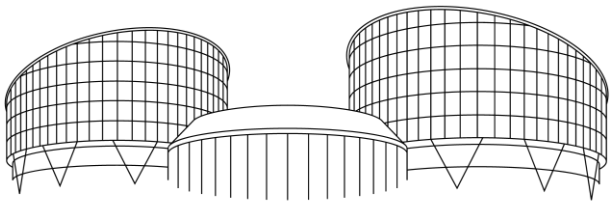

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MIKIASHVILI v. GEORGIA

(Application no. 18996/06)

JUDGMENT

STRASBOURG

9 October 2012

FINAL

09/01/2013

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

In the case of Mikiashvili v. Georgia,

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

Josep Casadevall, *President,*
Egbert Myjer,
Corneliu Bîrsan,
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria, *judges,*
and Santiago Quesada, *Section Registrar,*

Having deliberated in private on 18 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 18996/06) against Georgia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Georgian national, Mr Giorgi Mikiashvili ("the applicant"), on 29 April 2006 and supplemented by an additional application submitted on 18 June 2008.

2. The applicant was represented by Mr Zaza Khatiashvili, a lawyer practising in Tbilisi. The Georgian Government ("the Government") were represented by their Agent, Mr Levan Meskhoradze of the Ministry of Justice.

3. On 26 April 2010 the Court decided to communicate the complaints under Articles 3 and 13 of the Convention concerning the applicant's alleged ill-treatment by police and prison officers and the complaint under Article 5 § 3 of the Convention of the unreasonableness of his pre-trial detention to the Government (Rule 54 § 2 (b) of the Rules of Court). It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

4. The Government and the applicant each submitted, on 27 September and 21 December 2010 respectively, observations on the admissibility and merits of the communicated complaints (Rule 54 (a) of the Rules of Court). The Government submitted additional comments on the applicant's submissions on 21 February 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal case brought against the applicant and the alleged ill-treatment during his arrest

5. The applicant was born in Tbilisi in 1984. According to the relevant police reports, the applicant was slightly inebriated when he was arrested on 29 October 2005 and had physically resisted police officers. As a result, he had sustained slightly swollen lips and a small bruise on his forehead.

6. Following his arrest the applicant underwent an external visual examination upon his being taken to the temporary detention centre. A report drawn up thereafter by a doctor on duty recorded a large bruise on the left part of the applicant's forehead, a large bruise on the right temple, a large bruise near the left eye and cheekbone, a bruise and evidence of an injury that had bled on his lips, and large bruises on his neck and all over his back (the report of 29 October 2005).

7. On 30 October 2005, the applicant was charged with the offence of resisting police officers with the intention of obstructing them in the course of their duties, committed as part of a group in a premeditated manner (Article 353 § 2 of the Criminal Code of Georgia). According to the decision to bring charges, two police officers, N.J. and G.A., had seen a young man running down the street at around 2:15 a.m. with a mobile phone in his hand, being "chased" by two women (who turned out to be his wife and a friend). Before the young man could get into a car parked at the end of the road, the two police officers had stopped and questioned him to find out why he was running and to whom the mobile phone belonged. At that point the applicant had got out of the car and, together with another young man, B., his friend, had begun to verbally and physically attack the police officers. The police had been unable to calm them down and the applicant and his friend had torn the police officers' shirts and jumpers during the struggle. The police had called for backup and, after several colleagues had arrived as reinforcements, had managed to arrest the offenders. Once placed in custody in a temporary detention centre, the offenders had continued to verbally and physically attack the police. In particular, the applicant had delivered a punch to the left eye of a police officer, A.Ts., who had accompanied him to the investigation room to take care of some procedural matters.

8. According to three medical reports concerning the examination of the three police officers who had allegedly been attacked by the applicant and his friend B., A.Ts. had a closed head injury and a bruise on his left eye, G.A. had a closed head injury and a graze on his right knee, and N.J had a

superficial lesion on his lips and cheek. All three police officers were discharged from the hospital on the same day.

9. On 30 October 2005 the investigator, with the consent of the supervising prosecutor, sought an order from the Tbilisi City Court that the applicant be remanded in custody pending trial. The reasons given for the request were the risks that the applicant might abscond and that he might impede the investigation.

10. On 31 October 2005 the Tbilisi City Court, refusing the applicant's application for a non-custodial measure, ordered his pre-trial detention for three months. Having reviewed the criminal case materials and heard the parties' oral pleadings, the court confirmed the existence of a reasonable suspicion that the offence had been committed. The imposition of pre-trial detention was found to be further justified by the assumption that if the applicant was freed he might influence the eyewitnesses, which would prevent the truth of the matter from being established. Moreover, because of the severity of the penalty for such a serious crime, the applicant might evade trial.

11. Photographs of the applicant taken at the hearing on 31 October 2005 showed bruising around his eyes and an injury to the left hand side of his forehead. On the same date he was transferred to Tbilisi no.1 Prison, where following his external inspection by a doctor on duty, a medical certificate was drawn up reporting an injury to the left hand side of the applicant's forehead (medical certificate of 31 October 2005). According to the certificate, the injury – which the applicant claimed to have sustained before his arrest – was healing.

12. On 2 November 2005 the investigator responsible for the case rejected the defence's application to have a medical examination carried out. According to the investigator, it had not been established that the applicant had been injured during his arrest, as the medical certificate issued by the doctor in Tbilisi no. 1 Prison showed that the injury had predated his arrest. Moreover, the investigator considered that, had the applicant been injured during his arrest, he would have raised the complaint at the hearing of 31 October 2005.

13. On the same date, 2 November 2005, the applicant appealed against the detention order, claiming, *inter alia*, that the assumptions that he would abscond from the trial and influence the investigation were wholly unsubstantiated.

14. On 7 November 2005, whilst holding an oral hearing, the Tbilisi Court of Appeal ("the Court of Appeal") dismissed the applicant's appeal, concluding that his remand in custody was necessary in view of the seriousness of the crime and the facts and arguments contained in the court decision of 31 October 2005. With regard to the defence's complaint that the authorities had refused to allow the applicant to undergo a medical examination, the Court of Appeal noted that the defence had never

requested such an examination under Article 73 § 1 (g) of the Code of Criminal Procedure ("the CCP").

15. On 9 November 2005 the applicant appealed against the refusal to allow a medical examination, complaining that the investigator had been acting as a medical expert in determining when he might have received the various injuries. In his opinion, the refusal to allow a medical examination had amounted to a violation of his rights under Article 73 § 1 (g) of the CCP.

16. On 28 December 2005 a judge ordered the investigating authorities to have the applicant examined by a medical expert. The examination was carried out between 5 January and 1 February 2006. The medical expert had a copy of the medical report of 29 October 2005. In addition he himself noticed a scar measuring 1 cm by 1 cm on the right temple, corresponding to an injury classified as slight, and caused by a hard blunt object. The expert concluded that all the applicant's injuries could possibly date back to the day of the arrest, as the applicant was contending.

17. On 25 January 2006, the applicant's detention had been extended by a month. This decision had been upheld on 29 January 2006 by the Court of Appeal which, in a separate decision, drew the investigator's attention to the fact that no investigative actions had been taken for a month and that the proceedings had therefore been prolonged without reason.

18. On 21 June 2006 the applicant was allegedly again beaten, this incident occurring on the premises of the court of first instance, before which he had been brought for trial.

19. On 22 June 2006 the applicant was convicted of having committed the offence defined in Article 353 § 2 of the Criminal Code and sentenced to one year and six months' imprisonment. Before the court, N.J. confirmed that he had been hit by the applicant while the other young man had insulted him. Around fifteen people had come out of a nearby bar to back up the young men and insult the police officers. It had therefore been difficult to arrest the offenders and the officers had had to call for backup. Once the two men had been arrested, N.J. and his colleague G.A. had gone to the hospital to be treated. Their clothes had been torn. According to N.J., the applicant had had blood on his lip and the possibility that he had sustained other injuries to his body could not be excluded.

20. G.A. claimed that he had been hit by both young men and that the applicant had already had an injury to his face prior to the arrest.

21. A.Ts. submitted that he had arrived at the scene when the arrest operation was almost over and had seen that the two young men had been taken to the temporary detention centre. He had encountered the applicant in the investigation room, where the latter had punched him in the eye. A.Ts. stated that he had not physically attacked the applicant.

22. The applicant's friend who, according to the police officers, had been running down the street with a mobile phone, stated that he had been

drunk, had felt unwell and had been walking quickly down the street, followed by his wife and a friend. When the police had stopped him to find out who the telephone belonged to, he had handed the phone to his wife and had run into the bushes because he had felt sick. On his return, he had seen that the two women were screaming and that the police were trying to hit the applicant and another of his friends, B. He had helped the applicant, who had been on the ground, to get up. He claimed that the police officers' clothes had not been ripped and that his two friends had not had any visible injuries on their bodies before being arrested.

23. Two other policemen who had arrived as backup stated in evidence that they had seen the two young men beating G.A., who had fallen to the ground. The offenders had been swearing and refusing to get into the police car.

24. The applicant lodged an appeal against conviction, complaining that the court had agreed with the police officers' contention that they had been beaten, without examining his complaint that he had been mistreated by those same police officers during his arrest, as well as later on in the police station. He also alleged that during his arrest he had fallen to the ground and had been kicked in the head, stomach and back. His friend had helped him up. He alleged that in the temporary detention centre a glass had been smashed over his head and the police had beaten him violently. During the following two weeks he had not slept, had suffered from headaches and had been behaving strangely. The applicant further complained that the first-instance court had ignored the medical report which had proved that he had been beaten. Requiring medical care as a result of the treatment he had endured, the applicant submitted that he had been the victim of a violation of Article 3 of the Convention and requested that the Court of Appeal attribute the same importance to that aspect of the case as to the other facts.

25. On 12 April 2007 the Court of Appeal held that, in the light of the facts established by the first-instance court, it could not be found that the applicant had been subjected to ill-treatment at the hands of the police. The first-instance judgment was upheld.

26. On 14 December 2007 an appeal on points of law lodged by the applicant, in which he reiterated his complaint under Article 3 of the Convention, was declared inadmissible by the Supreme Court of Georgia. This decision was served on the applicant on 19 December 2007.

B. Medical care administered to the applicant

27. According to medical certificates issued by different psychiatric clinics in Tbilisi, they had never treated the applicant before his arrest.

28. Shortly after his arrest, on 11 November 2005 the applicant had to be placed in the psychiatric ward of the prison hospital because of his psychiatric instability. On 14 November 2005 he was examined by experts

from the Empathy Rehabilitation Centre for Victims of Torture ("Empathy Centre"). The preliminary results of the examination showed that the applicant was suffering from a head injury and concussion and was delirious. The experts also noted, on the basis of the applicant's account, that the latter had suffered from head injuries several times in the past and that he had had a history of aggressive behaviour related to inebriation. The experts recommended that he undergo an in-patient psychiatric examination and a tomography scan of his brain and that he receive treatment with drugs and appropriate medical supervision.

29. On 26 December 2005 the applicant's lawyer lodged a request with the Tbilisi City Prosecutor for a psychiatric examination of his client to be carried out in order to determine whether he required to be admitted to a specialised institution, whether his condition was a result of the way he had been treated during his arrest and whether he could be held accountable for his actions at the time of the offence of which he was accused.

30. On 6 February 2006 the Tbilisi Public Prosecutor's Office ordered an out-patient psychiatric examination, which resulted in a medical report of 27 March 2006. According to the report, the applicant was not suffering from any chronic psychiatric illness, temporary psychological disorder, or mental illness. He was suffering from mild depression and was responsible for his actions.

31. On 30 March and 19 April 2006 the director of the Empathy Centre approached the prison authorities, drawing their attention to the applicant's psychiatric problems and the suicidal tendencies which his sister and the chaplain had reported to her. She requested that the applicant be kept in the prison hospital in order to receive appropriate treatment and to undergo an in-patient psychiatric examination.

32. The case file shows that the applicant was kept in the psychiatric ward of the prison hospital until 22 April 2006. Between 22 April and 27 May 2006, he remained in the same institution, but on a different ward. On the latter date he was sent to Tbilisi no. 5 Prison, and was once again admitted to the psychiatric ward of the prison hospital on 29 May 2006. On 16 August 2006 he was sent to Rustavi no. 6 Prison and placed in solitary confinement in the hospital wing.

33. On 22 December 2006, an in-patient psychiatric examination of the applicant took place. According to the report, the applicant had not been mentally ill before or at the time of the acts with which he was charged. He had therefore been responsible for his actions. However, at the time of the examination the applicant was suffering from a temporary psychological disorder in the form of brief reactive psychosis. He could not control his actions and needed intensive compulsory psychiatric treatment under increased medical supervision. On 31 January 2007 the Court of Appeal decided to order the applicant's admission to Khoni Psychiatric Clinic, where he remained until his release. As it appears from the relevant medical

files, the applicant received various treatments there and was monitored by medical specialists.

34. According to a report by the experts from the Empathy Centre dated 10 June 2008 containing the results of their monitoring of the applicant between 8 November 2005 and 27 May 2008, the applicant's psychotic state had been triggered a few days after his arrest and he had been cured only after appropriate treatment had been administered by the doctors at the clinic in Khoni and by other doctors during the four months following his release.

C. Investigation into the alleged abuse of authority by the police officers during the applicant's arrest

35. On 20 December 2005, in response to a complaint filed by the applicant's lawyer, the Tbilisi prosecuting authorities decided to separate the aspects of the case potentially relating to the alleged abuse of authority by the police officers during the arrest (Article 333 § 3 (b) of the Criminal Code) from the criminal case brought against the applicant and his friend. A separate investigation was therefore opened in that regard.

36. When questioned as a witness during that investigation on 26 January 2006, the applicant affirmed that he had been subjected to ill-treatment during his arrest. Notably, he alleged that he had first been pushed by the police officers, as a result of which he had fallen to the ground, and then the police officers had kicked him and beaten him with truncheons, causing particularly serious blows to his head. He also explained that he had been beaten at the temporary detention centre by seven or eight police officers who had also insulted him. He had fought back in order to defend himself. When he had been in Tbilisi no. 1 Prison, a visual medical examination had been carried out, during which he had deliberately misled the doctor by telling him that he had suffered the injury to his forehead prior to his arrest. He had in fact been afraid of being subjected to further ill-treatment.

37. The police officers who had stopped the applicant's friend as he ran down the road with his phone and the officers who had arrived on the scene later to help with the arrest were also questioned. Their statements were the same as those they had made in the criminal case against the applicant. N.J. added that force had been used during the arrest and that the applicant had shown signs of it on his body. However, he claimed that the force used had been proportionate, in view of the fact that the applicant had been physically resisting the police officers.

38. A.Ts. also confirmed his previous statement (see paragraph 21 above). He added that his injured eye had bled and that since then he had almost completely lost his sight. The police officers who had been present in the temporary detention centre confirmed that A.Ts.'s eye had been injured by the applicant and also explained that breakable objects were not

allowed inside the investigation room of the detention centre, which meant that the applicant could not have had a glass smashed over his head.

39. The applicant's friend, who was arrested at the same time, confirmed that the applicant had been ill-treated during the arrest. His wife, who had been present at the scene, stated in her deposition that all she had seen was a quarrel, which had turned into a fight. Another of their friends stated in her deposition that the applicant had insulted the police officers first. However, she had not seen who had dealt the first blow.

40. On 7 April 2006 the applicant's lawyer lodged a complaint with the Prosecutor General about the refusal of the Tbilisi Prosecutor's Office to grant his client the status of civil party in the new case and the fact that, despite the requirements of Article 3 of the Convention, the investigation was not moving forward.

41. On 30 June 2006 the prosecuting authorities, relying on the witness depositions and the medical examinations carried out on the police officers, decided to discontinue the proceedings. They considered that the police had acted in accordance with the law during the applicant's arrest and that there was no evidence to substantiate the applicant's allegations of ill-treatment during his arrest and at the temporary detention centre.

42. The applicant lodged an appeal against that decision, arguing that no explanation had been provided for the injuries and the health problems he had experienced following his arrest. He repeated that those problems were the direct consequence of the ill-treatment he had suffered at the hands of the police, who had abused their authority.

43. On 9 August 2006 the Tbilisi City Court examined the case without the participation of the parties, relying solely on the evidence in the case file. It upheld the decision of 30 June 2006 to discontinue the proceedings on the grounds that the applicant had not raised the complaint of ill-treatment either during questioning when he had been charged or when he had been questioned as an accused, despite being assisted by a lawyer during all the procedural steps concerning him. Furthermore, he had not availed himself of his right to request a medical examination or a medical opinion. The Tbilisi City Court concluded that, at the time of the applicant's arrest, the police officers had not committed any acts which were contrary to the law and that the ill-treatment of the applicant at the police station had not been proved.

44. On 20 September 2006 the Tbilisi Court of Appeal, ruling without the parties present and as the court of last instance, held that the previous decisions were well-founded.

D. Alleged ill-treatment on 14 and 15 August 2006

45. On 15 August 2006 between 11.20 a.m. and 11.45 a.m., representatives of the Public Defender's Office ("PDO") visited the

applicant in the prison hospital and found that he had traces of blows and injuries to the head, loin and back. The applicant explained that, during the night of 14-15 August 2006, he had been beaten by the deputy director of the prison hospital, G.B., and six other members of the prison hospital staff, among whom he could identify I. and D. He alleged that he had been kicked, insulted and spat on. The applicant, who stated that he had insulted his attackers in return, had been placed in solitary confinement where, venting his aggression, he had smashed up everything. At the time of the representatives' visit, he claimed to be hungry and complained of the prison authorities' refusal to allow him to eat, drink or go to the toilet. He asked the representatives to help him obtain a transfer to a safe place and said that he feared being killed.

46. On 16 August 2006 the Department of Investigations of the Ministry of Justice commenced an investigation under Article 118 § 1 of the Criminal Code (intentionally causing less serious harm to the health of another).

47. When questioned as a witness by an investigator on 17 August 2006, the applicant changed his initial testimony. He asserted that he could not recall the details of the incident of 14-15 August 2006, as he had been taking psychotropic medication at the material time. All he could remember was that he had not had a fight with the representatives of the prison administration. He further claimed that he had frequent quarrels with other prisoners, whom he could not name because of the risk posed to his life.

48. The deputy director of the prison hospital, G.B., implicated by the applicant in his initial statement as having been involved in his ill-treatment, maintained that a fight had broken out between the applicant and another prisoner, A.A., in the prison hospital yard on 14 August 2006 and that prison officers had had to intervene in order to stop it. He claimed that he had not witnessed the incident personally and had only arrived at the prison hospital yard after the fight was over. The applicant had then been placed in solitary confinement. According to G.B., neither he nor any of the prison officers had either psychically or verbally insulted the applicant during this incident.

49. The prison officers who had been in the prison hospital yard during the incident were also questioned. They maintained that prisoner A.A. and the applicant, who they asserted was always aggressive towards prison hospital staff and other prisoners, had had a fight on 14 August 2006 and that due to the applicant's aggressive behaviour he had been subsequently placed in solitary confinement. They claimed that on the next day the applicant had burnt his shirt, smashed up the cell and continued verbally assaulting prison officers. They also stated that the incident had lasted for a short period of time and that they had noticed no injuries on either A.A. or the applicant afterwards.

50. A.A. confirmed in a statement that on 14 August 2006 at around 6:00 p.m. while exercising in the prison hospital courtyard he had had an argument with the applicant and had kicked him once, after which prison officers had intervened and restrained them. A.A. noted that neither the prison officers nor the prisoners who were in the prison hospital courtyard during the incident had engaged in the fighting or had assaulted the applicant.

51. Another six prisoners, eyewitnesses to the incident, were additionally questioned in the course of the investigation. They confirmed that a fight had broken out between the applicant and A.A. on 14 August 2006 and that the prison officers had only intervened to stop it.

52. An independent medical report drawn up on 29 August 2006 at the request of the defence found that the applicant had two haematomas on his back, measuring 2 cm by 1.5 cm and 6.5 cm by 2.5 cm, and a 3.5 cm by 1 cm haematoma in the area of his loin. These injuries had been inflicted by a hard, blunt object and could have been inflicted at the time and in the circumstances referred to in the report of the visit of the PDO representatives.

53. On 7 July 2008 the prosecutor discontinued the proceedings for lack of evidence of a crime. Whilst omitting the medical evidence concerning the applicant's injuries, he based his findings primarily on the deposition of the applicant given to the investigator on 17 August 2006, as well as on the statements of the Governor of the prison hospital, his two deputies, the prison officers and the applicant's fellow prisoners questioned in the course of the investigation. The prosecutor concluded that it could not be established that the applicant had been physically assaulted by the staff of the prison hospital.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

A. The Code of Criminal Procedure ("CCP"), as in force at the material time

54. Article 28 § 1 (a) of the CCP stated that a preliminary investigation shall be discontinued if the act or omission concerned is not an offence under the Criminal Code.

Pursuant to Article 62 §§ 1 and 2 of the CCP, whilst criminal investigations were normally carried out by the Ministry of the Interior, an investigation into an offence implicating a police officer, an investigator, or a senior military or special law-enforcement officer was to be entrusted to the Public Prosecutor's Office.

The other relevant provisions of the CCP read as follows:

Article 73 – Rights of a suspect

"1. A suspect has the right ...

(f) when detained or issued with a decision on his/her recognition as a suspect, to request a free medical examination and relevant written conclusion, and to call for a forensic medical examination, which request should be immediately met. A refusal to order [such] an examination is subject to appeal in the district (city) court ..., which shall deal with the matter within 24 hours."

Article 151 – The purpose and grounds for applying measures of restraint

"1. A measure of restraint shall be applied to ensure that the accused cannot avoid the investigation and trial, that his further criminal activity is prevented, that he cannot interfere with the establishment of the truth in a given criminal case, or [in order] that a court's verdict is implemented. Pre-trial detention or [any] other measure of restraint shall not be imposed on the accused if a less restrictive measure meets the objectives provided for in this paragraph.

2. The grounds for the imposition of a measure of restraint are a reasonable suspicion that the person might abscond or fail to appear in court, destroy evidence, threaten the parties to the proceedings or commit a new crime. ...

4. A court shall impose pre-trial detention as a measure of restraint only when the objectives set out in the first paragraph of this Article can not possibly be achieved by applying a less restrictive measure."

Article 261 – Obligation to initiate a preliminary investigation

"Upon receipt of information concerning the commission of a crime, the investigator and the public prosecutor, within the limits of their powers, shall open an investigation. ..."

Article 263 – Information concerning the commission of a crime

"1. The preliminary investigation shall be opened on the basis of the information concerning the commission of a crime brought to the attention of the investigator or the public prosecutor by a natural person or other legal entity ... reported in the media, or brought to light during the investigation of a case by the authority in charge of the investigation ..."

B. Human Rights Watch Report "*Undue Punishment: abuses against prisoners in Georgia*" (Volume 18, No. 8(D) September 2006)

55. The relevant parts of the report read as follows:

Summary

"... Ill-treatment of detainees has increased since December 2005. Some detainees reported being beaten regularly and severely or being subject to other ill-treatment and inhuman punishment. In some cases, the beatings and other inhuman treatment constituted torture. There is widespread impunity for such ill-treatment. Detainees have no access to an effective complaint mechanism and in some facilities have limited ability to communicate confidentially with their lawyers. Investigations into abuse are rare and those responsible for abuse are seldom held accountable.

Impunity for abuses perpetrated by prison staff and special forces

There are numerous obstacles to effective investigation and prosecution of perpetrators of abuse against detainees, including direct interference by prison authorities and the lack of identifying insignia among prison staff and special forces. ...

The lack of investigations into the deaths, injuries, and other ill-treatment and possible torture inflicted by law enforcement agents acting in the Georgian penitentiary facilities in early 2006, also suggests that the government is not fully committed to guaranteeing justice for victims and eliminating the climate of impunity."

C. Amnesty International "*Briefing: to the Committee against Torture*" (AI Index: EUR 56/005/2006, 30 March 2006)

"... In 2005 the large majority of injuries alleged to have been sustained through police ill-treatment were reportedly inflicted during the arrest. In the same period Amnesty International also continued to receive information about some cases in which detainees were reportedly tortured or otherwise ill-treated in cars while being taken to a place of detention, in police stations, and in the Ministry of Internal Affairs. ...

Impunity for torture or other ill-treatment is still a big problem. Amnesty International is concerned that procurators do not open investigations into all potential torture or other ill-treatment cases in a systematic manner. In dozens of cases where the procuracy has opened investigations the perpetrators have not been brought to justice. Investigations into allegations of torture or other ill-treatment have often not been conducted in a prompt, impartial and independent manner."

D. The Report of 25 October 2007 (CPT/Inf (2007) 42) on the visit to Georgia carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment ("the CPT") from 21 March to 2 April 2007

"2. Ill-treatment

10. In general, the CPT's delegation gained the impression that the situation as regards the treatment of persons detained by the police in Georgia had considerably improved since the Committee's second periodic visit. The great majority of the persons interviewed during the 2007 visit, who were or had recently been in police custody, indicated that they had been treated in a correct manner. The delegation received only a few isolated allegations of physical ill-treatment, all but one of which referred to the excessive use of force at the time of apprehension (i.e. kicks and punches after the person concerned had been brought under control). ...

15. ... [T]he CPT reiterates its long-standing recommendation that whenever persons brought before a judge at the end of police custody allege ill-treatment by the police, the judge record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge should request a forensic medical examination whenever there are other grounds (e.g. visible injuries, a person's general appearance or demeanour) to believe that ill-treatment may have occurred. If necessary, the relevant legal provisions should be amended."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

56. The applicant complained under Article 3 of the Convention of having been mistreated by police officers on 29 October 2005 and by prison officers on 21 June and 14-15 August 2006 and of the failure of the relevant national authorities to conduct a thorough and adequate investigation into his complaints of ill-treatment.

57. In his additional application form lodged on 18 June 2008 the applicant further complained that the conditions of his detention in Tbilisi no. 1 Prison in 2005 and in Tbilisi no. 5 Prison between 27 and 29 May 2006 had been inadequate and that he had been denied necessary psychiatric treatment in Tbilisi no.1 Prison in 2005, and in the prison hospital and in Rustavi no. 6 Prison between 16 August 2006 and 31 January 2007. He again relied upon Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' submissions

58. Referring to the fact that the applicant had never complained of his alleged ill-treatment on 21 June 2006 before either the prosecution or the judicial authorities, the Government claimed that this part of the complaint

under Article 3 of the Convention should be rejected for non-exhaustion of domestic remedies. In the alternative, the Government maintained that the applicant had failed to comply with the six-month time-limit because he had not lodged his application within six months of the alleged incident. They also submitted that this complaint was in any event manifestly ill-founded.

59. The Government raised no preliminary objections as regards the admissibility of the other complaints made by the applicant under Article 3 of the Convention.

60. The applicant disagreed. He pointed out that, given his unsuccessful attempts to bring to justice those responsible for his alleged ill-treatment on the other two occasions, he had considered it pointless to complain to the national authorities regarding the incident of 21 June 2006.

2. The Court's assessment

61. In respect of the complaint concerning the incident of 21 June 2006, the Court accepts the Government's argument that an investigation, leading to the possible criminal responsibility of the prison officers in charge, was an effective remedy (see, *Ramishvili and Kokhreidze v. Georgia* (dec.), no. 1704/06, 26 June 2007, and *Davtian v. Georgia* (dec.), no. 73241/01, 6 September 2005). However, the applicant did not lodge a complaint that could have brought such an investigation about with the competent domestic authorities. Moreover, he did not raise his grievances before the judicial authorities in the course of the criminal proceedings conducted against him or before the prosecution authorities in the course of the criminal proceedings concerning his alleged ill-treatment during the arrest.

62. Hence, the applicant failed to exhaust the available domestic remedies and this part of the complaint under Article 3 of the Convention must be rejected as inadmissible, in accordance with Article 35 §§ 1 and 4 of the Convention.

63. The Court further notes that the applicant also complained of a lack of psychiatric treatment and the poor conditions of his detention in various prisons. These complaints concern the period until 31 January 2007 (see paragraph 57 above). In the present case, however, when the applicant applied to the Court in April 2006, he did not voice those complaints in his application form, either in the statement of facts or in the complaints under specific Articles of the Convention. It was only on 18 June 2008, when the applicant submitted an additional application form, that he raised these issues for the first time. The Court, therefore, considers these complaints inadmissible on account of the applicant's failure to comply with the six-month time-limit (see *Aliev v. Georgia*, no. 522/04, §§ 62 and 63, 13 January 2009, and *Belashev v. Russia*, no. 28617/03, § 48, 4 December 2008).

64. The Court lastly observes that the applicant's complaint regarding his alleged ill-treatment on 29 October 2005 and 14-15 August 2006 is not

manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

65. The Government challenged the applicant's version of events and submitted that the applicant had not been subjected to any form of ill-treatment, either on the day of his arrest on 29 October 2005 or on 14-15 August 2006.

66. In connection with the applicant's arrest, they conceded that the police had used force, which had been provoked by the applicant's own actions. The use of force had been no more than an adequate and proportionate response to the applicant's unruly and unlawful behaviour, in particular his refusal to obey the lawful orders of the police officers. The medical certificates issued by the prison authorities had certified that the applicant had not been ill-treated. Furthermore, the applicant's allegations had contradicted the findings of the relevant criminal proceedings. With respect to those proceedings, the Government considered that the investigation into the alleged ill-treatment had been thorough and prompt. The applicant had had opportunities to complain of his alleged ill-treatment upon his being taken to the temporary detention centre, during questioning as an accused and also during the hearing on 31 October 2005, but he had failed to do so. The Government, hence, explained that the belated medical examination of the applicant had merely been the result of his failure to promptly report his alleged ill-treatment to the relevant national authorities.

67. As regards the incident of 14-15 August 2006, the Government denounced the applicant's allegations as untrue, referring to the contrary findings of the relevant criminal proceedings. In their supplementary observations they submitted the relevant case file, according to which it had been established that the applicant had not been subjected to any form of physical ill-treatment in the prison hospital on 14-15 August 2006. Whilst basing his findings on the statements of fourteen witnesses, the prosecutor had decided on 7 July 2008 to drop the criminal proceedings into the incident of 14-15 August 2006 for lack of a crime. The Government sought, in particular, to draw the Court's attention to the fact that in his statement as a witness given in the course of the domestic criminal proceedings, the applicant had denied being ill-treated by prison hospital staff.

68. The applicant disagreed with the Government's account of events. He contended that no plausible explanation for the multiple injuries on his body and his serious mental problems had been forthcoming from the authorities. The applicant particularly criticised the fact that he had never

been informed of the investigator's decision of 7 July 2008 concerning the discontinuation of the criminal proceedings concerning the incident of 14-15 August 2006. He claimed that he had only become aware of the existence of this decision when the Government's observations in the present case had been forwarded to him.

2. The Court's assessment

(a) General principles

69. The Court reiterates that where an individual is taken into police custody in good health and is found to be injured on release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). The same principle applies to alleged ill-treatment resulting in injury which takes place in the course of an applicant's arrest (see *Klaas v. Germany*, 22 September 1993, §§ 23-24, Series A no. 269, and *Rehbock v. Slovenia*, no. 29462/95, §§ 68-78, ECHR 2000-XII).

70. According to the Court's case-law, Article 3 does not prohibit the use of force for the purposes of effecting an arrest. However, such force may be used only if indispensable and must not be excessive (see, among others, *Altay v. Turkey*, no. 22279/93, § 54, 22 May 2001; and *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). In respect of a person deprived of his liberty, 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 (see *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336).

71. Furthermore, 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 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).

72. Lastly, the Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and 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. This investigation should be capable of leading to the identification and punishment of those responsible. If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its

fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

(b) Application of the above principles to the circumstances of the present case

i. Alleged ill-treatment of the applicant on 29 October 2005

(α) Substantive issue

73. The Court notes that it is undisputed that the applicant's injuries, supported by medical evidence, actually arose in the course of his arrest and subsequent scuffle with the police. Further, having regard to the nature of the applicant's physical injuries (see paragraphs 6 and 28 above), the Court finds them sufficiently serious to fall within the scope of Article 3 of the Convention (see, *mutatis mutandis*, *Assenov and Others*, cited above, § 95). The burden, hence, rests on the Government to demonstrate with convincing arguments that the use of force during the applicant's arrest and subsequently in the temporary detention centre was not excessive (see *Zelilof v. Greece*, no. 17060/03, § 47, 24 May 2007).

74. The Court observes that in the course of inquiries into the applicant's allegations the domestic authorities advanced a plausible account of the origin of the applicant's injuries, explaining that the injuries had been sustained by him in the course of his arrest at the scene of crime and that the police officers had not used force against the applicant at the temporary detention centre. In view of this explanation, advanced by the domestic authorities themselves, the Court will assess whether the use of force during the applicant's arrest was excessive, presuming that that use of force resulted in all the injuries in issue.

75. The Court notes the Government's argument that force had been used lawfully in response to the applicant's unruly conduct. Accepting that the applicant, being slightly under the influence of alcohol, behaved aggressively and refused to comply with police orders, the Court is ready to admit that in these circumstances the officers may have needed to resort to physical force to prevent further disruption and calm the applicant down. The Court cannot, though, overlook the fact that the degree of bruising established during the medical examination was serious, including large bruises on his neck and all over his back, and that the applicant sustained a head injury and concussion (see, by contrast, *Stefan Iliev v. Bulgaria*, no. 53121/99, § 44, 10 May 2007, and *Spinov v. Ukraine*, no. 34331/03, § 50, 27 November 2008). It further notes the difference between the extent of the applicant's and the police officers' injuries (see paragraphs 6 and 8

above): both of the police officers, N.J. and G.A, were discharged from the hospital on the same day (see, *Zelilof*, cited above, § 50).

76. In view of the above mentioned, the Court cannot accept that the numerous bruises on different parts of the applicant's body and his head injury could have resulted from the application of restraining force. It notes that while no conclusive evidence was provided by the parties concerning the exact nature and degree of force resulting in the applicant's injuries, viewed cumulatively, the medical evidence, the nature of the applicant's injuries, his detailed and consistent statements, as well as the lack of plausible and detailed explanation on the part of the Government as to the cause of the injuries, give rise to a strong adverse inference that these injuries were the result of the police officers using excessive and disproportionate force (see, *Rehbock*, cited above, § 76; *Kuzmenko v. Russia*, no. 18541/04, §§ 42-43, 21 December 2010; *Butolen v. Slovenia*, no. 41356/08, § 90, 26 April 2012, and, *a contrario*, *Spinov*, cited above, § 50).

77. The Court, hence, concludes that there has been a violation of Article 3 of the Convention in its substantive limb on account of the excessive physical force to which the applicant was subjected by the police in the course of his arrest on 29 October 2005.

(β) Procedural issue

78. The Court notes from the outset that the criminal proceedings into the alleged abuse of authority by police officers during the applicant's arrest on 29 October 2005 were only instituted on 20 December 2005, that is to say with a delay of almost two months. This is inconsistent with the obligation to carry out a prompt investigation, as there is a risk that evidence of ill-treatment disappears as time goes by and injuries heal (see, for instance, *Pădureţ v. Moldova*, no. 33134/03, § 64, 5 January 2010).

79. The Court further observes that a number of crucial steps were delayed which made it difficult, if at all possible, for the prosecution authorities to thoroughly investigate the alleged incident. The most serious omission of the investigation in that regard is the delayed medical examination of the applicant. The Court notes in this connection that the applicant's injuries were first reported in the two medical certificates issued by prison doctors on 29 October and 31 October 2005 respectively (see paragraphs 6 and 11 above). However, these reports were drawn up merely on the basis of external visual examinations of the applicant and, they do not, as a result of their limited nature, elaborate on the probable cause of the applicant's injuries. The first in-depth medical examination of the applicant, despite his reiterated requests (see paragraphs 12, 14 and 15 above), was only conducted more than two months after the incident. This obviously contradicts the domestic authorities' (see paragraphs 14 and 43 above) and the Government' assertion in its pleadings before the Court (see paragraph

66 above) that the belated examination in the present case was to be explained by the failure of the applicant to report his alleged ill-treatment in a timely and proper manner.

80. A similar omission took place with respect to the applicant's psychiatric examination, which was only carried out in March 2006, despite the relevant request filed by the applicant's lawyer already on 26 December 2005.

81. With regard to the thoroughness of the investigation, the Court further notes some discrepancies capable of undermining its reliability and effectiveness. Hence, the investigative authorities did not examine the applicant's allegation concerning unjustified use of truncheons against him during his arrest. As is evident from the relevant case materials, none of the police officers were questioned on that matter and the relevant decisions of the domestic authorities are also silent on that issue. The relevant national authorities also did not give adequate consideration to the medical evidence concerning the applicant's injuries (see paragraphs 41, 43 and 44 above) and failed to explain, *inter alia*, their origin.

82. Furthermore, the Court observes somewhat inconsistent approach to the assessment of evidence by the national authorities. It is apparent from the decisions of the domestic authorities that they based their conclusions mainly on the statements given by the police officers involved in the incident. Although excerpts from the applicant's statement were included in the decision not to institute criminal proceedings, the domestic courts did not consider that statement to be credible, apparently because it reflected a personal opinion and constituted an accusation by the applicant. However, the domestic courts accepted the credibility of the police officers' statements, without giving sufficient convincing explanations, despite the fact that the statements of those officers also might have been subjective and aimed at evading criminal liability for the purported ill-treatment. The Court considers in this respect that the credibility of the police officers' statements should also have been questioned, as the investigation was supposed to establish whether the officers were liable on the basis of disciplinary or criminal charges (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006, and *Antipenkov v. Russia*, no. 33470/03, § 69, 15 October 2009).

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

ii. Alleged ill-treatment of the applicant on 14-15 August 2006

(α) Substantive issue

84. The Court observes that the domestic proceedings did not identify any tangible proof that the applicant had been ill-treated by prison hospital staff on 14-15 August 2006. The applicant's account of events was not corroborated by any of the witnesses questioned in the course of the investigation (see paragraphs 48-51 above). The Court also notes that the contradictory statements of the applicant made before the domestic authorities cast doubt on the veracity of his claim. The only time the applicant complained of having been ill-treated in the prison hospital was to the representatives of the PDO (see paragraph 45 above). On 17 August 2006, when questioned by an investigator in the presence of his lawyer, the applicant renounced his previous allegation of ill-treatment (see paragraph 47 above). The Court finds this inconsistency striking, particularly since the applicant was represented by a lawyer throughout the relevant criminal proceedings.

85. Going beyond the domestic authorities' findings of fact and applying a particularly thorough scrutiny (see, among other authorities, *Talat Tepe v. Turkey*, no. 31247/96, § 49, 21 December 2004), the Court itself is unable, in view of the evidence in the case file and solely on the basis of the applicant's assertions before the Court, to consider the impugned ill-treatment in the prison hospital a fact established "beyond reasonable doubt" (see *Davtian v. Georgia*, no. 73241/01, § 38, 27 July 2006, and *Danelia v. Georgia*, no. 68622/01, §§ 42 and 43, 17 October 2006). The Court, thus, concludes that there has been no violation of Article 3 of the Convention in its substantive limb.

(β) Procedural issue

86. The Court recalls at the outset, as it has held in previous cases, that the conclusion reached in paragraph 85 above does not preclude the applicant's complaint in relation to Article 3 from being "arguable" for the purposes of the positive obligation to investigate (see, *Böke and Kandemir v. Turkey*, nos. 71912/01, 26968/02 and 36397/03, § 54, 10 March 2009; and *Aysu v. Turkey*, no. 44021/07, § 40, 13 March 2012). In this connection, the Court notes that it is undisputed that the inquiry into the alleged ill-treatment of the applicant commenced promptly and that a number of urgent and relevant investigative measures were taken, such as the applicant's medical examination and the questioning of various witnesses. The Court observes, however, that there were serious deficiencies in the manner in which those measures were conducted from the very beginning of the investigation and throughout its duration.

87. The Court notes at the outset that all the investigative measures were conducted by the Investigation Department of the Ministry of Justice, the

very same Ministry which was, at the material time, in charge of the prison system. Their findings were then simply endorsed by a prosecutor from the General Prosecutor's Office, without having made any additional inquiries of his own, as the basis for dismissing the case. This institutional connection between the investigators and those implicated by the applicant in the incident, in the Court's view, raises legitimate doubts as to the independence of the investigation conducted (see *Tsintsabadze v. Georgia*, no. 35403/06, § 78, 15 February 2011). The fact that the prosecutor made no attempts to scrutinize the investigator's account of the incident further undermines the effectiveness of the investigation (see, *Matko v. Slovenia*, no. 43393/98, § 90, 2 November 2006; *Đurđević v. Croatia*, no. 52442/09, §§ 89-90, ECHR 2011 (extracts), and *Butolen*, cited above, § 76). Hence, the Court cannot overlook the fact that despite the two contradictory statements made by the applicant (the first to the PDO representatives on 15 August 2006 and the second to the investigator on 17 August 2006), the prosecutor did not consider it necessary to arrange for his repeated questioning (see *Iljina and Sarulienė v. Lithuania*, no. 32293/05, § 52, 15 March 2011, and *Đurđević*, cited above, § 90). He made no attempts to otherwise remedy that situation and simply ignored the applicant's initial incriminating statement in his decision of 7 July 2008 (see paragraph 53 above).

88. Furthermore, the prosecutor limited himself to exonerating the prison officers who allegedly ill-treated the applicant, but failed to examine the available medical evidence and explain the origin of the applicant's injuries in his decision to terminate the preliminary investigation. Hence, he did not specify whether the applicant's injuries had been inflicted by A.A., and if so, how multiple injuries on different parts of the applicant's body could have been caused by a single kick, as alleged by A.A. Neither did the prosecutor examine the likelihood of the applicant sustaining his injuries as a result of the prison officers' intervention in the fighting, nor as a result of the applicant's subsequent aggressive behaviour in the prison cell.

89. The Court observes further deficiencies in the official version of the incident as advanced by the national authorities. Thus, the Court notes the statement of A.A., who claimed that he had kicked the applicant only once, whereas the prison officers asserted, without providing any details, that there had been a fight between the applicant and A.A. and that they had had to intervene in order to stop it. In these circumstances, it is unclear why A.A. was not given a medical examination to establish the nature of his injuries. Obviously, an identification of the nature and origin of his injuries could have shed light on whether the official finding that there had been a fight between the prisoners was well-founded.

90. It is to be noted that the official version of events was also supported by the depositions of the other prisoners who had witnessed the incident. However, the Court cannot but observe that all the prisoners questioned in

connection with the 14 August 2006 incident were employed at the material time by the administration of the prison hospital. Such a dependency could have explained the concurrence of those witnesses' statements.

91. Lastly, the Court observes that the prosecution authority did not inform the applicant of the decision to discontinue the proceedings. As a result, the applicant was left in the dark as regards the progress of the investigation and was deprived of the ability to challenge the lawfulness of that decision and complain about the shortcomings of the investigation before the domestic courts (see *Members (97) of the Gldani Congregation of Jehovah's Witnesses v. Georgia*, no. 71156/01, §§ 122-123, 3 May 2007, and *Muradova v. Azerbaijan*, no. 22684/05, § 131, 2 April 2009).

92. Having regard to all the above mentioned, the Court concludes that the authorities failed to conduct an independent and thorough investigation into the circumstances surrounding the incident of 14-15 August 2006. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

A. Admissibility

93. The applicant complained under Article 5 §§ 1 (c) and 3 and Article 6 of the Convention that the reasons given for the court decisions ordering his remand in custody had been neither adequate nor sufficient and that the court proceedings leading to those decisions had been unfair.

94. The Court considers that the complaint under Article 5 § 1 (c) of the Convention concerning the sufficiency of the grounds given by the domestic courts to justify the applicant's pre-trial detention falls more properly to be examined under Article 5 § 3 of the Convention. As regards the complaint under Article 6, in so far as Article 5 of the Convention is the *lex specialis* in matters of detention, there is no room for examining the same issues under Article 6 of the Convention (see *Patsuria v. Georgia*, no. 30779/04, § 92, 6 November 2007, and *Ramishvili and Kokhreidze* (dec.), cited above).

95. The complaint concerning the alleged lack of adequate reasons in the relevant court decisions, which falls to be examined under Article 5 § 3 of the Convention, is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further notes that this complaint in not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

96. The applicant complained that the court decisions of 31 October and 7 November 2005 authorising his pre-trial detention had not been accompanied by sufficient reasons.

97. The Government contested that argument, maintaining that the reasons given in the contested judicial decisions had been adequate.

98. Article 5 § 3 of the Convention reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

99. The Court notes that the domestic court decisions of 31 October and 7 November 2005 constituted two stages of the same *habeas corpus* proceedings bearing on the initial three-month period of the applicant's pre-trial detention. Consequently, in order to establish whether that period of detention was reasonable within the meaning of Article 5 § 3 of the Convention, the reasons given in those decisions, as well as the arguments of the parties to the proceedings, should be examined as a whole (see *Saghinadze and Others v. Georgia*, no. 18768/05, § 136, 27 May 2010).

100. The Court reiterates that, even if there is a reasonable suspicion that a person arrested has committed an offence, the domestic courts are under an obligation to demonstrate other "relevant" and "sufficient" grounds to justify the deprivation of that person's liberty (see, amongst other authorities, *Punzelt v. the Czech Republic*, no. 31315/96, § 73, 25 April 2000). It falls in the first place to the national judicial authorities to examine the circumstances for or against the existence of such an imperative interest, and to set them out in their decisions on any applications for release. It is essentially on the basis of the reasons given in these decisions, and of the facts established by the applicant in his or her appeals, that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Stašaitis v. Lithuania*, no. 47679/99, § 82, 21 March 2002). In exercising this function, the Court has to ensure that the domestic decisions were not in stereotypically worded or summary form (see *Panchenko v. Russia*, no. 45100/98, § 107, 8 February 2005) and that the reasoning was not of a declaratory nature, general or abstract (see *Nikolov v. Bulgaria*, no. 38884/97, § 73, 30 January 2003, and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 63, ECHR 2003-IX (extracts)).

101. Turning to the circumstances of the present case, the two grounds relied on by the prosecutor in his request for the imposition of the detention measure, which were confirmed by the domestic courts in the contested decisions, were the fear that if released the applicant could influence the witnesses, and that the applicant might abscond in view of the gravity of the charge.

102. The Court recalls that the danger of absconding cannot solely be assessed on the basis of the severity of the sentence risked (see *Muller v. France*, 17 March 1997, § 43, *Reports* 1997-II), but must be analysed with reference to a number of other relevant additional factors, which may either confirm the existence of such a danger or make it appear so slight that it cannot justify detention pending trial (see, among others, *Letellier v. France*, 26 June 1991, § 43, Series A no. 207). Having regard to the lack of such sufficient reasoning in the domestic court's decision to remand the applicant in custody (see, *a contrario*, *Šuput v. Croatia*, no. 49905/07, § 100, 31 May 2011), the Court is not prepared to accept that the danger of absconding constituted a valid ground for the applicant's pre-trial detention. However, the Court subscribes to the domestic authorities' consideration that if released the applicant could have influenced the witnesses. It notes that the applicant's friends were among the key witnesses in the criminal case against him. In such circumstances, the applicant's ability to influence them could not be excluded and consequently, the Court cannot but consider the existence of such a risk as real.

103. The Court also notes that the applicant was tried quickly – within less then eight months. This factor is of further importance when assessing the compatibility of pre-trial detention with Article 5 § 3 of the Convention (see *Kusyk*, cited above, § 39; *Klamecki v. Poland*, no. 25415/94, §§ 74 and 76, 28 March 2002; and *Galuashvili v. Georgia*, no. 40008/04, § 40, 17 July 2008).

104. In view of the foregoing considerations, the Court concludes that the domestic courts' argument concerning the risk of influencing the witnesses could justify the applicant's detention for the initial period of three months. Accordingly, there was no breach of Article 5 § 3 of the Convention on this account.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

105. Relying on Articles 6 § 1 and 13 of the Convention, the applicant reiterated his complaints concerning the ineffectiveness of the investigation into his ill-treatment on 29 October 2005. He also complained, under Article 6 § 1 of the Convention, about the outcome of the criminal proceedings conducted against him and claimed his innocence.

106. As regards the proceedings concerning the ill-treatment of the applicant on 29 October 2005, having regard to the finding of a violation under Article 3 of the Convention, the Court does not consider it necessary to also examine the application under Articles 6 § 1 and 13 of the Convention.

107. The Court further finds, in light of all the material in its possession, that the remainder of applicant's submissions under Article 6 § 1 of the Convention do not disclose any appearance of an arguable issue under this

provision and must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicant claimed EUR 1,000,000 in respect of pecuniary damage he had sustained as a result of the violations of the Convention in his case. He explained that due to the severe deterioration in his medical condition he had been prevented from improving his professional status by becoming a prosperous football player and finding employment. He further claimed EUR 2,000,000 for non-pecuniary damage.

110. The Government submitted that the applicant's claims for pecuniary-damage were unsubstantiated. The Court could not speculate as to whether the applicant would have become a successful football player with a high income. Further, regarding the applicant's claim for non-pecuniary damage, they considered the amount requested exorbitant.

111. The Court does not discern any causal link between the violations found and the pecuniary damage alleged: it therefore rejects these claims. On the other hand, ruling on an equitable basis and taking all the circumstances of the case into account, it awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

112. In the absence of a claim for costs and expenses, the Court notes that there is no call to make any award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 3 (the applicant's alleged ill-treatment on 29 October 2005 and 14-15 August 2006 and the inadequacy of the investigations in that regard) and Article 5 § 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in its substantive limb on account of the applicant's ill-treatment by the police on 29 October 2005;

3. *Holds* that there has been a violation under Article 3 of the Convention in its procedural limb on account of the lack of an effective investigation into the applicant's ill-treatment by the police on 29 October 2005;

4. *Holds* that there is no need to examine the complaints under Articles 6 § 1 and 13 of the Convention in connection with the applicant's ill-treatment by the police on 29 October 2005;

5. *Holds* that there has been no violation of Article 3 of the Convention in its substantive limb on account of the applicant's alleged ill-treatment by prison officers on 14-15 August 2006;

6. *Holds* that there has been a violation of Article 3 of the Convention in its procedural limb on account of the lack of an effective investigation into the applicant's allegation of ill-treatment by prison officers on 14-15 August 2006;

7. *Holds* that there has been no violation of Article 5 § 3 of the Convention;

8. *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 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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;

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

Done in English, and notified in writing on 9 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President