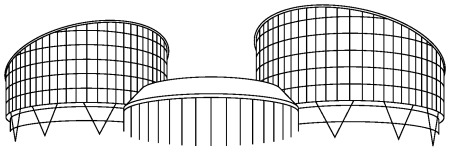

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF PASTUKHOV v. RUSSIA

(Application no. 74820/14)

JUDGMENT

STRASBOURG

1 October 2019

This judgment is final but it may be subject to editorial revision.

In the case of Pastukhov v. Russia,

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

Alena Poláčková, *President,*
Dmitry Dedov,
Gilberto Felici, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 10 September 2019,

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

PROCEDURE

1. The case originated in an application (no. 74820/14) 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 Aleksey Viktorovich Pastukhov ("the applicant"), on 18 November 2014.

2. The applicant was represented by Mr Z. Zhulanov and Ms Y. Pershakova, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant alleged that he had been unlawfully detained and ill-treated in the police custody, that the investigation into the events had been ineffective and that he had been unable to obtain adequate redress for the damage sustained as a result of unlawful actions of the police.

4. On 23 February 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicant's arrest and detention in the police custody

5. The applicant was born in 1978 and lives in Perm.

6. The facts of the case, as submitted by the parties, may be summarised as follows.

7. On the night of 6 February 2011 the applicant was returning home. He was drunk and mistakenly entered a neighbouring block of flats, which, by

coincidence, had a flat with the same number as his own. He persistently rang the doorbell and asked to let him in. The flat owner, Ms B., called the police. When officers arrived, the applicant was lying on the stairs. They checked his passport and established his registration address. Ms B. suggested that the applicant had confused the buildings and asked the officers to notify his relatives about the incident. After a failed attempt to contact them, the officers took the applicant to a station.

8. At 5.11 a.m. on 6 February 2011 the applicant was brought to police station no. 4 of the Motovilikhinskiy District of Perm. He was formally charged under Article 20.21 of the Code of Administrative Offences ("the CAO"), on account of being drunk in a public place and fined 300 Russian roubles (RUB). The police also drew up an arrest record which indicated that the applicant had an abrasion on his nose. The applicant was not subjected to a medical examination. After a body search he was taken to an empty cell and placed on a bunk bed, which was installed at some 40 centimetres above the concrete floor and lacked any safety railings. At 9 a.m. duty officers found the applicant lying on the floor. They were unable to wake him up and left him lying on the floor. One of them made an entry in a register of administrative detainees, noting that the applicant had been released at 8.10 a.m. on 6 February 2011. At 3 p.m. the duty officer once again tried to wake the applicant up, but failed and called an ambulance. Medics who arrived at the scene stated that the applicant was in coma and took him to a hospital. During the next five hours the applicant was transferred between three hospitals. At 9 p.m. he was admitted to State Hospital no. 1 of Perm where he was examined by a doctor and a number of injuries, including bruises on the left cheekbone area, knee and shoulder, as well as a swelling on the left parietal area, were found on him. The applicant was also diagnosed with a grave closed cranio-cerebral trauma with hematomas in the left part of the frontal lobe and a haemorrhagic contusion epicentre in the right part of the frontal lobe and a skullcap fracture affecting the base of the skull. On the same day he underwent a surgery.

9. Between 6 February and 22 March 2011 the applicant received treatment in a neurosurgical unit of the hospital. He remained in the state of coma at least until 15 February 2011. The applicant developed a posttraumatic encephalopathy, epilepsy and dementia. He partially lost his eyesight and ability to understand the nature of his acts and to control his actions. The applicant was assigned a lifelong first-degree disability and was formally declared legally incapacitated. His mother, Ms Yelena Pastukhova, became his legal guardian.

B. Investigation

10. On 6 February 2011 the hospital to which the applicant was admitted informed the police about his trauma and the state of his health. Four days

later Ms Pastukhova lodged a criminal complaint against the officers of the police station with the Prosecutor of the Motovilikhinskiy District of Perm. She complained about the applicant's unlawful detention in the police custody and the absence of necessary medical treatment. She also implied that the injury was inflicted on him by the police officers. An additional complaint was lodged on 17 February 2011.

11. On 14 February 2011 an officer of police station no. 4, in response to the information from the hospital, issued a one-page decision refusing to open a criminal investigation into the events. It stated that the applicant's injuries were not "criminal" in origin and that it was impossible to question him because he was unconscious. The officer also referred to statements from the applicant's mother and Ms B., according to whom, "no crimes or offences were committed against the applicant and none of his personal belongings disappeared".

12. Meanwhile, an investigator of the Motovilikhinskiy District Department of the Investigative Committee carried out a preliminary inquiry in response to Ms Pastukhova's complaint. He interviewed Ms Pastukhova, arresting officers Y. and S., duty officer N., doctor A. and Ms B.

13. Ms Pastukhova stated that on 5 February 2011 the applicant had been in a sauna with his friends. He had been drunk and at 2 a.m. on 6 February 2011 he had taken taxi to drive home but had disappeared. The police had tried to contact Ms Pakhtusova at her home address, but she had been at work. On 7 February 2011 officers informed her that the applicant had had a stroke, that he had fallen down the stairs in a block of flats and that he had been taken to a hospital in coma. Ms Pastukhova had collected the applicant's passport and money from the police and had gone to see her son in the hospital.

14. Mr N., a police officer, submitted that at 9 a.m. on 6 February 2011, upon staring his duty at the police station, he and Mr Zh., an officer finishing his duty shift, had entered the applicant's cell and had found him sleeping face down on the floor and snoring. He had had no blood on his clothes or visible injuries on his face. Officer N. had had to serve the applicant with an administrative offence record and to return him the money found on him. Officer N. had tried to wake him up by "pulling his hand and lightly slapping his face", but the applicant had not responded and officer N. had called the ambulance. The applicant had been taken to a hospital.

15. Arresting officers Y. and S. stated that approximately at 5 a.m. on 6 February 2011 they had responded to a call from Ms B. who had complained that a drunken man had been breaking into her flat. They had found the applicant on the floor in the staircase near Ms B's flat. He had had abrasions on his nose and hands and had reeked of alcohol. The officers had checked his passport and had discovered that the applicant lived in the neighbouring house, in a flat with the same number as that of Ms B. An

officer had gone to the applicant's home, but no one had answered the door bell. The officers had decided to take the applicant to the police station for sobering up. They had lifted him and had helped him to walk to the police car. The applicant had stated his name but had not answered any other questions. The applicant had been taken to the station. The officers denied using any force against him.

16. According to Ms B., the applicant had rung her doorbell for the first time at around 3 a.m. on 6 February 2011. Two men in plain clothes who had identified themselves as "security" had been lifting the applicant. The latter had apparently been intoxicated and had been unable to stand straight. They had explained that the applicant had lived in that flat. Ms B. had noted that she had seen the applicant for the first time and that he had probably gone to the wrong house. The men had left. She had not seen any injuries on the applicant. Fifteen minutes later the applicant alone had rung her doorbell. He had kicked and punched the door and had demanded to be let in. She had unsuccessfully tried to reason with him. Ms B. had called the police. Through the door peephole viewer she had seen the applicant on floor, lying on his back. He had bumped his head against the wall and he had started snoring. She had not heard any sounds of a fall. Police officers had arrived few minutes later. She had opened the door and had confirmed that she had not known the applicant. The officers had turned the applicant to his left side and had asked her for an ammonia inhalant to wake him up. The applicant had not had any visible injuries. The officer had found a passport in the name of Aleksey Pastukhov which also had his address. The applicant had not responded to any questions, but had confirmed his name. Ms B. had suggested that he had confused the houses. She denied any violence against the applicant on the part of the police officers. According to Ms B., the applicant could have sustained an injury as a result of a fall, because he had been drunk, and had had difficulties standing on his feet.

17. Mr A., a doctor, submitted that upon admission to the hospital the applicant had had bruises on his cheek and on a parieto-occipital area of his head. An examination also revealed a serious cranio-cerebral trauma – cerebral contusion, skullcap and skull base fracture. These injuries, according to Mr A., could have been caused by a fall from a standing position on a firm surface, but the actual mechanism of the injury was not known.

18. On 18 March 2011 the investigator decided not to institute criminal proceedings due to the absence of *corpus delicti* in the police officers' actions. He found plausible the explanation of the applicant's injuries by Mr A. and held that there had been no indication that the injuries had resulted from violence. The investigator also noted that a medical expert examination of the gravity of the applicant's injuries and their nature was underway.

19. On 22 April 2011 a deputy prosecutor of the Motovilikhinskiy District of Perm quashed the decision of 14 February 2011 (see paragraph 11 above) and ordered to join the preliminary inquiry by the police to the inquiry initiated by the Investigative Committee. On 25 May 2011 the prosecutor also quashed the decision of 18 March 2011 stressing that the inquiry had been incomplete as the investigator had yet to question a number of potential witnesses.

20. In the course of an additional inquiry the investigator held a number of interviews:

Mr L., an emergency doctor, stated that he had found the applicant unconscious on the floor of the cell with his face down and snoring. He had not had any visible injuries. The applicant, in coma, had been taken to a hospital. Mr L. explained that a short time after a serious head injury a person may be able to walk unassisted, until a hematoma becomes larger. The applicant could have thus fallen into a coma during his sleep.

Mr K. and Mr R. confirmed that he had been heavily drunk in the evening of 5 February 2011. They had denied any conflicts between them.

Mr Zh., an officer on duty when the applicant had been brought in, stated that the latter had been drunk and had had difficulties standing on his feet. His speech had been slurred. He had not had any visible injuries. After a record of administrative offence and a record of arrest had been drawn up, the applicant had been taken to an empty cell and had been placed on a bunk bed, on his right side. The officer had body searched the applicant and had made a list of his personal belongings. The cell had been under video surveillance. Once every hour he had checked on the applicant who had continued sleeping. Officer Zh. had not heard any sounds of a fall. In the morning officers Zh. and N. found the applicant sleeping on the floor. They had not noticed any injuries on him. Zh. thought that the applicant had fallen from the bed. The officers had unsuccessfully tried to wake him up. Officer Zh. denied using any physical force against the applicant.

21. The investigator also received a forensic medical expert report assessing the applicant's injuries. The experts concluded that his head injury had originated from a single or multiple impacts with "a massive firm blunt object (surface), such as [the one] resulting from a fall". The report also listed other injuries found on the applicant, namely bruises on his cheekbone, left shoulder, right knee and on a shoulder blade. The experts' conclusion was that those injuries had been most probably caused by blows by a hard blunt object and had not led to any damage to the applicant's health.

22. On 9 June 2011 the investigator issued another decision once again finding no evidence that the applicant's injuries had resulted from violence and refusing to institute criminal proceedings. This decision was quashed on 28 November 2011 when a deputy head of the District Investigative Department ordered the investigator to interview other persons detained in

the police station together with the applicant; to obtain a video recording from the police station; to inspect the staircase where the applicant had been found and the cell where he had been held; to find and question the security guards who had brought the applicant to Ms B.'s flat; to re-interrogate officer N. and to order an additional medical expert examination for the origin of other injuries found on the applicant.

23. On 8 December 2011 the investigator issued a third decision, essentially similar to the previous two. He noted, in particular, that the video recordings were no longer available as they had only been stored for one month and that it was impossible to find the security guards who had brought the applicant to Ms B.'s flat. The inspections of the staircase and the cell were also fruitless. An additional medical expert examination was pending.

24. On 30 January 2012 the deputy head of the District Investigative Department quashed the decision of 8 December 2011. On 24 February 2012 he instituted criminal proceedings under Article 111 § 1 of the Criminal Code of Russia ("infliction of serious injuries"). The investigator in charge of the case interrogated a number of persons. In addition to witnesses already questioned during the preliminary inquiries, the investigator heard Ms M., who had been at the police station on the night of the applicant's arrest. She essentially confirmed statements by the police officers concerning the applicant's arrest and also noted that he had been brought to the station in handcuffs, which had been removed before his placement in a cell. Ms M. further stated that officer Zh. had surveyed the applicant via a video camera installed in the cell. The applicant had fallen from the bed twice during that night and each time officer Zh. had put him back on the bed. Ms M. denied any violence against the applicant during his custody in the police station.

25. The investigator also questioned detainees who had been held in other cells of the police station. They had not heard any screams, sounds of blows or of fighting. They insisted that officers had not used force against detainees, including the applicant. Mr Ku., a doctor in a hospital to which the applicant had been taken before his transfer to State Hospital no. 1, stated that there had been no visible injuries on the applicant or any signs of beatings. Mr P., a police driver, argued that no physical force or special means had been used against the applicant. The applicant had neither been dropped on the ground nor hit against a police car. Ms K., Ms B.'s neighbour, stated that on the night of the incident she had heard three male voices in the stairway; two men had then left. She did not hear any sounds of fighting.

26. An additional medical expert examination showed that the applicant's head trauma could not have resulted from "impacts with any blunt objects weighing less that the head with a limited impact surface (including fists, feet and truncheons)". It was possible that the injury had

resulted from a fall from the upright position and a blow of the head against a hard surface. According to the report, other injuries found on the applicant (see paragraph 21 above) had not caused any harm to his health. They had been inflicted by multiple blows by a hard blunt object, but it was impossible to establish time or sequence of their infliction.

27. On 16 August 2012 criminal proceedings against the police officers were discontinued with the finding that they had not caused any harm to the applicant. The case was transferred to the investigators of the Motovilikhinskiy District Department of the Interior. On 4 October 2012 the Deputy District Prosecutor quashed the decision of 16 August 2012 on a formal ground. The case was sent back to the District Investigative Committee Department. The criminal proceedings under Article 111 § 1 of the Criminal Code were suspended on 2 December 2012 and the criminal search division of police station no. 4 was ordered to find those responsible for causing bodily harm to the applicant.

28. On 28 December 2012 the investigator again refused to institute criminal proceedings against the police officers. He found that the applicant's arrest was necessary because his actions had disclosed elements of administrative offences under Articles 20.1 § 1 and 20.21 of the CAO (minor disorderly acts and public intoxication), punishable, in particular, by administrative arrest, and, therefore, he had had to be brought before a judge. The applicant had been lawfully detained pursuant to section 11 § 11 of the Police Act of 1991, which empowered the police to detain until sober persons in a state of intoxication, if they are unable to walk unaided or if they lost their bearings or can cause harm to themselves or others. The investigator further held that the police station had not employed a paramedic and the duty officers Zh. and N. had not had any medical training. Thus no one in the station could have promptly identify that the applicant had not been sleeping drunk, but rather had been in a coma as a result of the head injury. The investigator concluded that the officers had duly discharged their duties and had taken sufficient care of the applicant by calling an ambulance. He dismissed, as unreliable and uncorroborated by other witness testimony, statements by a doctor, Mr Yu., who had insisted that in addition to other injuries, the applicant had had a hematoma in the area of his scrotum.

29. On 25 June 2013 the applicant's mother applied to the Motovilikhinskiy District Court of Perm with a complaint under Article 125 of the Code of Criminal Procedure of Russia ("the CCrP") against the decision of 28 December 2012, arguing, with reference to Article 3 of the Convention, that the investigation had been ineffective. On 15 July 2013 the District Court granted her complaint and found the impugned decision unlawful and unjustified. The court pointed out, in particular, that the investigator had not resolved discrepancies between the statements by the police officers, who had testified that the applicant had not fallen from the

bunk bed during his stay in the cell and that no means of restraint had been used against him, and the statements by Ms M., who had testified that the applicant had been handcuffed when he had entered the police station and that he had fallen from the bed twice during the night and that each time officer Zh. had put him back in bed. The District Court further held that the medical experts had failed to substantiate their conclusions and had not assessed whether the applicant's injuries could have resulted from a fall from the bed.

30. On 14 October 2013 the investigator once again refused to initiate criminal proceedings. This decision was quashed by the Perm Regional Department of the Investigative Committee on 11 December 2013.

31. Another decision refusing to open a criminal case against the police officers was delivered on 28 February 2014. The investigator noted that the criminal proceedings under Article 111 § 1 of the Criminal Code were pending (see paragraph 24 above) and that the criminal filed contained evidence that the applicant had been intentionally injured by unidentified persons. The investigator also referred to an additional forensic medical report showing that during the applicant's examination on 17 February 2011, eleven days after his admission to the hospital, a bruise on his scrotum had been found. According to the description in the applicant's medical record, the bruise had been inflicted by a firm blunt object not later than three days before the examination. At the same time, the investigator once again dismissed statements from doctor Yu. as unfounded (see paragraph 28 above).

32. The applicant's mother complained about the refusal to the District Court under Article 125 of the CCrP, asserting that the investigator had failed to eliminate the defects identified by the District Court in its decision of 15 July 2013. On 15 May 2014 the District Court dismissed her complaint. It was convinced by the findings of the forensic medical experts and pointed out that during an additional interview Ms M., had retracted her previous statements about the handcuffing. The decision was upheld on appeal by the Perm Regional Court on 15 July 2014.

C. Civil proceedings

33. On 7 November 2013 Ms Pastukhova, acting on the applicant's behalf, brought a civil action against the Ministry of Finance of Russia seeking RUB 4,000,000 in compensation for non-pecuniary damage resulting from unlawful detention, infliction of injuries and the failure on the part of the police to afford necessary medical care and assistance.

34. On 14 March 2014 the District Court partially granted the claim and awarded the applicant RUB 50,000. It held that a criminal complaint of Ms Pastukhova had not been properly addressed for almost a year, until the institution of the criminal proceedings under Article 111 § 1 of the Criminal

Code in February 2012. It also stressed that the decisions dismissing requests for a criminal case to be opened, issued during that period, had all been declared unlawful and incomplete. Multiple unlawful refusals to open a criminal case, in the District Court view, interfered with the applicant's rights as a victim of a crime, guaranteed by Article 52 of the Constitution of Russia. The court concluded that the applicant was entitled to non-pecuniary damages given the unlawful actions of the investigation authorities, irrespective of the possible outcome of the ongoing criminal proceedings under Article 111 § 1 of the Criminal Code. The District Court, at the same time, found no grounds for declaring the ensuing investigation (after February 2012) ineffective, and rejected the relevant part of the claim.

35. The court also held that the applicant's arrest and detention were lawful and justified because the administrative offence record could not have been issued on the spot, in view of his condition and due to impossibility to contact his relatives and to take him home. The conditions of the applicant's detention in the police station were also found to be in compliance with the applicable regulations. Finally, the District Court dismissed as unsubstantiated Ms Pastukhova's argument about the police officers' responsibility for intentional or negligent infliction of health damage to the applicant, including their alleged failure to timely provide him with the requisite medical aid.

36. On 4 June 2014 the Perm Regional Court upheld the judgment of 14 March 2014 on appeal. An application for a cassation review of the case was rejected on 10 September 20154 by the Presidium of the Regional Court.

II. RELEVANT DOMESTIC LAW AND PRATICE

37. For the relevant domestic law and practice see *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, §§ 60-82, 10 April 2018; *Lyapin v. Russia*, no. 46956/09, §§ 96-102, 24 July 2014; *Shimovolos v. Russia*, no. 30194/09, §§ 31-34, 21 June 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained that he had not been examined by a medical specialist and had not been provided with necessary care in the police custody and that he had been detained in a cell unsuitable for his needs in health-threatening conditions. He also complained that the authorities had failed to explain the injuries sustained under their control

and that the investigation into the events had been ineffective. He relied on 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. Submissions by the parties

39. The Government pointed out that the applicant had not argued that the police officers had inflicted his injuries. The applicant had not proven that he had not had injuries before his encounter with the police. He had not submitted any evidence confirming that the injuries had been inflicted during his detention. The Government contended that the domestic authorities had examined the circumstances in which the applicant had sustained the injuries and that there were no grounds to depart from those conclusions. The domestic investigation had collected sufficient evidence showing that the applicant's head injury had resulted from a fall and that that the police officers had had nothing to do with it. The officers had not acted negligently when they had not afforded the applicant medical care. Nothing suggested that his life or health had been in danger.

40. The applicant maintained his complaint. He argued that the only injuries he had had prior to his transfer to the police station, i.e. abrasions on his nose and hand, had been listed in the administrative arrest record. The police officers had also mentioned those injuries in their statements. He had been taken from the station to the hospital where he had been immediately diagnosed with a number of injuries, including the cranio-cerebral trauma. The applicant concluded that he had sustained that head injury at some point during his detention in the police station and that it was for the authorities to explain its origin. He further submitted that given a negligent attitude of the police officers, he had not received medical help in due time. Finally, he observed that poor and delayed investigation of his case had led to a loss of essential evidence which could have determined those responsible for his ill-treatment.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

42. In assessing the evidence on which to base the decision as to whether there has been a violation of Article 3, the Court adopts the standard of proof "beyond reasonable doubt". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006‑IX). In relation to 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, with further references, *Bobrov v. Russia*, no. 33856/05, § 33, 23 October 2014). 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 (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999‑V). In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government (see *Bouyid v. Belgium* [GC], no. 23380/09, § 83, ECHR 2015).

43. The Court reiterates that where an individual makes a credible assertion that he or she has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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. That investigation should be capable of leading to the identification and – if appropriate – punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, 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 *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000‑IV, and *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 233, 30 March 2016).

44. The investigation into serious allegations of ill-treatment must be both prompt and thorough. 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 and forensic evidence. 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 *Mocanu and Others v. Romania* [GC], nos. 10865/09, 45886/07 and 32431/08, § 322, ECHR 2014 (extracts), and *Kopylov v. Russia*, no. 3933/04, § 133, 29 July 2010). Furthermore, the investigation must be independent, impartial and subject to public scrutiny (see *Mesut Deniz v. Turkey*, no. 36716/07, § 52, 5 November 2013). It is necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004). It should result in a reasoned decision to reassure a concerned public that the rule of law has been respected (see, *mutatis mutandis*, *Kelly and Others v. the United Kingdom*, no. 30054/96, § 118, 4 May 2001).

(b) Substantive limb

45. Turning to the circumstances of the present case, the Court observes that it was not in dispute between the parties that the applicant had been drunk and had certain visible injuries, such as abrasions on his nose and hand, when he had been brought to the police station (see paragraph 8 above). It was also not disputed that more serious injuries such as a head trauma and bruises on the applicant's cheekbone, left shoulder, right knee and on a shoulder blade were discovered and recorded when the applicant was already under the control of the hospital staff to whom he had been entrusted after his release from the police station. The Court further notes that the applicant, whose state of intoxication was particularly grave even according to the description given by the police officers (sleeping in a stairway, slurred speech, impossibility to stand unaided, need to lift and assist him when walking to the car, inability to answer any question, etc.) (see paragraphs 14, 15 and 20 above), had not been examined by a doctor or other medical professional upon his placement in a cell in the station. The Court emphasizes in this connection, that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") considers a right of access to a doctor for detained persons during their custody by law-enforcement agencies as one of the three fundamental safeguards against ill-treatment (the CPT Standards 2022 (revised in 2011) (CPT/Inf/E (2002) 1-Rev. 2011) Extract from the 2nd General Report [CPT/Inf (92) 3]). The CPT further considers that while it is reasonable to keep persons with moderate levels of inebriation in custody without medical supervision, persons with severe alcohol intoxication should be routinely seen by a doctor and if necessary kept under medical supervision (Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo carried out by the CPT from 8 to 15 June 2010, CPT/Inf (2011) 26).

46. In the absence of any medical examination during his detention, the applicant was divested of an important safeguard against a breach of Article 3 of the Convention (see *Shlychkov v. Russia*, no. 40852/05, § 64, 9 February 2016, with further references). In the Court's view, the failure of the authorities to medically examine the applicant and to properly record his injuries immediately upon his arrest led to a significant delay in his medical treatment and to the loss of essential evidence, which could have shed light on the time and circumstances in which he had received his injuries. By denying the applicant a basic right of medical examination, the authorities had also striped themselves of a possibility to provide a plausible explanation to the applicant's injuries and to discharge their burden of proof in this regard.

47. The Russian authorities cited the absence of a paramedic among employees of the police station and the lack of medical training of the duty police officers as factors absolving them of the necessity to examine the applicant and removing any responsibility for the applicant's health. The Court, however, does not consider either factor to be an excuse for the authorities' failure to act. An emergency doctor or a medical professional from a town hospital could have been invited to perform the first-aid examination of the applicant. The Court further recalls that the necessity of a specialised training of police officers in the care of intoxicated persons had been emphasized by the CPT on a number of occasions (see, for instance, Report to the Swedish Government on the visit to Sweden carried out by the CPT from 18 to 28 May 2015, CPT/Inf (2016) 1; Report to the Finnish Government on the visit to Finland carried out by the CPT from 22 September to 2 October 2014, CPT/Inf (2015) 25).

48. The Court is also concerned that the applicant had been admitted to the hospital with a significant delay of five hours after the ambulance had taken him from the police station and that during that time he had been transferred in an unconscious state between two other hospitals for unknown reasons. The Court cannot overlook the fact that the applicant had been diagnosed with an additional injury during his stay in the hospital (see paragraphs 28 and 31 above). However, as it follows from the materials of the domestic investigation no actions were taken in order to explain it.

49. Turning next to the Government's argument concerning the scope of the Court's assessment and the necessity to adhere to the findings and the conclusions reached by the domestic authorities, the Court stresses that its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention (see *Blokhin v. Russia* [GC], no. 47152/06, § 139, 23 March 2016, with further references). Thus, in the present case the domestic authorities, when deciding whether to institute criminal proceedings against the police officers, applied the standard of proof "beyond reasonable doubt" and found no grounds to prosecute them in the absence of direct evidence. At the same time, the Court observes that

the conclusions reached by the domestic investigation were of a probabilistic nature and at no point did they exclude with certainty the possibility of the applicant's sustaining his injuries in the police custody.

50. The fact that the applicant had been taken to the hospital from the police station in an unconscious state, and that his injuries were recorded for the first time in the hospital created a strong presumption that the injuries had occurred while the applicant had been under the control of the police. Therefore, the burden of proof was on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the applicant's version of events (see *Bouyid*, cited above). The Court does not lose sight of the Government's argument that at least one injury, the applicant's head trauma, resulted from a fall in a staircase. Leaving aside the lack of any evidence supporting that conclusion, the Court does not need to assess the injury's origin. It observes that in addition to the head trauma the applicant was diagnosed with a number of other injuries, such as bruises on his cheekbone, left shoulder, right knee and on a shoulder blade (see paragraph 21 above). The nature and cause of those injuries was never explained. The Court observes that in the absence of such explanations or any evidence confirming that the applicant had sustained the injuries before his transfer to the police station, the Court concludes that there has been a violation of Article 3 of the Convention under its substantive limb.

(c) Procedural limb

51. The Court considers that the applicant made a credible assertion that he had sustained serious injuries during his stay in the police custody. His claim was supported by medical reports and other evidence obtained in the course of the domestic proceedings. The State, accordingly, was under an obligation to carry out an effective investigation into the events.

52. The Court observes at the outset, that the domestic courts acknowledged that repeated refusals to open a criminal case for the first twelve months following the applicant's mother's criminal complaint had breached the applicant's right, as a victim of a criminal offence, to have access to justice, guaranteed by Article 52 of the Russian Constitution (see paragraph 34 above). This finding, in the Court's view, constitutes, at the very least, an implicit admission of the investigative authority's failure to react promptly and effectively to the applicant's arguable claim of ill-treatment.

53. The Court has previously held that in the context of the Russian legal system in cases of credible allegations of ill-treatment it is incumbent on the authorities to open a criminal case and to conduct a proper criminal investigation applying the entire range of investigative measures. A mere refusal by the authority to open a criminal investigation into credible allegations of serious ill‑treatment in the police custody is indicative of the

State's failure to comply with its obligation under Article 3 to carry out an effective investigation (see *Lyapin*, cited above, §§ 129 and 132-36). A delay in opening a criminal case and conducting a criminal investigation in such cases cannot but have a significant adverse impact on the investigation, considerably undermining the investigating authority's ability to secure evidence concerning the alleged ill‑treatment (see *Razzakov v. Russia*, no. 57519/09, § 61, 5 February 2015).

54. The Court notes that between 10 February 2011, when the applicant's mother had submitted her first criminal complaint and 28 February 2014, the investigative authorities issued seven decisions refusing to open a criminal case. Those decisions, save for the very last one, were quashed either by the supervising investigators and prosecutors or by the courts on formal grounds or because measures taken in the course of the inquiries were incomplete. The criminal case against unidentified persons on charges of the intentional infliction of serious injuries to the applicant, formally opened in February 2012, was transferred to the District Department of the Interior and suspended eight months later without any developments.

55. The Court observes that the initial refusal to commence criminal proceedings was taken eight days after the information about the applicant's medical condition was reported by the hospital to the police. That decision was not based on the results of any investigative or operative measures. Moreover, the decision was taken by the investigator of police station no. 4, the officers of which had been allegedly responsible for the applicant's ill-treatment. The second decision refusing the institution of criminal proceedings was delivered in a similar rush, even before the finalisation of the applicant's forensic expert examination, which was essential for the determination of causes and gravity of his injuries. The Court also notes that in response to the superior investigator's direction to establish and question security guards who had allegedly accompanied the applicant when he had first came to Ms B.'s flat, the investigator in charge of the case merely stated that it had been impossible to find them. It is, however, unclear from the materials in the Court's possession, which actions, if any, were taken in order to identify them. Furthermore, first inspection of the cell where the applicant had been held and the staircase of the Ms B.'s flat was carried out some nine months after the events in issue, a delay which had led to the loss or destruction of all relevant traces and evidence. Similarly, due to a delay on the part of the investigating authorities, the video record from the camera installed in the applicant's cell was also destroyed. In addition, the investigation had not even considered the necessity to inspect the house of the applicant's friend where he had spent the evening before the incident and the police car in which he had been taken to the police station. The domestic file also does not contain any information about the investigative

authorities' attempts to reconstruct the applicant's route from his friend's house to his home.

56. In view of the foregoing, the Court finds that the delay in opening the criminal case in connection with the applicant's assertions of ill-treatment and numerous flaws in the investigation show that the authorities did not take all reasonable steps available to them to secure evidence and did not make a serious attempt to find out what had happened (see, among other authorities, *Labita*, cited above, § 131, and *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., Reports of Judgments and Decisions 1998-VIII).

57. Accordingly, there has been a violation of Article 3 of the Convention under its procedural head.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

58. The applicant complained that his unrecorded detention in police station no. 4 of the Motovilikhinskiy District of Perm from 8.10 a.m. on 6 February 2011, when the entry of his release had been made in the register of administrative detainees, until 3.30 p.m. on the same day, when he had been taken to the hospital, had been unlawful. He also complained that he had not been entitled to compensation for his unrecorded detention. The applicant relied on Article 5 of the Convention, which, in so far as relevant, provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

59. The Government submitted that the applicant's detention had had a basis in the domestic law, that it had been lawful and justified in the circumstances of the case and that the applicant had had an enforceable right to compensation in view of his allegedly unlawful detention. In their observations they did not address the applicant's argument that during the above mentioned period his detention had not been recorded.

60. The applicant admitted that his apprehension and escorting to the police station had been lawful. However, he insisted, that his detention after 8.10 a.m. on 6 February 2011 (a time of his release according to the police station's register) had breached the guarantees of Article 5 of the Convention. He further argued that the domestic courts, when examining his civil claim, had left this argument unanswered and had found the entire period of his detention lawful, thus depriving him of a compensation for unrecorded detention.

A. Admissibility

61. The Court notes that this complaint 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. Complaint under Article 5 § 1 of the Convention

62. It has been the Court's constant view that unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for his detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention. Moreover, the lack of record of a person's detention may deprive that person of access to a lawyer and all other rights of a suspect, and makes him or her potentially vulnerable not only to arbitrary interference with the right to liberty but also to ill-treatment (see *Fortalnov and Others v. Russia*, nos. 7077/06 and 12 others, §§ 76-77, 26 June 2018, with further references).

63. According to the record of the applicant's arrest, he was brought to the police station at 5.11 a.m. on 6 February 2011. The record did not contain any information about the applicant's release from custody. The time of the applicant's release in the police station's register of administrative detainees was indicated as 8.10 a.m. on the same day. This entry, as it was established by the domestic investigation, and not disputed by the parties, had been made by the duty officer at some point after 9 a.m., while the applicant still remained in the cell. He left the station at 3.30 p.m. on the same day with an ambulance. Accordingly, from 8.10 a.m. and up until his hospitalisation, that is for seven hours, the applicant's detention was unrecorded.

64. In the absence of any argument by the Government capable of persuading the Court to reach a different conclusion, the Court holds that the applicant's unrecorded detention between 8.10 a.m. and 3.30 p.m. on 6 February 2011 was contrary to the requirements of Article 5 of the Convention. It has therefore been a violation of Article 5 § 1 of the Convention.

2. Complaint under Article 5 § 5 of the Convention

65. The Court has already held that in accordance with the relevant provisions of the Russian Civil Code, an award in respect of pecuniary and/or non-pecuniary damage may be made against the State only if the detention is found to have been unlawful in the domestic proceedings. In the present case, however, the domestic courts did not find the applicant's detention unlawful, despite the above facts had been earlier established during the pre-investigation inquiry. The applicant had, therefore, no grounds to claim compensation for his detention which had been effected in breach of Article 5 § 1 of the Convention (see *Chuprikov v. Russia*, no. 17504/07, § 98, 12 June 2014). Furthermore, the Court observes that Russian law does not provide for State liability for detention which was unrecorded or unacknowledged in any procedural form (see *Ivan Kuzmin v. Russia*, no. 30271/03, § 79, 25 November 2010).

66. The Court therefore concludes that there has been a violation of Article 5 § 5 of the Convention in view of the lack of an enforceable right to compensation for the applicant's unrecorded detention in the police station between 8.10 a.m. and 3.30 p.m. on 6 February 2011 in contravention of Article 5 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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. The applicant's claim for just satisfaction

68. The applicant submitted that the ill-treatment to which he had been subjected caused grave damage to his health (see paragraph 9 above), that due to his disability he is unable to serve his needs and requires constant care and assistance. The applicant claimed 240,000 euros (EUR) in respect of non-pecuniary damage. He also sought 885,353.83 Russian roubles (RUB) and EUR 324,768.2 in respect of pecuniary damage, comprising RUB 165,772.03 for the medical expenses which he had incurred (cost of

antiepileptic medication and medical tests), as well as RUB 692,581.8 for the medication which he has to take throughout his life; RUB 27,000 for a plastic surgery (head scar revision); EUR 33,104 for a medical treatment abroad and EUR 291,664.2 for loss of future earnings. The applicant submitted medical documents, prescriptions, bills and receipts, as well as photo and video materials in support of his claim.

69. Finally, the applicant claimed RUB 138,077.7 for the costs and expenses incurred in the domestic proceedings and before the Court, to be paid directly to the Public Verdict Foundation for Assistance in the Protection of Citizen's Rights and Freedoms ("the Public Verdict NGO"), a non-governmental organisation, whose lawyer, Mr Z. Zhulanov, represented the applicant.

B. The Government's position on just satisfaction claims

70. The Government submitted that Article 41 should be applied in accordance with the established case-law.

C. The Court's assessment

1. Pecuniary damage

71. The Court's case-law has established that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings (see, amongst others, *Stretch v. the United Kingdom*, no. 44277/98, § 47, 24 June 2003). A precise calculation of the sums necessary to make complete reparation in respect of the pecuniary losses suffered by applicants may be prevented by the inherently uncertain character of the damage flowing from the violation. An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved the more uncertain the link becomes between the breach and the damage. The question to be decided in such cases is the level of just satisfaction, in respect of both past and future pecuniary loss, which it is necessary to award, the matter to be determined by the Court at its discretion, having regard to what is equitable (see *ibid*., § 48, and *Lustig-Prean and Beckett v. the United Kingdom* (just satisfaction), nos. 31417/96 and 32377/96, §§ 22‑23, 25 July 2000).

72. The Court observes that the applicant's medical condition (see paragraph 9 above) resulted from the trauma which he had sustained while under the control of the authorities. Therefore, there is a direct causal link, between the breach of Article 3 of the Convention established by the Court in the present case and the damage suffered by the applicant.

73. As it follows from the documents in the Court's possession, the medication and medical treatment which the applicant underwent had been prescribed to him by his treating doctor and were necessary. The applicant's expenses in this part were confirmed by the relevant bills and receipts. Similar considerations apply to the applicant's claim in the part concerning the plastic surgery, the necessity of which also stems from the treatment to which the applicant had been subjected in contravention to Article 3 of the Convention. The Court observes, in this connection that the calculation of the cost of the surgery was provided by a local medical organisation and it does not seem manifestly unreasonable or excessive. The Court, therefore, grants the applicant's claim for pecuniary damages in the part relating to the medical expenses which he had incurred and the plastic surgery which he intends to undergo.

74. By contrast, the Court cannot accept the applicant's claim for future medical expenses in the part relating to the medical treatment abroad. The Court observes that the applicant has failed to submit any medical documents demonstrating that such treatment is absolutely necessary for him and cannot be received in Russia.

75. The Court further notes that the remaining part of the applicant's claim for pecuniary damages, comprising the cost of the medication which he is to take throughout his life and loss of earnings, was based on the average cost of the medication prescribed to him, the difference between the applicant's disability pension and the average salary in Russia and the official data on the male life expectancy in the Perm Region. The Court considers that the method of calculation applied by the applicant is not in line with the Court's approach to the calculation of future losses. Therefore, the Court cannot accept the final figure claimed under this head by the applicant. Nonetheless, bearing in mind the uncertainties of the applicant's situation, and the fact that he will undeniably suffer material losses as a result of his disability and the need for constant medical treatment, the Court considers it appropriate, in the present case, to make an award in respect of pecuniary damage based on its own assessment of the situation (see *Mikheyev v. Russia*, no. 77617/01, §§ 159-162, 26 January 2006).

76. In sum, the Court awards the applicant pecuniary damages in the amount of EUR 20,000, plus any tax that may be chargeable and dismisses the remainder of his claim under this head.

2. Non-pecuniary damage

77. The Court notes that it has found a violation under both the substantive and procedural heads of Article 3 of the Convention on account of the applicant's ill-treatment and the failure of the domestic authorities to carry out an effective investigation into the matter, as well as a violation of Article 5 §§ 1 and 5 of the Convention on account of the applicant's unrecorded detention and the lack of compensation in this respect. These

violations inevitably caused serious suffering and frustration to the applicant. Making its assessment on an equitable basis, the Court awards the applicant EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable and dismisses the remained of the applicant's claim for non-pecuniary damages.

3. Costs and expenses

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to grant the applicant's claim in full and awards him EUR 2,033 covering costs under all heads, plus any tax that may be chargeable to him on that amount. The amount awarded is to be paid directly to the Public Verdict NGO.

4. Default interest

79. 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 application admissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb in that the applicant has been subjected to inhuman and degrading treatment;

3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the lack of an effective investigation into the applicant's allegations;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's unrecorded detention;

5. *Holds* that there has been a violation of Article 5 § 5 of the Convention in that the applicant did not have an enforceable right to compensation in connection with his unlawful detention;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 2,033 (two thousand thirty-three euros), plus any tax that may be chargeable, in respect of costs and expenses, to be paid directly to the Public Verdict NGO;

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

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

Done in English, and notified in writing on 1 October 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Alena Poláčková
President