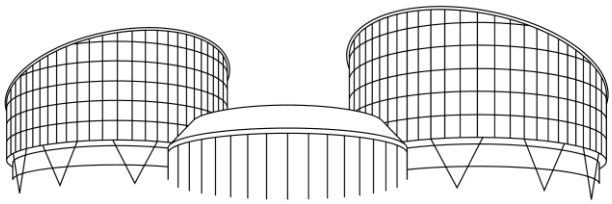

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF DVALISHVILI v. GEORGIA

(Application no. 19634/07)

JUDGMENT

STRASBOURG

18 December 2012

FINAL

18/03/2013

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

In the case of Dvalishvili v. Georgia,

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

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

Having deliberated in private on 27 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 19634/07) 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 Revaz Dvalishvili ("the applicant"), on 6 April 2007.

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 24 February 2011 the Court decided to communicate to the Government the complaints under Articles 3 and 13 of the Convention concerning the applicant's alleged ill-treatment by police and the prosecution authorities' failure to conduct an effective investigation in that regard. 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 30 June and 25 August 2011 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 14 October 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings against the applicant and his alleged ill-treatment

5. The applicant was born in 1984 and lives in the village of Gvishtibi, Georgia. On 27 December 2005, at around 9.50 p.m., the applicant was arrested by three police officers on suspicion of breaching public order in the city of Tskaltubo and physically assaulting a taxi driver. He was taken to the Tskaltubo police department, where, with the status of a suspect, he protested his innocence and invoked his right to remain silent. An identification procedure which took place immediately afterwards resulted in the taxi driver identifying the applicant as one of the assaulters. According to the applicant, he was then severely beaten by three police officers identified as B.Gh., M.K. and M.M., who demanded that he confess to verbally and physically assaulting the taxi driver.

6. On the following day the applicant was charged with an aggravated breach of public order, an offence under Article 239 § 2 (a) of the Criminal Code of Georgia. He was questioned as an accused in the absence of a lawyer and confessed to the offence. Later, an ambulance was called for the applicant. An emergency doctor and a nurse, who visually examined him in the presence of a prosecutor, drew up a report noting that the applicant had a bruise on his right eye and a scratch on his nose. When asked about the source of the injuries, the applicant stated that he had fallen to the ground when running away from the police officers during the arrest.

7. On 29 December 2005 the Tskaltubo District Court ordered the applicant's release on bail. According to the applicant, at the hearing he repeated his confession, since it was on that condition that the police officers had promised to release him.

8. On 30 December 2005 the applicant, who by that time had developed a severe headache, general weakness and nausea, was taken to Kutaisi hospital. On admission to the hospital he alleged that he had been beaten by police officers. After the required medical examination, the applicant was diagnosed with an internal head injury, concussion and chronic gastroduodenitis. A haematoma measuring 2 cm by 2.5 cm was observed on his right eye; also, minor excoriations were found on his right thigh, left shoulder and right hand, and minor swelling in the right temple area and jaw. He was treated at the hospital until 6 January 2006.

9. On 7 January 2006 the applicant was again hospitalised with recurring headaches and dizziness. He was treated for two weeks and discharged from the hospital on 20 January 2006.

10. According to the case file, in February 2006 the applicant additionally consulted a doctor on a number of occasions following complaints of severe headaches and pain in the abdominal area.

11. On 21 March 2006 the investigator in charge of the applicant's criminal case ordered a forensic examination in order to establish the gravity and potential cause of the applicant's injuries. On the same day the Imereti regional office of the National Forensic Bureau issued a conclusion on the basis of an analysis of the applicant's medical records. Confirming the applicant's diagnosis, the expert established that the injuries had been caused by a hard blunt object and belonged to the category of bodily injuries of minor severity causing long-lasting damage to the applicant's health.

12. On 12 October 2006 the applicant's lawyer arranged for an alternative, independent examination of the applicant's medical records, inquiring in particular as to whether the injuries sustained by the applicant could have been the result of a single fall to the ground, as claimed by the applicant in his pre-trial confession and by the police officers in their testimony (see paragraph 13 below). In the report of 25 October 2006, the experts from the National Forensic Bureau concluded the following:

> "According to the medical documentation submitted with respect to the injuries sustained by Revaz Dvalishvili on 27 December 2005 [he had] hematomas on the right thigh and in the area of the right eye, and bruises on the right thigh and between the fourth and fifth fingers of the right hand. The injuries have been caused by a hard blunt object. Having regard to the location of the injuries, they could not have been caused by a single fall from the own height over a hard blunt object."

13. On 28 December 2006 the Tskaltubo District Court convicted the applicant of an aggravated breach of public order and sentenced him to one year in prison and a fine. It was established that the applicant, along with two acquaintances, had hired a taxi on the evening of 27 December 2005 to travel from the city of Kutaisi to Tskaltubo. One of his acquaintances had been dropped off on the way to Tskaltubo. Upon arrival at the place of destination, the applicant, who was heavily drunk, had refused to pay the taxi fare and had physically and verbally assaulted the taxi driver. Soon afterwards, police officers had arrived. The applicant and his acquaintance had tried to run away. The applicant, however, had fallen down on some concrete slabs and had eventually been arrested, while his acquaintance had managed to escape.

14. The conviction was based, *inter alia*, on the statement of the victim, who identified the applicant as his assaulter, the statements of the three police officers who had arrested him and the results of various forensic examinations. The conviction did not take into account the applicant's pre-trial confession. According to the record of the hearing, the defence

lawyer had requested the Tskaltubo District Court to declare the applicant's pre-trial testimony inadmissible, arguing that his confession had been extracted by ill-treatment; however, the request was dismissed. The court concluded that there was no evidence to substantiate the applicant's allegations of ill-treatment.

15. On 9 July 2007 the Kutaisi Court of Appeal, modifying the classification of the offence to a simple breach of public order, upheld the applicant's conviction and replaced his prison sentence with a fine. The appellate court similarly rejected the applicant's allegation of ill-treatment as unsubstantiated.

16. By a decision of 1 April 2008 the Supreme Court of Georgia dismissed the applicant's appeal on points of law.

B. Investigation into the applicant's alleged ill-treatment

17. On 10 February 2006 the applicant lodged a criminal complaint against the police officers, alleging ill-treatment. The complaint was addressed to the Public Prosecutor of Western Georgia. On the same day a criminal investigation was initiated into the alleged ill-treatment of the applicant under Article 144(1) of the Criminal Code of Georgia.

18. The prosecutor questioned seven police officers, including those who had arrested the applicant and two of those whom he had implicated as having been involved in his alleged ill-treatment. They all denied beating the applicant. They maintained that the latter had sustained minor scratches on his nose and both hands when he had fallen on concrete slabs whilst fleeing the crime scene. The two police officers who had chased the applicant added in their statements that in the dark they had failed to notice the applicant immediately and had fallen over him.

19. The prosecutor also questioned the taxi driver who had identified the applicant as his assaulter and the five witnesses who had participated in the identity parade. They all confirmed that throughout their interaction with the applicant on 27 December 2005 he had not voiced any grievances against the police. Furthermore, they could not recall any obvious signs of physical injuries on the applicant. The taxi driver also confirmed that he had seen the applicant falling down and the police officers falling over him.

20. The emergency doctor and the nurse who had visually examined the applicant on 28 December 2005 were also questioned in the course of the investigation. They confirmed the accuracy of their findings concerning the injuries they had observed on the applicant the day after his arrest (see paragraph 6 above). They further reiterated that the applicant had not complained about the actions of the police officers and had maintained that the injuries were the result of his accidental fall while attempting to escape from the police. No other investigative measures were taken.

21. On 24 May 2006 the prosecutor decided to discontinue the proceedings for lack of evidence of a crime. The prosecutor based his findings on, amongst others, the results of the criminal proceedings conducted against the applicant, which at that time were at the stage of the pre-trial investigation. Referring to the evidence collected in the course of the above-mentioned criminal investigation, the prosecutor concluded that it had conclusively proved the applicant's guilt.

22. As regards the applicant's injuries, the prosecutor fully accepted the version of events put forward by the police officers concerning the applicant's fall. The decision referred primarily to the testimony by the police officers, who maintained that the applicant could have been injured when he had fallen on concrete slabs whilst fleeing the crime scene, or when they had restrained him. In support of his position, the prosecutor further relied on the confession of the applicant, which, according to the prosecutor, had been maintained at the hearing of 29 December 2005. The fact that the applicant had not indicated the police officers as having caused his injuries when he was medically examined on 28 December 2005 or at the hearing of 29 December 2005 was accorded particular weight by the prosecutor.

23. Finally, having regard to the medical report of 21 March 2006 (see paragraph 11 above), the prosecutor concluded that he was unable to establish any ill-treatment on the part of the police officers and noted that the injuries sustained by the applicant could have occurred as a result of his accidental fall or "as a result of justified use of force by police officers for the purpose of his arrest".

24. The applicant's lawyer appealed to the Tskaltubo District Court against the prosecutor's decision of 24 May 2006. In the appeal the lawyer contended that rather than examining the applicant's allegations of ill-treatment, the prosecutor had merely reiterated the findings of the preliminary investigation conducted in the course of the proceedings against the applicant. The lawyer objected in particular to the prosecutor having relied on the applicant's confession, instead of examining whether the confession had been extracted by ill-treatment. He further highlighted the prosecution authorities' failure to organise a comprehensive forensic examination capable of establishing the cause of the applicant's injuries and their failure to visit and inspect the scene of the incident.

25. According to the record of the oral hearing of 1 August 2006, the applicant's lawyer, noting that the designated trial judge of the Tskaltubo District Court had also dealt with the bail proceedings in the criminal case against the applicant, requested her removal. The judge in question, however, dismissed the request as unsubstantiated. She concluded that during the bail proceedings the applicant had not raised any allegations of ill-treatment against the police officers and thus there was no reason to doubt her objectivity and impartiality.

26. By a decision of 1 August 2006 the Tskaltubo District Court dismissed the applicant's appeal as unsubstantiated. Relying on the applicant's pre-trial confession, the statements of the police officers and the medical documents of 28 December 2005 and 21 March 2006, the court confirmed the account of events presented by the police officers. In particular, the court held:

> "In view of the above it is established that Revaz Dvalishvili confessed to committing the offence, he did not raise any allegations against the police officers, particularly concerning the beating, either upon his arrest, or at the meeting with the prosecutor or in the court when remanded in custody. ...
>
> There is no evidence in the case file to suggest that the police officers have committed an act defined as a criminal offence, and thus the complaint is not supported either by the real circumstances pertaining to the case or by the legislation and should be rejected."

27. On 11 October 2006 the Kutaisi Court of Appeal upheld the decision of 1 August 2006, endorsing the reasons given by the first-instance court.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

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

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

B. Conclusions and recommendations of the United Nations Committee against Torture with regard to Georgia (CAT/C/GEO/CO/3), dated 25 July 2006

29. The relevant part of the report reads as follows:

> "**C. Subjects of concern and recommendations**
>
> 9. The Committee remains concerned that despite extensive legislative reforms, impunity and intimidation still persist in the State party, in particular in relation to the use of excessive force, including torture and other forms of ill-treatment by law-enforcement officials, especially prior to and during arrest...
>
> 12. The Committee is also concerned about the relatively low number of convictions and disciplinary measures imposed on law-enforcement officials in the light of numerous allegations of torture and other acts of cruel and inhuman or degrading treatment..."

C. *Georgia: Torture and ill-treatment. Still a concern after the "Rose Revolution*, Report by Amnesty International, 23 November 2005 (Index AI: EUR 56/001/2005)

30. The relevant parts of the Amnesty International report read as follows:

"**Introduction**

...Amnesty International has continued to receive reports about torture and ill-treatment in Georgia. Many cases still do not come to light because police cover up for their crimes and detainees are often afraid to complain or identify the perpetrators for fear of repercussions. Impunity for torture is still a big problem. Amnesty International was concerned that procurators did not open investigations into all potential torture and 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. Case examples featured in the report demonstrate that investigations into allegations of torture or ill-treatment have often not been conducted in a prompt, impartial and independent manner.

More needs to be done to eradicate torture and ill-treatment

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 continued to receive some cases where detainees were reportedly tortured or ill-treated in cars while being taken to a place of detention, in police stations, and in the Ministry of Internal Affairs. One detainee alleged that he was ill-treated during the remand hearing. There were also allegations that several people were attacked on the street by security service agents in plainclothes or taken to unpopulated places such as cemeteries or forests and ill-treated.

The methods used to torture or ill-treat detainees, as indicated in the reports Amnesty International has received since the 'Rose Revolution', include electric shocks; putting plastic bags over the head of a detainee; suspending a detainee from a pole between two tables; cigarette and candle burns; placing the barrel of a gun in a detainee's mouth threatening to shoot; blindfolding with adhesive tape; hitting a detainee's ear with open palms; threats to beat the detainee's family; gagging the detainee with a piece of cloth so they cannot shout; beatings, including with truncheons and butts of guns, and kicking."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

31. The applicant complained, under Article 3 of the Convention, that he had been ill-treated by police officers at the Tskaltubo Police Department

with the aim of extracting a confession from him. He further alleged that the relevant national authorities had failed to conduct a thorough and adequate investigation into his allegations of ill-treatment. He relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

32. The Court considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Nor is it inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

33. The Government challenged the applicant's version of events and submitted that he had not been subjected to any form of ill-treatment on 27 December 2005. In support of that argument the Government provided an extract from the logbook of the temporary detention centre, according to which the applicant had been visually examined upon his admission to the detention centre on 27 December 2005 and several scratches had been identified on his nose, in the area of his right eye and on both hands. The applicant noted in the logbook that he had no complaints against the police.

34. The Government also stressed that the applicant had had several opportunities to raise his allegation of ill-treatment, in particular during his questioning at the police department, whilst being examined by the emergency doctor on 28 December 2005 and also during his detention hearing of 29 December 2005, but he had failed to do so. Furthermore, immediately after his arrest the applicant had been informed of his right to request a forensic examination, but he had not availed himself of that possibility. Referring to the findings of the relevant criminal investigation and the reports on the applicant's visual examination at the police

department, the Government submitted that the applicant had failed to prove that he had been ill-treated after his arrest.

35. As regards the State's positive obligation under Article 3 of the Convention, the Government maintained that the applicant's allegations had been properly investigated by the national authorities and the effectiveness of the investigation had been verified and confirmed by the courts at two levels of jurisdiction.

36. The applicant disagreed with the Government. He claimed that the case file contained sufficient evidence that his injuries had been inflicted by the police and that the Government had failed to provide a credible alternative explanation as to how he had sustained those injuries. The applicant argued in this connection that the examination of his complaint had been superficial; the authorities had done nothing to determine the origin of his injuries; a forensic medical examination had not been ordered; and the scene of the incident had not been inspected. Thus, according to the applicant, the investigation had not been thorough and effective.

2. The Court's assessment

(a) General principles

37. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. 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 *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, §§ 119-20, ECHR 2000-IV).

38. The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see, among other authorities, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). However, where allegations are made under Article 3 of the Convention, the Court must conduct a particularly thorough scrutiny (see *Ülkü Ekinci v. Turkey*, no. 27602/95, § 135, 16 July 2002) and will do so on the basis of all the material submitted by the parties.

39. In assessing evidence, the Court has adopted the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, 18 June 2002, and *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Such proof may, however, follow from the coexistence of sufficiently

strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ülkü Ekinci*, cited above, § 142). 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).

40. Lastly, the Court reiterates that where an individual raises an arguable claim that he has been 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 if necessary 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) Concerning the alleged ill-treatment

41. The Court observes that the parties advanced different explanations as to the origin of the applicant's injuries. On the one hand, the applicant gave a consistent account corroborated by medical evidence (see paragraphs 8 and 12 above), according to which he had been beaten at the Tskaltubo police department. On the other hand, the authorities' version, supported by the statements of the police officers and the victim, was that the injuries at issue could had been caused when the applicant had fallen on concrete slabs whilst fleeing the crime scene, or when the police officers had restrained him.

42. Having regard to the nature of the applicant's physical injuries, the Court finds them sufficiently serious to fall within the scope of Article 3 of the Convention. The burden, hence, rests on the Government to provide a satisfactory and plausible explanation as to the cause of those injuries. In this connection the Court observes the following: whilst exclusively focusing on the applicant's injuries to his face, the Government simply

overlooked the fact that the applicant had also suffered long-lasting damage to his health, such as an internal head injury and concussion, and that several other bruises had been found on different parts of his body (see paragraphs 8 and 12 above). The relevant national authorities in their domestic decisions failed to challenge the medical conclusion of 21 March 2006 (see paragraphs 23 and 26 above), whilst the Government, in their pleadings before the Court, simply dismissed the forensic conclusion of 25 October 2006; they stated that this conclusion had not proved the fact of the applicant's ill-treatment. Hence, by overlooking the relevant medical information, the Government did not take the trouble of contesting the expert's conclusion that the applicant's various injuries could not be explained by a single fall (see paragraph 12 above).

43. The Court further finds unconvincing the Government's argument that their version of events was supported by several independent witnesses who had interacted with the applicant immediately following his arrest. It notes in this connection that those witnesses participated in the identification procedure, which took place before the applicant's alleged ill-treatment (see paragraph 5 above). Hence, the fact that those independent witnesses observed no injuries on the applicant only serves to corroborate his allegation concerning his subsequent ill-treatment.

44. Nor does the Court accept the Government's view that the applicant's failure to raise his ill-treatment allegations in the first few days of his detention before the prosecutor, the judge or other people he interacted with undermines its plausibility. He might have been discouraged from voicing his allegations, as he indeed asserted, by the very fact of being under the control of those whom he accused of ill-treatment (see *Nadrosov v. Russia*, no. 9297/02, § 33, 31 July 2008). The applicant was also not assisted by a lawyer during the initial period of his detention. It should, moreover, be noted that he voiced his allegations of ill-treatment as soon as he was released on bail (see paragraph 8 above) and brought the matter to the attention of the prosecution authorities immediately upon his discharge from hospital (see paragraph 17 above).

45. In the light of the above and having regard to the worrying findings concerning a risk of ill-treatment for those in Georgian police custody at the relevant time (see paragraphs 29-30 above), the Court concludes that there has been a violation of Article 3 of the Convention in that the applicant was subjected to ill-treatment by police.

(ii) Concerning the alleged inadequacy of the investigation

46. The Court notes at the outset that the authorities did carry out an inquiry into the applicant's allegations of ill-treatment and that a number of relevant investigative measures were indeed promptly taken, such as the questioning of various witnesses. The Court is not convinced, however, that the inquiry was sufficiently thorough and effective. Hence, it cannot

overlook the fact that the investigation in the current case did not include a forensic examination of the applicant's injuries with a view to determining their extent and origin. The prosecution authorities merely referred to two medical reports drawn up in connection with the criminal proceedings conducted against the applicant. However, the Court has certain reservations concerning the accuracy and reliability of those reports.

47. The first report of 28 December 2005, which noted a bruise on the applicant's right eye and a scratch on his nose, was the result of a purely visual examination of the applicant conducted by an emergency doctor in the presence of a prosecutor. In this connection, the Court reiterates that the medical examinations of presumed victims of ill-treatment should be conducted outside the presence of police officers and other government officials in order to attain the required standards of independence and thoroughness (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 118, ECHR 2000-X; *Karademir v. Turkey*, no. 32990/96, § 53, 30 October 2001; and *Lopata v. Russia*, no. 72250/01, § 114, 13 July 2010).

48. As regards the second forensic report of 21 March 2006, issued without an actual examination of the applicant, although it contains a detailed description of his injuries, it does not suggest a plausible explanation as to their origin and thus is unable to resolve the key question, namely whether the applicant's numerous injuries to different parts of his body could be explained by a single fall, as maintained by the police officers. The Court accordingly considers that one of the most serious omissions of the investigation was the failure of the relevant authorities to conduct a proper medical examination of the applicant, and, thus, secure key evidence concerning the incident.

49. The Court further deplores the fact that in accepting the account of the applicant's accidental fall, the authorities made no effort to scrutinise its credibility. Hence, the investigation authorities did not inspect the alleged scene of the incident in order to verify the veracity of the police officers' testimony concerning the existence of concrete slabs in the area. Nor did they provide answers as to whether it would have been possible for the applicant to sustain all his injuries from a single fall. The questioning of the police officers concerned was also superficial. Having examined the substance of their statements, the Court notes that all of them made formulaic statements to the effect that they had not participated in any ill-treatment; there was no attempt to put any precise questions to the police officers concerned; it is also unclear whether the third named police officer, M.K., was questioned at all; the Government failed to submit a copy of any statement by him.

50. The Court further notes the somewhat inconsistent approach to the assessment of evidence by the domestic authorities in the present case. It is apparent from the decisions of the prosecution authorities and the domestic courts that they based their conclusions mainly on the testimonies given by

the police officers involved in the incident, on the confession by the applicant and on the results of the preliminary investigation conducted in the course of the criminal proceedings against him. The Court finds it inconceivable that the domestic authorities, rather than verifying the applicant's allegations of ill-treatment, relied on the very same confession, which, as he claimed, had been extracted from him under physical duress (see paragraph 26 above). Also, the prosecution and judicial authorities accepted the credibility of the police officers' testimonies without giving any convincing reasons for doing so, despite the fact that those officers' statements might have been subjective and aimed at evading criminal liability for the purported ill-treatment of the applicant. The credibility of the police officers' statements should also have been questioned, as the investigation was supposed to establish whether they were liable to face 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).

51. The foregoing considerations are sufficient to enable the Court to conclude that there has also been a violation of Article 3 of the Convention under its procedural limb.

52. Having regard to its findings under Article 3, the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 of the Convention in respect of the effectiveness of the investigation and the fairness of the subsequent court proceedings.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

53. Relying on Article 6 § 1 of the Convention, the applicant claimed his innocence and complained that he had been wrongly convicted in unfair proceedings. He also complained of an unjustified denial of access to the Supreme Court of Georgia.

54. The Court finds, in the light of all the material in its possession, that these complaints do not disclose any appearance of an arguable issue under Article 6 § 1 of the Convention and must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. As regards pecuniary damage, the applicant submitted that, as a result of his ill-treatment in police custody, his health had considerably deteriorated, with the result that he had incurred significant expenses in connection with medical treatment for the injuries sustained. He further argued that he would need additional medical care in the future, particularly with regard to the deterioration in his mental condition. The applicant stated that he had failed to obtain any documents indicating the amount of his expenses. He nonetheless claimed EUR 300,000 in compensation for his past and future medical expenses. As to non-pecuniary damage, the applicant sought EUR 2,000,000 for the traumatic experience he had suffered as a result of his ill-treatment.

57. The Government submitted that there had been no violation calling for compensation. In the alternative, the Government asserted that the applicant's claims for pecuniary damage were unsubstantiated and unsupported by any reliable documents. As regards the applicant's claims for non-pecuniary damage, they considered the amount requested exorbitant.

58. The Court notes that the applicant's medical expenses are not supported by any documentary evidence; it thus decides not to award him any compensation for the pecuniary damages.

59. As regards the applicant's claim in respect of non-pecuniary damage, the Court observes that he suffered humiliation and distress on account of the ill-treatment to which he was subjected. Nevertheless, the amount claimed appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 12,000 in respect of the non-pecuniary damage suffered as a result of his ill-treatment.

B. Costs and expenses

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

C. Default interest

61. 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 Articles 3 and 13 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 aspect on account of the applicant's ill-treatment;

3. *Holds* that there has been a violation of Article 3 of the Convention in its procedural aspect on account of the lack of effective investigation into the applicant's ill-treatment;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *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) for non-pecuniary damage, plus any tax that may be chargeable, to be converted into the national currency of the respondent State at the rate applicable at the date of the settlement;
   (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;

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

Done in English, and notified in writing on 18 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President