



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

FIRST SECTION

CASE OF DMITRACHKOV v. RUSSIA

(Application no. 18825/02)

JUDGMENT

STRASBOURG

16 September 2010

FINAL

16/12/2010

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

In the case of Dmitrachkov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 18825/02) 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 Dmitrachkov (“the applicant”), on 24 April 2002.

2. The applicant was represented by Mr Ilya Yevpolov, a lawyer practising in the town of Buzuluk, the Orenburg Region. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the criminal proceedings against him had been unfair. He also complained of ill-treatment at the hands of the investigative authorities and the lack of an effective investigation into the matter.

4. On 3 October 2005 the President of the First Section decided to communicate the complaint concerning the alleged ill-treatment and the related investigation into these events to the respondent Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in the town of Buzuluk in the Orenburg Region.

A. The applicant's arrest and alleged ill-treatment

6. Late in the evening of 16 April 2001 the applicant was arrested at his home on suspicion of having committed theft and robbery. He was placed in the isolation wing of the Buzuluk police station.

7. According to the applicant, in response to his requests for legal aid, he was beaten up by police officers Z. and V. They pressurised him to confess to the above-mentioned crimes. The applicant attempted to commit suicide but, as it appears, was promptly provided with medical assistance. It does not appear that this incident had any adverse consequences on his health.

8. Following the arrest the applicant remained in detention.

9. The Government submitted that according to the information provided by the Supreme Court of Russia the applicant's first documented interview took place on 18 April 2001 in the presence of his lawyer, S.

B. The investigation into the applicant's allegations of ill-treatment

1. The applicant's medical examination

10. The applicant complained about the ill-treatment to the police and to a local prosecutor's office.

11. It appears that the prosecutor's office did not take any steps in connection with the applicant's complaints, other than remitting the case to a police investigator, K., from the same police station.

12. On 19 April 2001 K. ordered the applicant's medical examination.

13. The examination was carried out on the same date. According to the expert's report, the applicant had a bruise of 3.5×5 cm on his back in the right lumbar region and the right temple area was sensitive on palpation. Noting that no harm to the applicant's health could be established, the expert concluded that the bruise could have been inflicted at the time and in the circumstances described by the applicant.

2. The prosecutor's first decision refusing to open a criminal case

14. By a decision of 3 May 2001 a senior assistant to the Prosecutor of the Buzuluk Prosecutor's Office refused to institute criminal proceedings against police officers Z. and V. for lack of evidence of a crime.

15. The decision referred to the statements of Z. and V., who denied the allegations of ill-treatment. Investigator K. stated that he had ordered a medical examination in response to the applicant's complaint and noted that the applicant had not complained about the alleged ill-treatment to the prosecutor when the latter had authorised his detention on remand. Finally, having regard to the expert's report, the prosecutor concluded that he was unable to establish any ill-treatment on the part of the police officers and noted that the injury sustained by the applicant could have occurred "in other circumstances".

16. The applicant submitted that he had learned about this decision "much later".

17. The Government did not make any comments concerning the date of notification of this decision to the applicant.

3. The trial court's request to the prosecutor's office to carry out an inquiry into the alleged ill-treatment

18. On an unspecified date the applicant's criminal case concerning the charges of theft and robbery was transferred to the Buzuluk Town Court for examination.

19. During the court hearing of his criminal case on 9 July 2001 the applicant repeated his allegations of ill-treatment. The two co-accused in the applicant's case also alleged ill-treatment by the police officers. The prosecutor participating in the examination of the case moved to adjourn the proceedings in order to carry out an inquiry into their submissions.

20. By a decision of the same date the trial court entrusted the Buzuluk Prosecutor with the inquiry and adjourned the proceedings.

4. The second decision refusing to institute criminal proceedings

21. On 27 July 2001 the Senior Assistant to the Prosecutor of the Buzuluk Prosecutor's Office refused to institute criminal proceedings against the police officers, referring, among other things, to the oral evidence given by police officers V. and Z. and investigator K. as well as to the previous decision of 3 May 2001.

22. The applicant stated that he was not notified about the decision immediately.

23. The Government submitted that the decision had been read aloud during the court hearing of 7 August 2001.

5. The judicial review of the decisions of the prosecutor's office

24. The applicant complained about the decisions of the prosecutor's office to the Buzuluk Town Court, alleging that they were unfounded and that several witnesses of the ill-treatment had not been questioned, and requested an additional inquiry.

25. By a judgment of 23 October 2001 the court rejected his complaint. In particular, it stated that:

“... The plaintiff's submissions proved unconfirmed during the court hearing. According to the statements of the police officers V. and Z. obtained in course of the prosecutor's inquiry into the alleged ill-treatment, Dmitrachkov [the applicant] was detained on suspicion of robbery and theft, no physical or psychological pressure was exerted on him ... Dmitrachkov failed to complain to the prosecutor who ... authorised his arrest although he had the opportunity ...

... According to the plaintiff, upon his placement in the isolation ward, he was hit with his head against the walls. However, his co-accused Ch. did not confirm this allegation.

The expert's opinion of 19 April 2001 revealed an injury, [namely,] a bruise in the left lumbar region. No injuries to the head were established ... which refutes the [plaintiff's] allegations of ill-treatment following his arrest.

In these circumstances the court considers that the decisions [...] of [...] 3 May 2001 refusing to institute criminal proceedings against Z. and V. and [...] of 27 July 2002 [...] are lawful and that there are no reasons to quash them.”

26. The applicant appealed.

27. By a decision of 16 April 2002 the Orenburg Regional Court held that the trial court had examined the case under the rules of civil procedure whereas the complaints against the investigative measures ought to have been examined under the provisions of the criminal procedure. It quashed the first-instance judgment and terminated the proceedings without examining the substance of the applicant's complaints.

28. In response to the Court's request for copies of the investigation file in respect of the events of 16 April 2001, the Government submitted that the file had been destroyed due to the expiry of the time-limit for its storage. The Government referred to an Instruction dated 28 December 1998 issued by the Prosecutor General's office.

C. The applicant's conviction

29. By a judgment of 4 December 2001 the Buzuluk Town Court convicted the applicant of robbery and theft and sentenced him to ten years of imprisonment and confiscation of his property. The applicant submits that he received a copy of the judgment on 27 March 2002. In the judgment, the trial court specifically rejected the applicant's allegations of ill-treatment

as unfounded without contesting the existence of his injuries or providing any explanation for their origin. The trial court referred to the decision of 27 July 2001 without questioning the witnesses mentioned in that decision in court.

30. On 21 May 2002 the Orenburg Regional Court upheld the judgment on appeal.

31. Both courts referred to the conclusions of the prosecutor's inquiries into the alleged ill-treatment and rejected the applicant's submissions in this connection.

II. RELEVANT DOMESTIC LAW

32. Article 117 § 2 (f) of the Criminal Code of the Russian Federation makes acts of torture punishable by up to seven years' imprisonment. Under Article 286 § 3 (a) and (c) abuse of an official position associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment.

33. Before 1 July 2002, criminal proceedings in Russia were governed by the 1960 Code of Criminal Procedure of the RSFSR ("the old CCP"). Under Article 113 of the old CCP, a refusal to open criminal proceedings could be appealed against to a prosecutor or a court. Under Article 220, a refusal by the prosecutor could be appealed against to a higher prosecutor.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained that he had been subjected to ill-treatment by police officers during his detention between 16 and 18 April 2001 and that the domestic authorities failed to investigate the matter properly. The Court finds it appropriate to examine the complaint under Article 3 of the Convention, which reads as follows:

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

A. Admissibility

35. The Government maintained that the applicant had not instituted any proper court proceedings against the decisions of the prosecutor's office

dated 3 May 2001 and 27 July 2001 under Article 113 of the old CCP and thus failed to exhaust the available domestic remedies.

36. The applicant disagreed, having submitted that in view of the circumstances of his case any further complaints would have been ineffective.

37. The Court notes that under Article 113 of the old CCP the decisions referred to by the Government could indeed have been appealed against either to a prosecutor or to a court. The Court further observes that although a court itself had no competence to institute criminal proceedings, its power to annul a refusal to institute criminal proceedings and indicate the defects to be addressed appears to be a substantial safeguard against the arbitrary exercise of powers by the investigating authority (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). The Court remains unconvinced, however, that in the circumstances of the present case the applicant can be said to have failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention.

38. The Court notes that by a decision of 3 May 2001 the Buzuluk Prosecutor's Office examined the applicant's allegations of ill-treatment and refused to institute criminal proceedings against police officers Z. and V. for lack of evidence of a crime. It does not appear that the applicant brought any court proceedings in respect of this decision. After the applicant's criminal case concerning the charges of theft and robbery was transferred to the Buzuluk Town Court for examination, the applicant complained about the ill-treatment at the hands of the police officers before the trial court. In response, on 9 July 2001 the trial court entrusted the Buzuluk Prosecutor with the inquiry and adjourned the proceedings. On 27 July 2001 the Buzuluk Prosecutor's Office refused to institute criminal proceedings against the police officers, referring, among other things, to the previous decision of 3 May 2001. Thereafter the proceedings in the applicant's criminal case resumed and on 4 December 2001 the Buzuluk Town Court convicted the applicant as charged, having specifically rejected the applicant's allegations of ill-treatment as unfounded with reference to the decision of 27 July 2001. This judgment was later upheld by the Orenburg Regional Court on appeal.

39. Regard being had to the fact that the second examination of the applicant's complaints about the alleged ill-treatment had been ordered, examined and accepted by the trial court and later reviewed by the appeal court within the framework of the criminal case in which he took part as a defendant, the Court finds that the applicant made the domestic courts sufficiently aware of his grievances in respect of the alleged ill-treatment episode. The Court is of the view that the courts had been given an ample opportunity to exercise their power to annul a refusal to institute criminal proceedings and indicate the defects to be addressed. In such circumstances, the Court is unconvinced that having additional recourse to the procedure

under Article 113 of the old CCP would have made any difference and yielded a different result from the one obtained by the applicant in this respect in the main set of criminal proceedings against him. Accordingly, the Court rejects the Government's objection.

40. The Court finds this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

41. The Government submitted that the applicant's allegations of ill-treatment had been thoroughly examined by the domestic courts at two instances in the course of the criminal proceedings against the applicant and reasonably rejected as unfounded.

42. The applicant maintained his complaints.

1. Alleged ill-treatment in police custody

43. The Court has held on many occasions that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336; see also, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). Otherwise, torture or ill-treatment may be presumed in favour of the claimant and an issue may arise under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241 A, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V). The Court further recalls that, while it is sensitive to the subsidiary nature of its role and cautious about taking on the role of a first-instance tribunal of fact, it is nevertheless not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case (see, for example, *Matyar v. Turkey*, no. 23423/94, § 108, 21 February 2002 and, by contrast, *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247 B, and *Vidal v. Belgium*, 22 April 1992, §§ 33 and 34, Series A no. 235 B).

44. The Court notes that the parties did not dispute the validity of the medical report drawn up on 19 April 2001, immediately following the applicant's arrest and detention between 16 and 18 April 2001, and confirming the presence of various injuries to his head and back. The Government were accordingly under an obligation to provide a plausible explanation of how the applicant's injuries had been caused.

45. At the outset the Court observes that the applicant's allegations of ill-treatment were examined first by the domestic authorities in the criminal proceedings against the applicant in the judgment of 4 December 2001, as upheld on 21 May 2002, and also in the course of the preliminary checks conducted upon the applicant's complaints by the decisions of the Buzuluk Prosecutor's office of 3 May and 27 July 2001.

46. The Court observes that the authorities accepted the validity of the medical report of 19 April 2001 and thus the existence of the applicant's injuries. The applicant's allegations of ill-treatment were rejected essentially with reference to the lack of a causal link between the applicant's injuries and the actions of the policemen and the lack of further evidence implicating the policemen. The Court notes that the medical report at issue was drawn up by the doctor shortly after the events at issue and there is nothing in the case file or the parties' submissions to suggest that the injuries described in the report had been inflicted either before the applicant's arrest on 16 April 2001 or in the period from his release to the medical examination of 19 April 2001.

47. On the basis of all the material placed before it, the Court finds that neither the authorities at the domestic level nor the Government in the proceedings before the Strasbourg Court have advanced any convincing explanation as to the origin of the applicant's injuries (see, by contrast, *Klaas v. Germany*, 22 September 1993, §§ 29-31, Series A no. 269). The Court concludes therefore that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than - entirely, mainly, or partly - by the treatment he underwent while in police custody (see the *Ribitsch*, cited above, § 34).

48. As to the seriousness of the acts of ill-treatment, the Court reiterates that in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The Court has previously had before it cases in which it has found that there has been treatment which could only be described as torture (see *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports of Judgments and Decisions* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83 and 84 and 86, *Reports* 1997-VI; *Selmouni*, cited above, § 105; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; and, among recent authorities, *Bati and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-... (extracts), as well as *Menesheva v. Russia*, no. 59261/00, § 55, ECHR 2006-...).

49. Furthermore, the Court reiterates its well-established case-law that in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes

human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention. It observes that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (see *Tomasi*, § 115, and *Ribitsch*, §§ 38-40, both cited above).

50. Turning to the circumstances of the present case the Court reiterates that, as follows from the applicant's description of the treatment he was subjected to, and the medical information in the case-file, the beatings complained of led to a bruise on his back in the right lumbar region and to the fact that his right temple area was sensitive to palpation which, however, did not lead to the establishment of any harm to the applicant's health (see § 13 above). Although the Court has found this unacceptable treatment to be deliberate it does not consider that it caused such serious injuries or suffering or was of such a cruel nature that it should be characterised as torture within the meaning of Article 3 of the Convention. Thus, the Court concludes that, taken as a whole, the ill-treatment amounted to inhuman treatment within the meaning of that provision.

51. Accordingly, there has been a breach of Article 3 of the Convention.

2. Alleged failure to carry out an effective investigation

(a) General principles

52. The Court reiterates that where an individual makes a credible assertion that he 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. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and 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 *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 55, 15 February 2007; *Matko v. Slovenia*, no. 43393/98, § 84, 2 November 2006; *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII; and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

53. The minimum standards of "effectiveness" defined by the Court's case-law also require that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see *Isayeva and Others*

v. Russia, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005, and *Menesheva*, cited above, § 67).

(b) Application of the above principles in the present case

54. The Court notes that the parties did not dispute the validity of the medical report drawn up on 19 April 2001, immediately following the applicant's arrest and detention between 16 and 18 April 2001, and confirming the presence of various injuries to the applicant's head and back. The Court further observes that the matter was duly brought before the competent authorities at a time when they could reasonably be expected to investigate the circumstances in question. The applicant's allegations, which were detailed and consistent throughout the domestic proceedings and before this Court, were, at least to some extent, corroborated by a medical certificate recording an injury to the head and back. The domestic authorities were therefore under an obligation to conduct an effective investigation satisfying the above requirements of Article 3 of the Convention.

55. In this connection the Court notes that the prosecution authorities, who were made aware of the applicant's ill-treatment, carried out a preliminary investigation which did not result in criminal prosecution. The applicant's ill-treatment complaints were also the subject of examination by the domestic courts at two levels of jurisdiction. In the Court's opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there was one, but whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was "effective".

56. The Court reiterates that the applicant was entirely reliant on the prosecutor to gather the evidence necessary to corroborate his complaint. The prosecutor had the legal power to interview the police officers, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for the purpose of establishing the truth of the applicant's account.

57. The Court will therefore assess the thoroughness of the investigation. In this connection the Court notes a number of significant omissions capable of undermining its reliability and effectiveness. Firstly, the Court observes that there was a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authorities. The prosecution authorities did not consider that testimony to be credible, apparently because it reflected a personal opinion and constituted an accusatory tactic by the applicant. However, the investigator did regard the police officers' testimonies as credible, despite the fact that their statements could have constituted defence tactics and have been aimed at damaging the applicant's credibility. In the Court's view, the prosecution investigation applied

different standards when assessing the testimonies, as that given by the applicant was deemed to be subjective but not those given by the police officers. The credibility of the latter testimonies should also have been questioned, as the prosecution investigation was supposed to establish whether the officers were liable on the basis of disciplinary or criminal charges (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

58. Secondly, the Court finds it striking that the investigator did not identify any witnesses who were not police personnel. While the investigating authorities may not have been provided with the names of individuals who might have seen the applicant at the police station or might have witnessed his alleged ill-treatment, they were expected to take steps on their own initiative to identify possible eyewitnesses. In particular, the prosecution authorities could have at least questioned lawyer S. who, as it follows from the information submitted by the Government, represented the applicant during the interview of 18 April 2001 (see paragraph 9). The Court therefore finds that the investigating authorities' failure to look for corroborating evidence and their deferential attitude to the police officers must be considered to be a particularly serious shortcoming in the investigation (see *Aydın*, cited above, § 106).

59. Thirdly, the prosecutor did not launch an investigation after being notified of the alleged ill-treatment. Instead he remitted the applicant's complaint to the local police station, a State authority whose employees were allegedly implicated in the events which were to be looked into, with an order to conduct an official police inquiry (see paragraph 11 above). While the Court acknowledges the necessity of internal inquiries by the police with a view to possible disciplinary sanctions in cases of alleged police abuse, it finds it striking that in the present case the initial investigative steps, which usually prove to be crucial for the establishment of the truth in cases of police brutality, were conducted by the police force itself (see, for similar reasoning, *Vladimir Fedorov v. Russia*, no. 19223/04, § 69, 30 July 2009). In this connection the Court reiterates its finding made on a number of occasions that the investigation should be carried out by competent, qualified and impartial experts who are independent of the suspected perpetrators and the agency they serve (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-..., and *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III). Furthermore, the Court would stress that it is not convinced that, despite relying on the police officers' statements in the decisions of 3 May and 27 July 2001 (see paragraphs 15 and 21), the assistant prosecutor had heard evidence from them in person. It appears that he merely recounted the officers' statements made during the internal inquiry. The Court, however, is mindful of the important role which investigative interviews play in obtaining accurate and reliable information from suspects, witnesses and victims and, ultimately,

the discovery of the truth about the matter under investigation. Observing the suspects', witnesses' and victims' demeanour during questioning and assessing the probative value of their testimony forms a substantial part of the investigative process.

60. Finally, as regards the judicial proceedings pertaining to the applicant's appeals against the prosecution decisions, the Court finds it striking that neither the trial nor the appeal courts manifested any interest in identifying and personally questioning witnesses of the applicant's alleged ill-treatment or hearing evidence from the officers involved in the incidents (see *Zelilof v. Greece*, no. 17060/03, § 62, 24 May 2007, and *Osman v. Bulgaria*, no. 43233/98, § 75, 16 February 2006). For the Court, this unexplained shortcoming in the proceedings deprived the applicant of an opportunity to challenge effectively the alleged perpetrators' version of the events (see *Kmetty v. Hungary*, no. 57967/00, § 42, 16 December 2003).

61. Having regard to the above failings of the Russian authorities, the Court considers that the investigation carried out into the applicant's allegations of ill-treatment was not thorough, adequate or effective.

62. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

63. Lastly, as regards the complaints about the alleged general unfairness of the criminal proceedings against him, having regard to the materials in its possession, the Court finds that they have not been sufficiently made out and do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

64. It follows that this part of the application should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicant claimed compensation of 1,000,000 Russian roubles (RUB) for damage.

67. The Government argued that the claims were unsubstantiated and in any event unrelated to any damage allegedly inflicted.

68. The Court observes that it has found above that the authorities subjected the applicant to inhuman treatment, in breach of Article 3 of the Convention. Under this provision it has also found that there was no effective investigation in respect of the events of 16 April 2001. Having regard to the seriousness of the violations of the Convention as well as to its established case-law (see *Mikheyev v. Russia*, no. 77617/01, § 163, 26 January 2006, and *Selmouni*, cited above, § 123), the Court awards the applicant 12,000 euros (EUR) for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

69. The applicants claimed RUB 15,000 for legal costs incurred during the domestic proceedings, RUB 10,000 in respect of legal costs incurred in the proceedings before the Court and RUB 50,000 for translation, fuel and postal expenses allegedly incurred during the Strasbourg proceedings.

70. The Government accepted the applicant's claim for legal and translation expenses in the amount of RUB 26,433. They contested the remainder of the claims as unsubstantiated.

71. 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. Having regard to the material in its possession, the Court considers it reasonable to award the applicant the sum of EUR 400 for the legal and translation expenses incurred in relation to the proceedings before the Court, plus any tax that may be chargeable to the applicant on the above amounts.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the applicant's ill-treatment by police officers during his detention between 16 and 18 April 2001 and the domestic authorities' failure to investigate the matter admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of both the substantive and procedural aspect of Article 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 12,000 (twelve thousand euros) in respect of non-pecuniary damage;
 - (ii) EUR 400 (four hundred euros) in respect of costs and expenses;
 - (iii) any tax that may be chargeable to the applicant on the above amounts;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President