



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

FIRST SECTION

CASE OF ALEKSANDR SOKOLOV v. RUSSIA

(Application no. 20364/05)

JUDGMENT

STRASBOURG

4 November 2010

FINAL

04/02/2011

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

In the case of Aleksandr Sokolov 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 Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 14 October 2010,

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

PROCEDURE

1. The case originated in an application (no. 20364/05) 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 Aleksandr Sergeyevich Sokolov (“the applicant”), on 23 March 2005.

2. The applicant was represented by Ms O.A. Sadovskaya, Mr I. Kalyapin and Mr A. Ryzhov, lawyers with the Committee Against Torture, a non-governmental organisation based in Nizhniy Novgorod. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been a victim of inhuman treatment and unacknowledged detention.

4. On 9 February 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

5. The Government objected to the joint examination of the admissibility and merits of the applications. Having considered the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1965 and lived, before his arrest, in Lipetsk.

A. Alleged ill-treatment of the applicant

7. On 3 February 2004 the Sovetskiy district prosecutor opened an investigation into the murder of a Ms B. An investigator, Mr N., was assigned to take charge of the proceedings.

8. According to the applicant, at about 4 p.m. on 19 February 2004 he came back from work to his flat on Lavochkina Street; his wife and fifteen-year-old son were at home. His mother and his wife's sister were visiting at the time. At about 7 p.m. four police officers barged into the flat and searched the premises in the presence of two attesting witnesses. The applicant was told that he was a suspect in a murder case; they handcuffed him and took him away in a blue Zhiguli car. Once in the car, an officer punched the applicant in the head and body and then pulled his cap down so that it covered his eyes. After a fifteen-minute ride the applicant was pushed out of the car into the snow. Police officers kicked and punched him, demanding that he tell them about the murder he had allegedly committed. Sometimes the officers took breaks from the beatings and drank vodka. At one point the applicant felt a sharp pain in his left side and realised that his rib had been broken.

9. The applicant further related that at about 10 p.m. he was taken by car to the Sovetskiy district police station. He was taken to the office of Mr Ry., whom the applicant had met before. Another officer, Mr Ro., was also present. Four officers started beating him, demanding that he confess to the murder of Ms B. and reveal where he had hidden her cell phone. Whenever he fainted, they poured water on him. The officers drank alcohol and verbally assaulted the applicant and his relatives. The applicant was beaten with a baseball bat on his shoulders, arms and upper body. He started bleeding and stained the wallpaper with his blood.

10. The beatings continued for two hours. The applicant was then taken into the detention cell within the police station, whereas the police officers left to search the applicant's parents' flat at 40 Let Okryabrya Street.

11. While in the cell, the applicant slit open a vein on his left forearm with a shard of a broken light bulb. His cellmate alerted the wardens. An ambulance arrived and took him to the trauma unit where the doctor sutured the wound. The police officers, who had in the meantime come back from

the search, accompanied the applicant. The doctor wanted to X-ray the applicant but the police officers would not let him.

12. Upon his return from the trauma unit, the beatings continued in the Sovetskiy district police station. The applicant felt that his ribs were broken on the other side. The officers kicked him in the groin and burned his genitals with a lighter. They took his trousers off, inserted an empty plastic bottle into his anus and took a photo, threatening to show the photo to his cellmates and tell them that he was a homosexual. They also stripped him naked, threw cold water on him and made him stand in front of an open window.

13. The Government submitted copies of two search-and-seizure records dated 19 February 2004. In so far as it can be ascertained, one record concerned the search carried out in the applicant's flat from 6.30 to 7.35 p.m. and the other related to the search of a flat at 40 Let Oktyabrya Street, which lasted from 10.05 to 11.15 p.m. In both records the applicant was listed as having been present during the search; however, the signatures are visibly dissimilar.

14. At about 7 a.m. on 20 February 2004 the applicant agreed to confess. The police officers took him to the investigator Mr N., in charge of the murder case, and told him to write a confession statement. They stayed throughout the time it took the applicant to write the statement and then left once the investigator began to question him as a suspect. When asked by the investigator about the origin of his injuries, the applicant replied that he had been beaten up by unknown persons the day before on his way home.

15. At 10 a.m. the investigator compiled an arrest record concerning the applicant. According to the arrest record, the applicant had been detained at 9.30 a.m. on 20 February 2004 in the prosecutor's office of the Sovetskiy District of Lipetsk.

16. Feeling unwell, the applicant asked the investigator to take him to a doctor. At 5.30 p.m. the applicant was examined by medical specialists who discovered large bruises on his chest, lumbar region, left iliac area, left elbow, head and face. Three ribs were broken on the left side and one rib on the right side.

17. The case-file contained a statement, allegedly signed by the applicant on 20 February 2004, in which he indicated that the day before he had been seriously drunk and had been beaten up by unidentified persons on his way home from work.

18. Following treatment for his injuries in hospital, on 3 March 2004 the applicant was transferred to a remand prison.

B. Investigation into the forgery of the statement of 20 February 2004

19. On an unspecified date the applicant complained to the prosecutor's office that the statement which he had allegedly written by hand on 20 February 2004 had been a forgery. On 24 February 2005 an investigator with the Pravoberezhniy district police station of Lipetsk asked a graphologist from the Lipetsk Regional Forensic Centre (*экспертно-криминалистический центр УВД Липецкой области*) to determine whether or not the statement of 20 February 2004 could have been written by the applicant's hand.

20. According to the graphologist's report of 10 March 2004, no part of the statement of 20 February 2004 had been written by the applicant. The signature also belonged to another person.

21. It would appear that on 13 March and 26 May 2006 the investigator refused to open a criminal investigation into the forgery. Both of those decisions were set aside by the Pravoberezhniy district prosecutor. On 18 August 2006 the Pravoberezhniy District Court of Lipetsk granted the applicant's request and ordered the prosecutor to take the necessary procedural measures.

22. On 6 March 2007 another investigator asked a graphologist from the Ministry of Justice Forensic Centre in the Lipetsk Region to determine whether the statement could have been written by a certain Mr A. On 26 March 2007 the expert replied that the samples of Mr A.'s handwriting provided were of such poor quality as to be unsuitable for forensic examination.

23. According to the Government, on 26 April 2007 the Pravoberezhniy district prosecutor quashed an earlier decision to suspend the proceedings and instructed the investigator to take specific action.

C. Investigation into the alleged ill-treatment

24. On 1 April 2004 the applicant, on the advice of his counsel, complained about the ill-treatment described above to the head of the Lipetsk Regional Police. He submitted that he had been unlawfully taken from his home, detained overnight and severely beaten by officers P., D., Z., Ro. and Ry. His complaint was referred to the investigator Mr N. for examination. Counsel for the applicant asked the investigator to arrange a medical examination.

25. On 2 April 2004 a medical examination returned the following findings:

“3.1. The forensic medical examination has established that [the applicant] suffered chest injuries in the form of numerous bruises, fractures of the fifth, sixth and ninth

ribs on the left side and the eighth rib on the right side, [and] numerous bruises on the head and upper limbs.

3.2. These bodily injuries resulted from the impact of hard blunt objects and could have been caused by blows and kicks on 19 February 2004.

3.3. The chest injuries are of medium severity, having resulted in a health impairment lasting over a period of more than twenty-one days; the other injuries did not result in any health impairment.”

26. On 9 April 2004 the investigator Mr N. questioned the applicant, who described in great detail the ill-treatment inflicted on him by the police officers on the night of 19 and 20 February 2004.

27. On 14 April 2004 the investigator questioned Mr P., the head of the criminal investigations department of the Lipetsk police. He confirmed that the police had apprehended the applicant on 19 February 2004. However, he insisted that the applicant had not been beaten or ill-treated while in the police custody and that he had made his confession voluntarily. Officers D., Z., Ro. and Ry. testified in a similar vein.

28. On 28 April 2004 the applicant's wife told the investigator that on 19 February 2004 her husband had had no injuries on his return from work and had not complained about being beaten up by anyone. She had been present during the search of their flat and seen her husband being taken away by the police. The applicant's wife's sister also stated that she had not seen any injuries on the applicant.

29. On 12 May 2004 counsel for the applicant asked the investigator to identify and examine the applicant's co-workers and factory doctor, his mother, wife and son, their neighbours, who had acted as attesting witnesses, the doctor and nurse from the trauma unit who had been on duty on the night of 19 and 20 February 2004, and the applicant's cellmate. He also requested that the investigator identify whether the actions of the police officers who had held the applicant overnight without registering his detention had been lawful.

30. On 25 May 2004 the investigator examined Mr Ch., one of the attesting witnesses who had been present during the search of the applicant's flat. He testified that the applicant had had no visible injuries and raised no complaints.

31. The investigator also heard police officer G., who had been the officer-on-duty from 8 a.m. on 19 February to 8 a.m. on 20 February 2004. He stated, in particular, that he did not remember the distinctive features of the man who had been brought in by officers Ry. and Ro. He maintained, nevertheless, that there had been no visible injuries on the man and that he had not received any complaints of ill-treatment.

32. On 26 May 2004 the investigator Mr N. decided not to institute criminal proceedings in respect of the applicant's complaint of ill-treatment. Relying on the policemen's statements, he accepted the version of events

according to which the applicant had been beaten up by unidentified persons on the day preceding his arrest. The investigator found as follows:

“Thus, the fact that [the applicant's wife's sister] and [the attesting witness] Mr Ch. did not see any injuries on [the applicant] may not prove the fact that there were no bodily injuries on [the applicant] at the moment he was taken away by the policemen, because Mr K., the traumatologist who carried out a cursory examination of [the applicant], did not see any injuries, either, and [the applicant] did not complain to him ...

The investigation concludes that the allegations [of ill-treatment] were raised by [the applicant] for the purpose of avoiding criminal responsibility and punishment for the crime he had committed.”

33. The applicant contested Mr N.'s decision to a higher prosecutor and to a court of general jurisdiction. He submitted that the inquiry had been superficial, that the investigator had not questioned all the relevant witnesses or collected the material evidence, such as his blood-soaked shirt. Counsel for the applicant maintained, in particular, that the inquiry should not have been entrusted to the same investigator who had examined the criminal charge against the applicant. The court was also asked to identify whether the actions of the police officer-on-duty and his assistant, who had permitted the unacknowledged detention of the applicant, had been lawful.

34. On 12 August 2004 the Sovetskiy District Court of Lipetsk partly upheld the applicant's complaint and declared the investigator's refusal unlawful. It determined that the investigator had not examined the crime scene, collected material evidence or interviewed the available witnesses. On 21 September 2004 the Lipetsk Regional Court quashed that decision on appeal and remitted the matter.

35. On 7 October 2004 the Sovetskiy District Court determined that the investigator's decision of 26 May 2004 had been lawful and justified. The investigator had acted within his competence and the applicant had not previously challenged him as lacking independence. The decisions he had taken as to whether to interview witnesses or collect material evidence had been within his discretion as investigator and could not be declared unlawful solely because he had decided that, in the absence of any indication of a criminal offence, those pieces of evidence had not been necessary.

36. The applicant lodged an appeal. He submitted that although the forensic examination of 2 April 2004 had revealed injuries on his body, the investigator Mr N. had not opened a criminal case, inspected the crime scene or questioned his wife, mother, son, fellow co-workers or medical personnel. The investigator had not established how the document of 20 February 2004 bearing the applicant's forged signature had found its way into the case file. Finally, he had not addressed the issue of his unrecorded detention in the Sovetskiy police station.

37. On 9 November 2004 the Lipetsk Regional Court upheld the District Court's judgment on appeal. On 27 September 2007 the Presidium of the Lipetsk Regional Court quashed the appeal judgment by way of supervisory review and remitted the matter for a new appeal hearing.

38. On 30 October 2007 the Lipetsk Regional Court issued a new appeal judgment, upholding the District Court's judgment of 7 October 2004 in a summary fashion.

D. The applicant's conviction

39. On 11 January 2005 the Sovetskiy District Court of Lipetsk found the applicant guilty of Ms B.'s murder and sentenced him to ten years' imprisonment in a high-security institution. The trial court explicitly refused to examine the issue of whether or not the applicant's confession had been obtained under duress because the Regional Court had already determined that matter in a final judgment of 9 November 2004 (see above). As to the applicant's overnight detention from 19 to 20 February 2004, the District Court held as follows:

“It has been reliably established at the hearing that [the applicant] was actually brought into the Sovetskiy district police station in Lipetsk on the night of 19 February 2004 and remained [there] until the moment he was [formally] arrested by the investigator as a suspect. For that reason the court considers it necessary to credit one day, 19 February 2004, towards the period of his detention.”

40. On 1 March 2005 the Lipetsk Regional Court upheld the applicant's conviction on appeal.

II. RELEVANT DOMESTIC LAW

41. A criminal case may be instituted on the basis of a criminal complaint if there is sufficient evidence of elements of a crime (Article 140 of the Code of Criminal Procedure). A criminal case may be opened by a prosecutor or by an investigator with the prosecutor's consent (Article 146 § 1 of the CCrP).

42. A victim is an individual who has suffered physical harm, emotional distress or pecuniary damage as a consequence of a crime. A victim has, in particular, the right to give statements, to take part in procedural acts, to put questions to experts, and to lodge requests (Article 42 of the CCrP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicant complained under Article 3 of the Convention that he had been ill-treated by police officers on 19 and 20 February 2004 and that his complaint had not been properly investigated. Article 3 provides as follows:

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

A. Admissibility

44. The Government claimed that the application was belated: the final decision was given by the Lipetsk Regional Court on 9 November 2004, whereas the application form was dated 29 July 2005.

45. The Court observes that, by letter dated 23 March 2005, the applicant described the circumstances of the alleged ill-treatment and unrecorded detention on 19 and 20 February 2004 and informed the Court that, in his view, a violation of Articles 3 and 5 § 1 of the Convention had been committed. This letter reached the Court within six months of the Regional Court's final decision and it contained sufficient information about the complaints the applicant wished to raise. On 6 June 2005 the Registry of the Court provided him with a blank application form which he sent back on 29 July 2005. In the light of the customary delays of the Russian postal service this period does not appear excessively long. Accordingly, the Court finds that the application was introduced within the time-limit set out in Article 35 § 1 of the Convention.

46. The Court notes that this complaint 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

1. Compliance with Article 3 as regards the alleged ill-treatment by police

47. 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, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch*, § 34, and *Salman*, § 100, both cited above).

48. The Government denied that the applicant had been ill-treated. In their view, the Court did not have sufficient evidence of any treatment in breach of Article 3.

49. On the facts, the Court observes that on the night of 19 February 2004 the police officers from the Sovetskiy district police station had come to the applicant's home on Lavochkina Street and from that moment on, the applicant was under their full control. On that day many persons had seen the applicant, including his wife, his son and their visiting relatives, but no one had observed any injuries on him. The allegation that the applicant had been beaten up on his way from work sits ill with their observations, taking into account the gravity and location of his injuries which included broken ribs and many bruises on his head and upper body. Nor is that allegation supported by any credible evidence: the graphologist determined that the statement of 20 February 2004 had not been written or signed by the applicant and was a forgery (see paragraph 20 above). It is therefore established that the applicant was in good health before he was taken into police custody.

50. On the following day, in the afternoon, the applicant was seen by doctors who discovered large bruises all over his upper body, including his head, face and arms, and four broken ribs. The applicant stayed in hospital for in-patient treatment until 3 March 2004.

51. According to the applicant, those injuries were a result of the ill-treatment inflicted on him by police officers at the Sovetskiy district police station, who had attempted to extract a confession by force and make him surrender material evidence. The police officers had repeatedly hit his face and body, and punched and kicked him. The Court notes that his account of events coincides with the findings of the forensic expert. Moreover, since he remained at the material time in custody within the exclusive control of the Russian police, strong presumptions of fact arise in respect of the injuries that occurred during his detention. However, the

Government and the domestic authorities failed to provide a satisfactory and convincing explanation of how those injuries had been caused. Their version, according to which the applicant had been beaten up by private individuals the day before, is belied by the testimony of his family members, the attesting witness Mr Ch. and the officer-on-duty. This version appears totally implausible in the absence of any evidence in its support or any credible attempt on the part of the domestic authorities to investigate the matter.

52. Having regard to the applicant's detailed and consistent, whenever he was able to make them freely, allegations, which are corroborated by the medical report, and in view of the absence of any other plausible explanation as to the origin of the injuries found on him by the forensic examination, the Court accepts that he was subjected to ill-treatment by the police.

53. 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 (see *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports of Judgments and Decisions* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83-84 and 86, *Reports of Judgments and Decisions* 1997-VI; *Selmouni v. France* [GC], no. 25803/94, § 105, ECHR 1999-V; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; and, among recent authorities, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-IV (extracts)).

54. In the instant case the Court finds that the existence of physical pain or suffering is attested by the medical report and the applicant's statements regarding his ill-treatment in the Sovetskiy district police station. Although his injuries were classified as being of "medium severity" in the domestic proceedings, the Court considers that four broken ribs and multiple bruises and abrasions attest to the severity of the ill-treatment to which he was subjected. It is also relevant to the assessment of the seriousness of those acts that the pain and suffering were inflicted on him intentionally, with a view to extracting a confession to having committed the offence of which he was suspected. In these circumstances, the Court concludes that, taken as a whole and having regard to its duration, purpose and severity, the ill-treatment at issue amounted to torture within the meaning of Article 3 of the Convention.

55. Accordingly, there has been a violation of Article 3 under its substantive limb.

2. Compliance with Article 3 as regards the effectiveness of the investigation

56. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision requires by implication that there should be an effective official investigation. For the investigation to be regarded as “effective”, it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The investigation into serious allegations of ill-treatment must be thorough. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 103 et seq., *Reports of Judgments and Decisions* 1998-VIII). They must take the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov*, cited above, § 102 et seq.). Further, the investigation must be expedient. The Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV). It has also given consideration to the promptness in opening investigations, delays in taking statements and to the length of time taken for the initial inquiry (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

57. The Government maintained that the domestic authorities had fully complied with the procedural obligations flowing from that provision. The applicant disagreed with their assertion.

58. The Court considers that medical evidence of damage to the applicant's health, together with his allegations of having been beaten by the police, amounted to an “arguable claim” of ill-treatment. Accordingly, the authorities had an obligation to carry out an effective investigation into the circumstances of the alleged ill-treatment.

59. The forensic examination revealed signs of severe beatings on the applicant's face and body. The presence of such injuries was indicative of a criminal assault occasioning actual bodily harm or at least the criminal offence of battery. Under Russian law, the applicant's criminal complaint, supported by that information on the elements of a criminal offence, was sufficient grounds for opening a criminal case (see paragraph 41 above). However, a criminal case has never been opened and the refusal to institute criminal proceedings was upheld by the prosecutor's office and the Lipetsk

courts. In the absence of a criminal case the applicant could not be granted the procedural status of victim, which restricted his participation in the investigation and prevented him from exercising the rights attached to that procedural status, including the right to lodge applications or the right to put questions to the medical expert (see paragraph 42 above). It cannot therefore be said that the applicant's right to participate effectively in the investigation was secured (compare *Denis Vasilyev v. Russia*, no. 32704/04, § 126, 17 December 2009).

60. The Court considers that the scope of the inquiry cannot be described as having been effective or adequate. The most fundamental investigative measures, such as inspecting the scene where the applicant alleged to have been beaten, collecting the material evidence, such as the baseball bat or blood-stained wallpaper, or arranging a confrontation between him and the police officers from Sovetskiy district police station, were never carried out. After the investigator had accepted the version of events according to which the applicant had been beaten up by persons other than police officers the day before he was taken into custody, he refused to institute criminal proceedings despite abundant medical evidence of a criminal act and did not make any attempt to identify the probable perpetrators, to inspect the crime scene or to examine witnesses who may have seen the applicant on that day. These failures alone, for which no explanation has been provided to the Court, suffice to render the investigation ineffective.

61. Finally, the Court does not accept that the domestic inquiry could be described as independent. The applicant had complained that he had been ill-treated for the purpose of obtaining his confession statement. The police officers had brought him to the office of the investigator Mr N. on the morning of 20 February 2004 and had remained there throughout the time it had taken the applicant to write the statement. The investigator saw the visible injuries on the applicant's person but had taken no action in this connection besides noting that the applicant claimed to have been beaten up by unknown persons. The presence of the police officers allegedly implicated in the ill-treatment must have inhibited the applicant's ability to speak freely but the investigator did not remove them from the office and did not open an inquiry into the origin of the applicant's injuries on his own initiative. Since Mr N. was in charge of investigating the criminal case in which the applicant had been a suspect, he obviously had a vested interest in obtaining a statement from him and overlooking the circumstances in which that statement had been obtained. A subsequent verification of the applicant's complaint about the ill-treatment by the police was entrusted to the same Mr N. In the Court's view, the lack of independence of the investigator from those implicated in the events further undermined the effectiveness of the investigation (see *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004).

62. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment. Accordingly, there has also been a violation of Article 3 under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

63. The applicant complained under Article 5 of the Convention about his unrecorded detention from 19 to 20 February 2004. The relevant part of Article 5 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 ...”

A. Admissibility

64. The Government claimed that this complaint should be rejected for non-exhaustion of domestic remedies and also as being belated.

65. The Court reiterates that the six-month period normally runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset, however, that no effective remedy was available to the applicant, the period runs from the date of the acts or measures complained of. Nevertheless, Article 35 § 1 cannot be interpreted in a manner which would require an applicant to bring a complaint before the Court before his position in connection with the matter has been finally determined at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to calculate the six-month time-limit from the date when the applicant first became or ought to have become aware of those circumstances (see *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 157, ECHR 2009-...; *Pavlenko v. Russia*, no. 42371/02, § 70, 1 April 2010, and *Zenin v. Russia* (dec.), no. 15413/03, 24 September 2009).

66. The Court observes at the outset that the Government did not identify a specific remedy of which the applicant should have made use. On the facts, it notes that the applicant chose to lodge a criminal-law complaint about that situation which arguably amounted to the criminal offence of unlawful deprivation of liberty. The applicant and his counsel repeatedly requested that the investigator and subsequently the Lipetsk courts assess the lawfulness of that situation (see paragraphs 29 and 33 above); however, all the domestic decisions passed over that point in silence. The normal

chain of appeals was concluded with the final decision of the Lipetsk Regional Court dated 9 November 2004 when the applicant must have become aware of the ineffectiveness of the criminal-law complaint. He introduced his complaint to the Court by letter of 23 March 2005 and then submitted the completed application form on 29 July 2005. For the reasons set out in paragraph 45 above, the Court is satisfied that the application was lodged within six months of the Regional Court's judgment of 9 November 2004. In these circumstances, the Government's objection must be dismissed.

67. The Court notes that this complaint 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

68. The applicant maintained that from 7.30 p.m. on 19 February 2004 to 10 a.m. on 20 February 2004 he had been deprived of his liberty in an arbitrary fashion. He had been placed in a cell but no arrest record had been compiled and his name had not been entered in the detainees' registration log. A legal basis for his detention had been lacking.

69. The Government acknowledged that the applicant was arrested by the police officers on 19 February 2004. The domestic courts had found that his arrest and subsequent detention had been lawful and compatible with the criminal-procedure requirements. He had been brought before a judge within forty-eight hours of his arrest.

70. On the facts, it is not in dispute between the parties that the applicant was deprived of his liberty on 19 February 2004 and taken into custody by the officers of the Sovetskiy district police station. The only arrest record which is available to the Court indicates that the applicant was arrested on 20 February 2004 in the prosecutor's office of the Sovetskiy District of Lipetsk (see paragraph 15 above). No other records concerning the intervening period of the applicant's detention from 19 to 20 February 2004 have been produced.

71. The Court reiterates that the absence of an arrest or detention record in respect of a period of deprivation of liberty must in itself be considered a most serious failing, as 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 the 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 (see *Fedotov v. Russia*, no. 5140/02,

§ 78, 25 October 2005; *Menesheva v. Russia*, no. 59261/00, § 87, ECHR 2006; and *Kurt v. Turkey*, 25 May 1998, § 125, *Reports of Judgments and Decisions* 1998-III).

72. In the instant case the record was eventually prepared; however, the date, time and location of the applicant's arrest listed therein were at variance with the actual date, time and location of his detention. The applicant's overnight detention, from 19 to 20 February 2004, on the premises of the Sovetskiy district police station, was not recorded or acknowledged in any procedural form. The Court finds that it was effected in breach of the requirements implicit in Article 5 of the Convention for the proper recording of deprivations of liberty (see *Anguelova v. Bulgaria*, no. 38361/97, § 157, ECHR 2002-IV, and *Menesheva*, cited above, §§ 87-89).

73. There has therefore been a violation of Article 5 § 1 of the Convention on account of the applicant's unrecorded detention from 19 to 20 February 2004.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

76. The Government submitted that the amount claimed was excessive in the light of the Court's case-law in similar cases.

77. The Court considers that the applicant must have suffered physical pain, anxiety and frustration because of the ill-treatment inflicted on him at the district police station, the ineffective investigation into his complaints and his unrecorded detention. Making its assessment on an equitable basis, it awards the applicant the amount claimed under this head, that is EUR 50,000, plus any tax that may be chargeable.

B. Costs and expenses

78. The applicant did not make a claim for costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

79. 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 application admissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's unrecorded detention from 19 to 20 February 2004;
4. *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 50,000 (fifty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 4 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Section Registrar

Christos Rozakis
President