CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF MIKHEYEV v. RUSSIA

(Application no. 77617/01)

JUDGMENT

STRASBOURG

26 January 2006

FINAL

26/04/2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mikheyev v. Russia,

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

Mr C.L.ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS , *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 5 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 77617/01) 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 Yevgenyevich Mikheyev ("the applicant"), on 16 November 2001.

2. The applicant, who had been granted legal aid, was represented by Ms O. Shepeleva, Mr Y. Sidorov, lawyers practising in Moscow and Nizhniy Novgorod, and Ms V. Vandova, a lawyer with "Interrights", the United Kingdom. The Russian Government ("the Government") were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that while in detention on remand he had been tortured by police officers in order to extract a confession to the rape and murder of a female minor. As a result, he had jumped out of the window of the police station and broken his spine. He also complained that the investigation into these events had been ineffective. He referred to Articles 3 and 13 of the Convention in this respect.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 24 May 2004 the Court was contacted by a British human-rights NGO, the Redress Trust, seeking leave to submit written comments as a third party. The request was refused by the President. At the same time the

President drew the attention of the Redress Trust to the possibility of reintroducing the request should the case be declared admissible.

6. On 7 October 2004 the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1). In addition, the Redress Trust reintroduced its request to submit written comments. A request in the same terms was also filed by a group of Russian NGOs, including the Public Verdict Foundation, the Demos Centre, the Yoshkar-Ola NGO Man and Law, and the Kazan Human Rights Centre. In December 2004 these organisations were granted leave by the President to intervene in the written procedure as a third party (Article 36 § 2 of the Convention and Rule 44 § 2). After the third parties' comments were received, the applicant and the Government filed their observations in reply (Rule 44 § 5).

8. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Proceedings against the applicant

9. The applicant was born in 1976 and lives in Nizhniy Novgorod. At the relevant time he was a police officer in the road traffic department. On 8 September 1998, while off duty, he and his friend F met MS, a teenage girl, in Bogorodsk, in the Nizhniy Novgorod region. The applicant gave MS a lift in his car to Nizhniy Novgorod.

10. On 10 September 1998 MS's mother informed the Bogorodsk municipal police of her daughter's disappearance. At 4 p.m. on the same day, the applicant was arrested. F was also arrested and brought to Bogorodsk police station. The applicant and F were questioned by police officers in relation to the disappearance of MS. However, no charge was brought against them. Following the questioning, the police seized the applicant's identity card and other documents and put him in the detention wing.

11. On the evening of 10 September 1998 the applicant's superior officer came to the applicant's cell and forced him to sign a resignation statement backdated to 17 August 1998.

12. On 11 September 1998 the police searched the applicant's flat, country house, garage and car. They found three gun cartridges in his car.

13. On 12 September 1998 three officers from Bogorodsk municipal police, N, T and D, filed an "administrative offence report" with a judge of Bogorodsk Town Court. The report stated that on the evening of 11 September 1998 the applicant and F had committed a "disturbance of the peace" at the railway station. On the same date the judge sentenced the applicant and F to five days' administrative detention from 11 September 1998.

14. According to the applicant, while in detention in Bogorodsk police station, he had been repeatedly questioned about the disappearance of MS. He denied any involvement in her disappearance. He said that he had requested a lawyer on many occasions, but that his request had been refused.

15. On 16 September 1998 the police opened a criminal investigation relating to the ammunition found by the police during the search of 11 September 1998 (criminal case no. 68205). By this time the term of the applicant's administrative detention had expired and the applicant had been placed in custody in connection with the criminal case. He was transferred to another detention centre, under the jurisdiction of Leninskiy police department, who were in charge of the case.

16. The applicant submitted that after his transfer to the detention centre the questioning had become more intensive and even violent. For instance, on several occasions the police officers had slapped him and threatened him with torture in order to extract a confession that he had killed MS. In particular, they had threatened to apply electric shocks to him or place him in a cell with "hardcore criminals" who would kill him if they learned he was a police officer.

17. On 17 September 1998 the applicant was visited by a lawyer hired by the applicant's mother several days earlier in connection with criminal case no. 68205. According to the applicant, during the conversation with the lawyer he had mentioned that the real reason for his detention was the disappearance of MS. However, the lawyer replied that she could not take on another case that she had not been paid for. The next day, according to the applicant, the police investigator banned all visits by the lawyer to the applicant.

18. Meanwhile, F testified to the police that he had seen the applicant rape and kill MS. He indicated to the investigators the place where they had allegedly hidden the body of MS. A group of policemen went there, but nothing was found.

19. On 19 September 1998 the applicant was questioned at Leninskiy police station in the presence of several police and prosecution officials, including I (the senior police investigator), S (deputy head of the local office of the Ministry of the Interior), MR (the deputy regional prosecutor),

the Bogorodsk town prosecutor, and a number of policemen of the Leninskiy police department.

20. The applicant alleged that he had been subjected to torture in order to make him corroborate F's confession. According to the applicant, while he was sitting handcuffed on a chair, police inspectors K and O had administered electric shocks to his ears through metal clips connected by a wire to a box. The applicant had been tortured several times in this way. The applicant had also been threatened with severe beatings and application of an electric current to his genitals. One of the police officers had told him that the current could cause his tongue to fall back into his throat, from where it could be extracted only by means of a safety pin.

21. According to the applicant, the officials from the prosecutor's office had not been present in the room where he had been tortured with electrodes. However, he had twice been brought to another room in the police station, where he had been repeatedly questioned by those officials, notably MR. The applicant had complained to MR about the ill-treatment, but the latter had not reacted, and when the applicant again refused to confess to murdering MS, MR had ordered the police officers to take the applicant "back to where he came from".

22. The applicant submitted that, unable to withstand the torture and left unattended for a moment, he had broken free and jumped out of the window of the second floor of the police station in order to commit suicide. He had fallen on a police motorcycle parked in the courtyard and broken his spine.

23. The applicant, accompanied by inspector K, was immediately taken to Hospital no. 33 of Novgorod Region, where he was examined by Dr M, who established various injuries caused by his fall from the window, affecting in particular his vertebral column and locomotor system.

24. On the same day the applicant was transferred to Hospital no. 39. His mother arrived at the hospital and asked Dr K to include burns to the applicant's ears in his medical record. However, her request was refused. She also submitted a request to Dr S, who was in charge of the applicant's case, and to the head doctor of the hospital, asking that the burns be recorded. She received no answer to her requests.

25. On 19 September 1998, the day of the applicant's fall from the window, MS returned home unharmed. She explained that on the night of 8 September 1998 the applicant had offered her a ride in his car. She had agreed. When they had arrived in Nizhniy Novgorod, he had suggested that she could spend the night at his place, but she had refused and the applicant had let her go. MS had gone to friends living in Nizhniy Novgorod, where she had spent several days, without letting her mother know were she was.

26. On 21 September 1998 the applicant's detention was formally discontinued. On 22 September 1998 the applicant underwent spinal surgery. He remained in hospital until 3 February 1999. On 25 September 1998 criminal case no. 22346 concerning the alleged rape and murder of

MS was closed. However, the applicant became a suspect in another criminal case – no. 22414, in which he was charged with the abduction of MS.

27. On 1 March 1999 the criminal investigation into the illegal possession of the gun cartridges was discontinued, on the ground that at the time of their discovery the applicant had been a police officer and, therefore, had had the right to possess the ammunition. On 1 March 2000 (the Government indicated a different date – 10 May 2000), the case concerning the alleged abduction of MS was also discontinued on the ground that the applicant had freed MS at her request.

B. Official investigations into the allegations of ill-treatment

28. On 21 September 1998 an investigator from the Leninskiy district prosecutor's office instituted a criminal investigation into the applicant's fall from the window of the police station on 19 September 1998 (case no. 68241).

29. The investigator questioned five police officers from the Leninskiy district police who had participated in the questioning on 19 September 1998. They stated that they had not ill-treated the applicant or seen him being ill-treated. The police officers said that, in the course of the interview, inspector K had told the applicant that his friend F had testified to having seen the applicant rape and murder MS, and that it would be wise for him to confess. The interview had then been interrupted for a tea break. While the officers had been busy preparing tea, the applicant had suddenly jumped out of his chair, run to the window, broken the glass and fallen out.

30. The investigator also questioned F, who submitted that no pressure had been exerted on him to make a false statement about the applicant. F stated that he had implicated the applicant out of fear of being accused of bringing about the disappearance of MS.

31. The investigator further questioned Dr K from Hospital no. 39, who had examined the applicant after the accident of 19 September 1998. The doctor confirmed that on the day of the accident the applicant's mother had mentioned some electrical burns on her son's ears. However, all the applicant's injuries had been caused by his fall from the window. According to the medical record, the applicant had no electrical burns to his ears.

32. B, the applicant's ward-mate in Hospital no. 39, was also questioned by the investigator. B spoke of burns and abrasions to the applicant's ears which may have been caused by an electrical discharge. B stated that he had worked as an electrician and therefore knew what burns from an electrical current looked like.

33. The investigator ordered a forensic medical examination of the applicant. The forensic report, drawn up on 26 October 1998, stated that the applicant had wounds on the top of his head, scratches on his forehead and

bite marks on his tongue. No burns or other traces of the use of electrical current were recorded.

34. On 21 December 1998 the investigator discontinued the criminal proceedings against the police officers for lack of evidence of a crime. The investigator found that the applicant had been arrested on 10 September 1998 in connection with the disappearance of MS. On 11 September 1998 the police had carried out a search of the applicant's car and found three gun cartridges. On the same day the applicant and F had been released. However, shortly after their release inspector N of the Bogorodsk police had identified certain factual gaps in their written submissions. Inspectors N and D had followed the applicant and found him at the town's railway station. The applicant had been disturbing passers-by by addressing them with obscene language. As a result the applicant had been arrested again and on the next day made the subject of an administrative arrest for disturbance of the peace. On 16 September 1998 a new criminal case had been opened against the applicant in relation to the gun cartridges found in his car. On 19 September 1998 a detention order had been issued against the applicant on this new ground. On the same day he had been transferred to Leninskiy district police station, where he had been questioned by several police officers, including inspectors K and O. After the interview the applicant had suddenly jumped out of his chair, broken the window and fallen out. He had been brought immediately to Hospital no. 39. On the same day MS had returned home.

35. The investigator referred further to the testimonies of the police officers and Dr K, the medical records of Hospital no. 39 and the forensic medical report of 26 October 1998. He also referred to the opinion of a medical expert, S, which stated that the application of an electrical current might leave burns on the skin. The investigator disregarded the testimony of B on the basis that the latter "had no specialist medical knowledge". The investigator came to the conclusion that the applicant's allegations of torture were unsubstantiated, describing them as a "defence mechanism" in response to the situation in which he had attempted suicide.

36. On 25 January 1999 the regional prosecutor's office reopened the case and handed it to the same investigator for further investigation. On 25 February 1999 the investigator, referring to the same evidence as before and using identical wording, discontinued the proceedings again. He added that the investigative measures referred to by the senior prosecutor in his decision of 25 January 1999 had already been taken in 1998. Given the state of the applicant's health, it was impossible to carry out new investigative measures, such as confrontations or forensic examinations.

37. On 1 December 1999 the same supervising prosecutor reopened the case and ordered certain additional investigative measures, including a medical examination of the applicant and a confrontation between the applicant and the police officers who had allegedly tortured him. The case

was transferred to another investigator. On 24 February 2000 the investigator discontinued the proceedings, basing his decision on the same reasoning as in the decision of 21 December 1998.

38. On 10 March 2000 the same supervising prosecutor reopened the case for the third time and handed over the file to another investigator.

39. This time the applicant's mother was questioned. She stated that on 19 September 1998 she had arrived at the hospital and had seen that her son's ears had been injured. She had asked that the injuries be recorded but the request had been refused by the hospital doctor, because "they had been given instructions to that effect".

40. The investigator also questioned a hospital attendant and four doctors from Hospital no. 39, who all denied that the applicant had had injuries other than those caused by his falling out of the window. One of the patients in Hospital no. 39, where the applicant had been brought after the accident, confirmed that the applicant had told him about the torture with electrodes; however, the patient stated that he had seen no traces of any injuries on the applicant's ears. F, who had visited the applicant in hospital, stated that the applicant had told him about the torture, but F had seen no signs of torture on him.

41. A further witness, the senior officer of the traffic police department where the applicant had served before his arrest, provided the investigator with a "psychological profile" of the applicant, describing the applicant as having a weak personality. The investigator also obtained the results of a psychological test which the applicant had undergone upon his appointment to the traffic police. The test revealed that the applicant "had a tendency to avoid conflict and was a vulnerable person, susceptible to outside influences".

42. On 21 July 2000 the proceedings were discontinued. The investigator concluded that the applicant had jumped out of the window of his own will, "driven by his personal assessment of the situation, based on specific psychological features of his personality".

43. On 10 November 2000 the case was reopened by another supervising prosecutor. F was questioned anew. This time F testified that while in Bogorodsk police station, he had been beaten by inspector A in an attempt to extract a confession to the murder of MS. Between 16 and 19 September 1998 F had been repeatedly questioned in Leninskiy district police station in Nizhniy Novgorod. In the course of the questioning I, the senior police investigator, had slapped and shaken him. I had also mentioned that F would be tortured with electrodes if he did not confess to the impugned crimes. F had also been questioned by MR, the deputy regional prosecutor. On 18 September 1998 F had signed the confession and even located on the map the place where he and the applicant had allegedly hidden the body.

44. After the incident, F had visited the applicant in hospital. The applicant had told him about the torture with electrodes. In reply F had

described to the applicant the officer who had threatened him with it, and the applicant had confirmed that this was the same officer who had participated in the questioning of 19 September 1998. Later that year he had recounted this to the investigator in charge of case no. 68241; however, it had been decided not to include these statements in the official record.

45. On 29 December 2000 the investigation was again discontinued by an investigator from the prosecutor's office. On an appeal by the applicant on 27 March 2001, the Nizhegorodskiy District Court of Nizhniy Novgorod quashed the decision, ordering the prosecution to carry out a further investigation. The court noted, *inter alia*, that the applicant's submissions were consistent and detailed, and that the case should be investigated more thoroughly. The court ordered other patients from the hospital where the applicant had been brought after the accident to be questioned. The court also deemed it necessary for the applicant to be examined by an expert in psychiatry and psychology.

46. The proceedings were resumed. This time the prosecution investigator questioned Dr M, who had been on duty in Hospital no. 33, where the applicant had been brought immediately after the accident. The doctor stated that he had not noticed or treated any injuries to the applicant's ears. The same evidence was reiterated by Dr K and Dr S. They both confirmed that the applicant's mother had requested them to re-examine the applicant's ears on several occasions, but that they had not identified any injuries. Five patients from Hospital no. 39 testified that the applicant had told them about being tortured with electrodes, but that they had seen no signs of any injuries on the applicant's ears. The same testimony was given by F.

47. The investigator also ordered a psychological and psychiatric examination of the applicant. The examination showed that the applicant was mentally sane, but had been traumatised by the accident and had a lasting physical disability as a result of it. At the time of the examination, the applicant's mental state was characterised by euphoric reactions, amiability, emotionality and dependence on a stronger personality, namely his mother. He did not display any suicidal tendencies. The report stated that it was impossible to draw any conclusions as to the applicant's mental state at the time of the accident.

48. On 19 May 2001 the proceedings were discontinued by the investigator on the same grounds as before.

49. By letter of 5 August 2002 the Nizhniy Novgorod regional prosecutor's office informed the applicant that the investigation had been reopened and sent to the Leninskiy prosecutor's office with relevant instructions for additional investigation. The applicant requested that the prosecution service question V, one of the patients in Hospital no. 39.

50. On 5 September 2002 the prosecution service discontinued the investigation, finding that no criminal offence had been committed and

indicating, *inter alia*, that it had been impossible to find V at his place of residence. The investigator concluded that the applicant's allegations of torture were supported only by his own submissions, which, in the light of other evidence obtained in the course of the investigation, had been found to be untrue.

51. Knowing that V was disabled and a wheelchair user, the representatives of the applicant contacted V and learned that the execution of the request to question V had been assigned to inspector O, one of the police officers involved in the alleged torture. Inspector O reported that on several occasions he had tried to question V, but had been unable to find him at his address. On 26 September 2002 V explained to the applicant's representatives that someone introducing himself as an investigator had telephoned him once and said that he needed to question him. V had agreed to make a statement, but the person had never called back.

52. On 28 October 2002 the Nizhniy Novgorod regional prosecutor's office annulled the decision of 5 September 2002. On 28 November 2002 the Leninskiy district prosecutor's office discontinued the investigation yet again on the same grounds. The applicant appealed against the decision to discontinue the investigation. By letter of 24 July 2003 the applicant was informed that the Nizhniy Novgorod regional prosecutor's office saw no reason to overturn the decision to discontinue the investigation.

53. According to the respondent Government, the regional prosecutor reopened the investigation on 6 November 2003 and transferred the case to the Leninskiy district prosecutor's office. Apparently, by the end of December 2003 the case had been closed again. On 19 January 2004, according to the applicant, the investigation was reopened. On 26 January 2004 the case was transferred from the Leninskiy district prosecutor's office to the department of the regional prosecutor's office dealing with investigations into cases of particular importance.

54. F was questioned once more. He testified that while being questioned in Leninskiy district police station in connection with the disappearance of MS he had been beaten by the police officers. They had also threatened to torture him with electrodes.

55. On 19 February 2004 the investigator from that department closed the case again, concluding that no evidence of ill-treatment of the applicant had been obtained and that the actions of the police officers had been lawful. On 4 March 2004 the case was reopened, before being closed again on 4 July 2004. On 3 August 2004 the case was reopened by the regional prosecutor's office. On 6 September 2004 the case was closed. It was then reopened, and, according to the Government's submissions, closed again on 20 October 2004. On 22 November 2004 the regional prosecutor reopened the investigation. According to the Government, the deadline for the new investigation was 2 April 2005.

56. On an unspecified date in 2005 the prosecutor's office brought charges against two policemen, K and SM, who had participated in the questioning of the applicant on 19 September 1998. The case file, together with a bill of indictment, was eventually forwarded to the Leninskiy District Court of Nizhniy Novgorod for examination.

57. In the course of the trial the court questioned a large number of witnesses. Hence, it questioned K, SM, and fifteen other police officers who had participated in the questioning of 19 September 1998 or had been in Leninskiy police station on that day. They all denied that they had tortured the applicant or had heard of any such torture. The court further questioned VK, a former police investigator, who had been in charge of the applicant's case but had not taken part in his questioning. She testified that she had heard from her colleagues that the applicant had jumped out of the window because he had been tortured with electrodes.

58. The court also heard evidence from the applicant, his mother, F, MS, and the doctors at the hospital where the applicant had been placed after the incident. They confirmed their initial submissions. An expert witness appeared before the court. He testified that in certain conditions electric current might leave no traces on the human body. The court also questioned VZ, who in August 1998 had been brought to Leninskiy police station on suspicion of theft. According to VZ, two policemen had questioned him and then tortured him with electrodes in the same way as the applicant described.

59. The court heard other witnesses and examined exhibits and materials collected in the course of the pre-trial investigation. Thus, the court read out the testimonies of B, V, and S, the applicant's ward-mates in Hospital no. 39, and examined the results of medical and psychiatric expert examinations of the applicant. The court also examined a piece of paper which had been found during the search of the office where the applicant had been questioned on 19 September 1998. It contained an unfinished passage describing the events of 10 September 1998, when MS had disappeared, under the title "Voluntary confession". The whole text had been written by the applicant.

60. On the basis of the above evidence the court established that on 19 September 1998 the applicant had been brought to Leninskiy police station, where he had been questioned by several officials from the police and the prosecutor's office. They had requested him to confess to having raped and murdered MS and to show them where he had buried the corpse. In order to extract a confession from the applicant, police officers K and SM had administered electric shocks to the applicant using a device connected to his ears. The court noted that in his initial submissions the applicant had testified that he had been tortured by inspectors K and O. However, following the identification parade the applicant had identified inspector SM as one of two officers who had tortured him. Unable to withstand the pain,

the applicant had agreed to confess, but, left unattended for a moment, had attempted suicide by jumping out of the window. He had fallen on a motorbike parked in the courtyard of the police station and broken his spine.

61. On 30 November 2005 the Leninskiy District Court of Nizhniy Novgorod found K and SM guilty under Article 286 § 3 (*a)* and (*в*) of the Criminal Code (abuse of official power associated with the use of violence or entailing serious consequences). They were sentenced to four years' imprisonment with a subsequent three years' prohibition on serving in the law-enforcement agencies. According to the information available to the Court, the judgment of 30 November 2005 is not yet final.

C. Unofficial inquiry into the events of 10 - 19 September 1998

62. In the summer of 1999 two activists from a regional human rights NGO (Nizhniy Novgorod Committee against Torture) interviewed several persons about the events of September 1998 complained of by the applicant. Their submissions were recorded on videotape.

63. In those interviews, F stated that he had been arrested on 10 September 1998. While in custody, he had been threatened and slapped several times in order to extract a confession to the murder of MS. On 17 September 1998 he had been questioned by a senior police investigator, I, who had kicked him and threatened to place him in an "underground cell" where he would be beaten and tortured with electrodes until his eyes bled.

64. On 18 September 1998 a short confrontation had been arranged between F and the applicant. F submitted that he had seen bruises on the applicant's neck. In the evening F had been questioned again, this time in the presence of the deputy regional prosecutor MR and the Bogorodsk town prosecutor, as well as several police officers. MR had threatened to lock F in a cell with "boy-crazy criminals" who would rape him, or to put him in a cell together with tuberculosis-infected detainees. He had also threatened that if F survived in the cell, he would be sentenced to 25 years' imprisonment or death row.

65. F had confessed to raping and killing the girl together with the applicant. At MR's request, F had named the place where they had allegedly hidden the corpse. An investigating team had been sent to the place in question, but had found nothing. On 20 September 1998, after the girl had come home, F had been released.

66. According to B, the applicant's ward-mate in Hospital no. 39, after having been brought to the hospital the applicant had told him about the circumstances of his arrest and, in particular, about the torture with electrodes. The applicant had shown B burns on his ears, which looked like "stripped blisters". According to M, another patient in the hospital, before the applicant had been brought to the hospital the police had warned the personnel that the applicant was a dangerous criminal. The patients had

been required to hide all sharp metallic objects. M also recollected that there had been something red on the applicant's ears, "as if somebody has pulled his ears". M also remembered that the applicant's mother had asked the doctors to examine his ears, but that they had replied that everything had been normal. V confirmed that, while in the hospital, he had heard from the applicant about the torture and seen the applicant's mother asking the doctor to examine his ears. V also confirmed that the applicant's ears had been injured, but said that it did not look like blisters as far as he could remember.

67. The NGO activists also interviewed L and K, witnesses to the search of the applicant's car.

68. In December 2000 the NGO activists questioned F once more with a view to clarifying the discrepancies between his evidence in the course of the official investigation and his statements to the NGO activists and the media. F stated that the investigators, while questioning him as part of the official criminal investigation, had disregarded his statements about the deputy regional prosecutor MR's involvement in the events of September 1998.

D. Other proceedings brought by the applicant with respect to the events of 10 – 19 September 1998

69. On an unspecified date in 1998 a prosecutor filed a request for supervisory review of the judgment of 12 September 1998 whereby the applicant had been sentenced to five days' administrative detention. On 2 December 1998 the President of the Nizhniy Novgorod Regional Court quashed that judgment. The President noted that the judgment had been based on the information from the police officers at Bogorodsk police station, who had alleged that they had arrested the applicant at the railway station on 11 September 1998. However, at that time the applicant had in fact been detained in custody in connection with the disappearance of MS.

70. On 23 March 2000 a prosecutor instituted criminal proceedings against the three Bogorodsk police officers for making false statements in relation to the alleged arrest of the applicant at the railway station (criminal case no. 310503). A prosecution investigator confirmed that the applicant had not been at the railway station on 11 September 1998, having at that time been detained in custody. However, on 3 November 2000 the charges against the police officers were dropped following a "change in the situation" in view of the fact that one police officer had been dismissed from his job, while the other two had been transferred to other positions within the Ministry of the Interior.

71. The Government stated that on 25 May 2001 criminal case no. 310503 had been reopened by the prosecution service and transmitted to the Pavlovsk town prosecutor's office for further investigation. On

20 October 2002 the criminal case was closed owing to expiry of the time-limits for criminal prosecution of the police officers. This decision was quashed by the town prosecutor and the case was reopened again. On 1 April 2004 the criminal case against the three police officers was forwarded to the court of first instance together with the bill of indictment. On 27 April 2004 the proceedings were discontinued owing to expiry of the statutory time-limit for criminal prosecution of the defendants. On 19 November 2004 the Nizhniy Novgorod Regional Court quashed that decision and remitted the case to the court of first instance. According to the respondent Government, the proceedings are still pending.

72. On 19 December 2001 the applicant lodged a civil claim with the Leninskiy District Court of Nizhniy Novgorod, seeking compensation for malicious prosecution, his dismissal from his job, the search of his premises and his detention and ill-treatment by the police. The applicant's lawyer asked the court to request from the prosecutor's office case-files nos. 68241, 310503 and 68341. The applicant and his representative maintained that the evidence gathered by the prosecution was necessary to argue the substantive part of the civil suit. On 22 April 2002 the Leninskiy District Court of Nizhniy Novgorod requested the files from the respective prosecutor's offices. On 6 July 2002 case-file no. 68241 was delivered to the court. It was withdrawn three days later by the prosecutor's office. On 27 July 2002 the case-file was re-submitted to the court. On 1 August 2002, at the prosecutor's request, the case-file was returned to the prosecution. On 23 October 2002 the applicant's representative asked the court to suspend the civil proceedings.

73. The applicant's notice of dismissal dated 17 August 1998 was annulled, and the applicant was reinstated in his post. The officers responsible for his backdated dismissal were subjected to disciplinary proceedings. However, owing to the applicant's complete disability, he had to leave the traffic police.

E. The applicant's present situation

74. The applicant is disabled and receives a pension from the State on that basis. The Government indicated that in connection with the accident he also received a lump-sum insurance indemnity from the State in the amount of 60,302 Russian roubles (about 1,740 euros at the current exchange rate).

75. The applicant produced a report, drawn up on 29 November 2004 by Dr L. Magnutova, a specialist in forensic medicine. The report stated that the applicant suffered from osteomyelitis, his legs were paralysed, he was unable to work and he suffered from severe dysfunction of the pelvic organs and loss of sexual function. He was confined to bed and was in permanent need of a nurse to help him urinate and empty his bowels. The applicant was

at risk of sepsis. He required regular hospital examinations, at least two or three times a year.

II. RELEVANT DOMESTIC LAW

A. Civil-law remedies against illegal acts by public officials

76. The Civil Code of the Russian Federation, which entered into force on 1 March 1996, provides for compensation for damage caused by an act or failure to act on the part of the State (Article 1069). Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage shall be compensated irrespective of any award for pecuniary damage.

B. Criminal-law remedies against illegal acts by public officials

77. Article 117 § 2 (f) of the Criminal Code of the Russian Federation makes acts of torture punishable by up to seven years' imprisonment. Article 110 of the Code makes incitement to suicide liable to a sentence of up to five years' imprisonment. Under Article 286 § 3 *(a)* and *(в)* the abuse of official power associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment.

C. Official investigation of crimes

78. Under Articles 108 and 125 of the 1960 Code of Criminal Procedure (in force until 2002), a criminal investigation could be initiated by a prosecution investigator at the request of a private individual or of the investigating authorities' own motion. Article 53 of the Code stated that a person who had suffered damage as a result of a crime was granted the status of victim and could join criminal proceedings as a civil party. During the investigation the victim could submit evidence and lodge applications, and once the investigation was complete the victim had full access to the case-file.

79. Under Articles 210 and 211 of the Code, a prosecutor was responsible for overall supervision of the investigation. In particular, the prosecutor could order a specific investigative measure to be carried out, the transfer of the case from one investigator to another, or the reopening of the proceedings.

80. Under Article 209 of the Code, the investigator who carried out the investigation could discontinue the case for lack of evidence of a crime. Such a decision was subject to appeal to the senior prosecutors or the court.

The court could order the reopening of a criminal investigation if it deemed that the investigation was incomplete.

81. Article 210 of the Code provided that the case could be reopened by the prosecutor "if there are grounds" to do so. Only if the time-limit for prosecuting crimes of that kind had expired could the investigation not be reopened.

82. Article 161 of the Code provides that, as a general rule, the information obtained in the course of the investigation file is not public. The disclosure of that information may be authorised by the prosecuting authorities if the disclosure does not impede the proper conduct of the investigation or go against the rights and legitimate interests of those involved in the proceedings. The information concerning the private life of the parties to the proceedings cannot be made public without their consent.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

83. The applicant complained of ill-treatment while in police custody, especially during the questioning in Leninskiy police station on 19 September 1998, and of a lack of an effective investigation in that respect. He relied on Article 3, which provides:

Article 3 - Prohibition of torture

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

A. The Government's preliminary objection

84. The Government submitted that the investigation into the events of the present case is still being conducted and no final decision has yet been taken at the domestic level. Referring to that, they maintained that the applicant had failed to exhaust domestic remedies in respect of his complaint of ill-treatment. As to his complaint about the alleged ineffectiveness of the investigation, it was, consequently, premature.

85. The applicant opposed to that view. He maintained that by the time of his first application to the Court the criminal investigation had been discontinued and reopened seven times. No new evidence could be obtained and all further attempts to investigate the case would be absolutely futile. The investigation lasted more than seven years and has finally proven to be

ineffective with time. Therefore, in the applicant's submissions, he is not obliged to wait until the completion of the investigation.

86. The Court recalls in this respect that if an individual raises an arguable claim that he has been seriously ill-treated by the police, a criminal law complaint may be regarded as an adequate remedy within the meaning of Article 35 § 1 of the Convention (see *Assenov and others v. Bulgaria*, no. 24760/94, 27 June 1996, DR 86-B, p. 71). Indeed, as a general rule, the State should be given an opportunity to investigate the case and give answer to the allegations of ill-treatment. At the same time "an applicant does not need to exercise remedies which, although theoretically of a nature to constitute remedies, do not in reality offer any chance of redressing the alleged breach" (*Yoyler v. Turkey*, no. 26973/95, 13 January 1997; see also *Akdivar and Others v. Turkey* judgment of 30 August 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1210, § 68). If the remedy chosen was adequate in theory, but, in course of time, proved to be ineffective, the applicant is no more obliged to exhaust it (see *Tepe v. Turkey*, 27244/95, Commission decision of 25 November 1996).

87. The Court observes that the circumstances of the applicant's fall from the window make out an "arguable claim" of ill-treatment, that he made use of the possibility to seek the institution of criminal proceedings against the police officers by putting his complaint in the hands of the authorities, which were competent to pursue the matter, and that the case is still pending. On that basis the Court, in its decision on the admissibility of the present application, found that the Government's objection should be examined together with the merits of the case.

88. The Court considers that the Government's preliminary objection raises issues which fall to be examined together with the substantive provisions of the Convention relied on by the applicant. This issue will be accordingly dealt with below.

89. On 29 December 2005 the Government informed the Court of the judgment of 30 November 2005 adopted by the Leninskiy District Court of Nizhniy Novgorod in the criminal case concerning the ill-treatment of the applicant at the hands of the police (see paragraph 61 above). The Government indicated that the judgment was not yet final and that they would keep the Court informed of any further developments.

90. Although the Government have not relied on it, the Court has examined whether this new development affects the applicant's status as a victim within the meaning of Article 34 of the Convention. In this respect the Court recalls that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, judgment of 25 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 846, § 36, and *Dalban v. Romania*

[GC], no. 28114/95, § 44, ECHR 1999-VI). In the present case the Court notes firstly that the judgment of 30 November 2005 is not yet final, and may be reversed on appeal. Secondly, although the fact of ill-treatment was recognised by the first-instance court, the applicant has not been afforded any redress in this respect. Thirdly, the judgment of 30 November 2005 dealt only with the ill-treatment itself and did not examine the alleged flaws in the investigation, which is one of the main concerns of the applicant in the present case. Therefore, although that judgment should be regarded as an integral part of the investigative process, it does not, in the circumstances of the case, affect the applicant's victim status in respect of the violations alleged by him.

B. Alleged inadequacy of the investigation

1. The Government

91. The Government did not submit any observations on the merits of this complaint. Furthermore, in reply to the Court's request for additional information and documents, the Government refused to provide the Court with the materials from the case-file concerning the alleged ill-treatment of the applicant by the police and the incident of 19 September 1998. They referred to Article 161 of the Code of Criminal Procedure, which stipulated that the materials from the pre-trial investigation could be made public only with the consent of the investigating authority and only if the disclosure did not interfere with the course of the investigation and with the rights of other participants in the criminal proceedings.

2. The applicant

92. The applicant complained that the State had breached its positive obligation to investigate his case under Article 3. The circumstances of the applicant's fall from the window amounted, at the very least, to an arguable claim in respect of the alleged ill-treatment. It was for the respondent State to carry out an effective and thorough investigation into his allegations. However, little had been done to investigate the case and the measures that had been taken were inadequate and ineffective.

93. The applicant pointed to numerous shortcomings in the official investigation. Thus, his medical examination had been carried out only on 26 October 1998, that is, more than one month after the events. Taking into account that the visual signs of such types of torture disappeared very quickly, the examination had been very belated. The invisible injuries to the skin following the application of electrodes could be identified by biological analysis within two weeks of the incident. However, the medical

examination of the applicant had been confined to a simple visual examination.

94. Further, the investigator had failed to hold a confrontation between the applicant and the police officers who had ill-treated him. An identity parade had taken place about two years after the incident. The only two independent witnesses who had been questioned at the first stage of the proceedings were B and Dr K. For a long period of time (from 21 September 1998 to 24 January 2000) the prosecution had refused to identify and question other personnel and patients of Hospital no. 39. This had been done only after numerous complaints by the applicant and his representatives, by which time the events of September 1998 had nearly disappeared from the memory of the witnesses.

95. The applicant drew attention to the lack of independence of the investigation, owing to the dual responsibility of the State prosecutors' offices for prosecution and oversight of the proper conduct of investigations. In the applicant's case the situation had been aggravated by the fact that the prosecution official MR, who had supervised the questioning of the applicant on 19 September 1998, performed the role of Nizhniy Novgorod deputy regional prosecutor. Accordingly, the investigators from the district and city prosecutors' offices had taken their orders from MR. The applicant referred to F's submissions of 7 December 2000, when he had said that during previous questioning the investigators had disregarded his statements about MR's involvement in the events of 10-19 September 1998. MR had not been questioned at any stage of the investigation and could no longer be questioned since he had died in the summer of 2002.

96. In August 2002 the applicant requested the prosecution to question V, one of the patients in Hospital no. 39, but to no avail. On 5 September 2002 the prosecution discontinued the case, indicating, *inter alia*, that it had been impossible to find V at his place of residence. Knowing that V was disabled and a wheelchair user, the representatives of the applicant contacted V and discovered the following. Investigator N, who had been in charge of the applicant's case, had requested the Leninskiy police to find V. The execution of this request had been assigned to O, one of the police officers allegedly involved in the ill-treatment. O had reported that on several occasions he had tried to question V, but had been unable to find him at his address. On 26 September 2002 V explained to the applicant's representatives that someone introducing himself as an investigator had in fact telephoned him once and explained that he needed to question him. V had expressed his readiness to be interviewed, but after the telephone conversation the person had never called him back again.

97. In the applicant's opinion the lack of independence had been reflected both in the way in which evidence was collected and in the manner of its assessment by the investigators. Thus, the investigator had disregarded

the testimonies of B, the applicant's hospital ward-mate. He had not given weight to the testimonies of other patients in the hospital. The investigation had not been sufficiently thorough to meet the requirements of Articles 3 and 13 of the Convention and had not reflected any serious effort on the part of the authorities to discover what had really occurred while the applicant was in detention. On the contrary, it appeared to have been directed towards obscuring the wrongs committed and protecting the officials responsible.

98. Finally, the applicant submitted that the Government's failure to submit comments on the merits, together with their unwillingness to produce materials from the criminal investigation, should be interpreted as supporting the applicant's position under both the substantive and the procedural head of Article 3 of the Convention.

3. Third party submissions and the Government's reply

99. In their written submissions the Redress Trust recalled certain general rules established by the European Court and other international bodies in the field of prohibition of torture and other forms of ill-treatment. Further, both the Redress Trust and the group of Russian human-rights NGOs concurred that the Russian system of criminal investigation lacked a number of crucial procedural safeguards which would, first of all, guarantee the rights of those under investigation and, second, protect the interests of victims of torture and alleged ill-treatment by the investigating authorities. They stressed that in practice the effectiveness of official investigations into allegations of ill-treatment committed by law-enforcement officials was very low, mainly because investigations into allegations of torture were often carried out by the same investigating authorities alleged to have been involved in the ill-treatment. They indicated other factors which, in their view, undermined the effectiveness of investigations into allegations of ill-treatment committed in the course of pre-trial investigations.

100. The Government objected to the participation of the above NGOs in the proceedings before the Court as third parties, and asked the Court to reject their conclusions as being abstract and irrelevant. The Government further informed the Court that, contrary to what the third parties maintained, legal mechanisms to protect against ill-treatment did exist in Russia and were on the increase. First, the Russian Constitution prohibited any form of ill-treatment. Further, Article 9 of the Code of Criminal Procedure provided that the parties to criminal proceedings should not be subjected to any violence or threat of violence. In addition, the Criminal Code of Russia laid down penalties for torture (Article 117), excessive use of official power (Article 286) and coercion into giving evidence (Article 302). Finally, Article 1070 of the Civil Code provided that damage caused by the illegal arrest, prosecution, or conviction of an individual should be compensated by the State irrespective of the liability of the State authorities involved.

101. Finally, the Government maintained that existing legal mechanisms were effectively implemented in practice. Thus, in 2003 - 2004 the public prosecutors had disclosed 685 breaches of the law by the law-enforcement agencies, as a result of which 350 officials had been subjected to disciplinary measures. Between 2000 and 2004 the State prosecution service had brought five cases under Article 117 § 2 (d) (torture) against officials of the law-enforcement agencies, four of which had gone before the courts. Within the same period 42 cases under Article 302 of the Code (coercion into giving evidence) had been brought, 25 of which were now before the courts. Moreover, 3,388 cases of abuse of power had been brought, resulting in the conviction of 4,204 officials. The Government produced extracts from two judgments, which, in their submission, confirmed the effectiveness of the above remedies. The Government also referred to other cases where police officers had been successfully prosecuted and then convicted by the domestic courts for committing offences amounting to ill-treatment within the meaning of Article 3 of the Convention.

4. The Court's assessment

a) The Court's evaluation of the evidence in the present case

102. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, pp. 17-18, § 30). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, 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 (as in the present case), strong presumptions of fact will arise in respect of injuries occurring during such detention. In such cases 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). In the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government (see *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002).

103. In the present case, in order to be able to assess the merits of the applicants' complaints and in view of the nature of the allegations, the Court requested the respondent Government to submit copies of the criminal investigation files relating, in particular, to criminal case no. 68241. The Government, relying on Article 161 of the Code of Criminal Procedure, cited above, refused to provide the Court with the materials sought. The Government also failed to provide any observations as to the substance of the case.

104. The Court observes that Article 161 of the Code of Criminal Procedure, referred to by the Government, leaves the question of public

disclosure of an investigation file to the discretion of the investigating authorities. It also establishes that the disclosure should not impede the proper conduct of the investigation or go against the rights and legitimate interests of those involved in the proceedings. The Government did not explain how the disclosure of the materials sought might be prejudicial for the interests of the investigation or the individuals involved. They did not advance any other plausible explanation for their failure to produce relevant documents and information, which were clearly in their possession.

105. In these circumstances the Court considers that it can draw inferences from the Government's conduct and examine the merits of the case on the basis of the applicant's arguments and existing elements in the file, even though the materials and information submitted by the applicant leave certain facts unclear. The Court will also take into account the evidence given at the hearing of Leninskiy District Court of Nizhniy Novgorod on 30 November 2005.

b) Alleged ineffectiveness of the investigation into the incident of 19 September 1998

106. As regards the effectiveness of the investigation, the Court takes note of the third parties' criticism of the Russian system of criminal investigation, and the Government's arguments to the contrary. However, it is not the Court's task to assess the defects of that system in general. It will focus on the particular facts of the case in order to establish whether the flaws of the investigation, complained of by the applicant, made it "ineffective" within the meaning of Article 3 of the Convention.

i. General principles

107. The Court reiterates, first of all, that the lack of conclusions of any given investigation does not, by itself, mean that it was ineffective: an obligation to investigate "is not an obligation of result, but of means" (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II). Not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see, *mutatis mutandis*, *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

108. Thus, the investigation into serious allegations of ill-treatment must be thorough. That 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*, judgment of 28 October 1998, *Reports* 1998-VIII, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including,

inter alia, eyewitness testimony, forensic evidence, etc. (see, *mutatis mutandis*, *Salman v. Turkey*, cited above, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq.; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). 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.

109. Further, the investigation must be expedient. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation was at issue, the Court 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). Consideration was given to the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI; and *Tekin v. Turkey*, judgment of 9 June 1998, *Reports* 1998-IV, § 67), and the length of time taken during the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

110. Finally, the Court reiterates that for an investigation into alleged ill-treatment by State agents to be effective, it should be independent (see *Öğur v. Turkey*, [GC], no. 21954/93, ECHR 1999-III, §§ 91-92; see also *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004). Thus, the investigation lacked independence where members of the same division or detachment as those implicated in the alleged ill-treatment were undertaking the investigation (see *Güleç v. Turkey*, judgment of 27 July 1998, *Reports* 1998-IV, §§ 80-82). The independence of the investigation implies not only the absence of a hierarchical or institutional connection, but also independence in practical terms (see, for example, *Ergi v. Turkey,* judgment of 28 July 1998, *Reports* 1998-IV, §§ 83-84, where the public prosecutor investigating the death of a girl during an alleged clash between security forces and the PKK showed a lack of independence through his heavy reliance on the information provided by the gendarmes implicated in the incident).

ii. Application of these principles in the present case

111. First, it cannot be said that the authorities remained absolutely passive in the present case. Thus, the investigator questioned several officers from Leninskiy district police station and the staff and patients of Hospitals no. 33 and 39 and obtained the applicant's medical record and the reports of the forensic examination of his physical and mental condition, etc. However, in the absence of the investigation file it is impossible for the Court to assess the quality of the investigative measures performed, that is, to know when and how the evidence was obtained, what were the questions put by the investigator to the witnesses and experts, how accurately their

answers were reproduced in the resulting documents of the investigative process, etc.

112. Secondly, the materials in the Court's possession, namely the investigators' decisions to discontinue the proceedings, disclose a number of significant omissions in the official pre-trial investigation. Thus, it is unclear whether there was an attempt to search the premises where the applicant had allegedly been tortured, and with what result. The fact that such a search was carried out and an important piece of evidence (the confession written by the applicant) was discovered, was mentioned only in the judgment of 30 November 2005. The investigator did not try to find and question individuals who had been detained with the applicant in Bogorodsk and Leninskiy police stations between 10 and 19 September 1998 and who could have possessed useful information about the applicant's behaviour before the attempted suicide; and it is unclear whether V, one of the applicant's ward-mates, was ever questioned by the investigator.

113. Thirdly, a number of investigative measures were taken very belatedly. The report on the forensic medical examination of the applicant, for instance, was dated 26 October 1998, that is, more than five weeks after the alleged ill-treatment. The police officers suspected of ill-treatment were brought before the applicant for identification only about two years after the incident. The applicant's mother was questioned only in 2000, and Dr M from Hospital no. 33 not until 2001, despite having been among the first witnesses to see the applicant after the accident. The investigator did not question personnel and patients in Hospital no. 39 until January 2000 (with the exception of B and Dr K, who had been questioned during the initial investigation). Finally, the applicant's psychiatric examination was carried out only in 2001, despite the fact that his mental condition was advanced by the authorities as the main explanation for his attempted suicide, and as the basis for the discontinuation of the proceedings.

114. The Court also notes that all the decisions ordering the reopening of the proceedings referred to the need for further and more thorough investigation. However, this direction was not always followed by the investigators in charge of the case. Hence, the decision to discontinue the proceedings dated 25 February 1999 was based on the same grounds as the decision of 21 December 1998. The decision of 24 February 2000 was again based on almost identical evidence and reasoning. Not until 2000, following the transfer of the case-file to another investigator, did the investigation move forward and new arguments and information appear in the investigators' decisions. However, precious time had been lost, and, in the Court's view, this could not but have a negative impact on the success of the investigation.

115. Fourthly, the Court notes that there was an evident link between the officials responsible for the investigation and those allegedly involved in the ill-treatment. The Court recalls that on the day of the incident the applicant

was questioned in the police station of the Leninskiy District of Nizhniy Novgorod. The questioning took place in the presence of the senior police investigator, the deputy head of the local branch of the Ministry of the Interior and two prosecution officials – the Bogorodsk town prosecutor and the deputy regional prosecutor, MR. According to the applicant, although MR had not been present in the room where the applicant had been tortured with electrodes, he had not reacted to the applicant's complaints of ill-treatment. Moreover, when the applicant refused to confess to the alleged murder of MS, MR had returned the applicant to the police officers who, according to the applicant, had tortured him. Furthermore, although it was known that MR had participated in the questioning of 19 September 1998, and had allegedly failed to react to the applicant's complaints of ill-treatment, the investigation of the case was referred to the prosecutor's office for the Leninskiy District of Nizhniy Novgorod, which came directly under the regional prosecutor's office where MR occupied an important position. In the years that followed, the investigation remained in the hands of the same district prosecutor's office, despite being closed and reopened on numerous occasions. Only in 2004 was the case forwarded to the department dealing with investigations into cases of particular importance; however, it still remained within the jurisdiction of the regional prosecutor's office.

116. It also appears that in the course of the investigation the prosecution cooperated closely with the Leninskiy district police. Thus, inspector O, identified by the applicant as one of the officers who had tortured him in 1998, was assigned the task of finding witness V. O reported to the prosecutor's office that he had visited V at his place of residence, but had been unable to find him. Later V testified that nobody from the police had ever tried to visit him at his home. Hence, an important step in the official investigation was entrusted to one of the two main suspects.

117. The Court notes the selective and somewhat inconsistent approach to the assessment and collection of evidence by the prosecutor's office. The first decision to close the case, dated 21 December 1998, was based mainly on the testimonies of the police officers who had been involved in the questioning of the applicant on 19 September 1998, and who, therefore, could not be regarded as impartial witnesses. The investigator, at the same time, disregarded submissions made by B, the applicant's ward-mate in the hospital. B's testimonies were rejected by the investigator because B had no special medical knowledge and, in the investigator's opinion, could not distinguish electrical burns from the injuries caused by the applicant's fall from the window. At the same time the investigator referred to the opinion of the applicant's former superior in the traffic police, who had stated that the applicant had a weak personality. This testimony was accepted by the investigator without question, and, moreover, was used as conclusive

evidence, although its author was not a professional in the field of psychology or psychiatry.

118. Further, although the medical examination of the applicant on 26 October 1998 did not find any electrical burns on his ears, it nevertheless established that the applicant had bite marks on his tongue. The investigator did not explain how these wounds could have been caused by the applicant's falling out of the window. In the course of the unofficial inquiry into the incident of 19 September 1998 (see paragraph 62 above), F testified that the investigators had disregarded his statements about deputy regional prosecutor MR's involvement in the events of September 1998.

119. The Court is particularly struck by the factual part of the investigator's report of 21 December 1998. The investigator stated that on 11 September 1998 the applicant had been released from custody, but then arrested again for disturbing the peace at the railway station. However, by that time it had been officially confirmed that the reports of inspectors N, T and D (who had allegedly arrested the applicant at the railway station) had been fabricated, and that at the relevant time the applicant had been in the hands of the police. Nevertheless this account of events was repeated in the decision to discontinue the proceedings of 25 February 1999. This fact, in the Court's view, is such as to discredit the consistency of the official investigation in the eyes of any independent observer.

120. The Court emphasises furthermore that the case did not reach the trial stage until seven years after the events complained of. The pre-trial investigation was closed and then re-opened more than fifteen times, and it is clear that during certain periods the investigative process was no more than a formality with a predictable outcome. Finally, the Court notes that the judgment of 30 November 2005 is not yet final.

121. In the light of the very serious shortcomings identified above, especially during the course of the investigation, the Court concludes that it was not adequate or sufficiently effective. The Court thus dismisses the Government's objection based on non-exhaustion of domestic remedies and holds that there has been a violation of Article 3 of the Convention under its procedural limb in that the investigation into the alleged ill-treatment was ineffective.

C. Alleged ill-treatment of the applicant

1. The Government

122. The Government did not submit any observations in this respect.

2. The applicant

123. The applicant maintained that he had been ill-treated and tortured by the police in breach of Article 3 of the Convention. In support of his assertion he submitted the transcripts of oral submissions of F (the co-suspect in the alleged killing of MS), B, M and V (his ward mate in Hospital no. 39) taken by two human rights activists in 1999 as part of the unofficial investigation into the events of September 1998 (summarised above in the "Facts" part). Further, the applicant alleged that the statements made by the police officers during the investigation into the allegations of ill-treatment had been fundamentally inconsistent, reflecting the fallacious nature of the version of events advanced by the authorities. In support of his observations the applicant also referred to a number of documents from the official investigation case-file, but to which he had no access at present.

124. The applicant added that there also existed much indirect evidence of the ill-treatment. In particular, he indicated that before his arrest his physical and mental condition had been normal. He had not shown signs of any psychological disorder or problems which might have led him to attempt suicide, nor had he borne any physical signs of ill-treatment. Upon entering the traffic police force he had undergone a psychological examination which found him to be stable and mentally well adjusted. However, after a few days in detention he had agreed to confess to the murder and rape of a female minor, a terrible crime which he had not committed (as became clear later when MS turned up alive and unharmed), and then, had attempted to commit suicide.

125. Further, the applicant's account of the events of 10 - 19 September 1998 had not been contested by the respondent Government. The Government had failed to produce the materials from the criminal investigation which might have helped the Court to clarify the circumstances of the case. The Government's interpretation of Article 161 of the Code of Criminal Procedure had been incorrect, and, moreover, incompatible with their obligations under Article 34 and 38 § 1 (a) of the Convention.

126. The applicant also drew the Court's attention to the circumstances of his arrest, detention and questioning, which, in his view, revealed a disregard for normal procedures providing safeguards against abuse, such as maintaining a detailed record of the interview, access to a lawyer etc.

3. The Court's assessment

127. 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,*

judgment of 4 December 1995, Series A no. 336, § 34; 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.

128. The Court notes that the parties did not dispute the fact that the applicant had sustained serious injuries by jumping out of the window of the police station, and that he had done it himself. However, differing versions of what had driven the applicant to attempt suicide were put forward by the parties. The authorities maintained that the questioning of 19 September 1998 had been lawful, and that the applicant's own psychological problems had led him to attempt suicide. The applicant opposed that view. He stressed that before the incident he had not shown any signs of mental disorder, and that he had attempted to kill himself solely because he could not withstand the torture and wanted to bring his sufferings to an end.

129. The Court observes in this respect that at all stages of the investigation the applicant presented a consistent and detailed description of who had tortured him and how. That fact was also noted by the domestic court on 27 March 2001. Further, the applicant's allegations were supported by the testimonies of B and the applicant's mother, who testified that they had seen electrical burns on his ears and head. V and M, other patients at the hospital, also confirmed that the applicant's ears were injured. Finally, according to the forensic report on the applicant of 26 October 1998, the applicant had bite marks on his tongue – an injury which may indirectly speak for the applicant's account of events. F testified that while in the hands of the police he had been threatened with the same kind of torture as that described by the applicant. F testified further that, while in custody, he had been slapped and threatened with rape and torture with electrodes (see paragraph 58 above). During a short confrontation with the applicant, F saw bruises on the applicant's neck.

130. On the other hand, the forensic medical examination of the applicant on 26 October 1998 did not reveal any injuries other than those caused by his falling out of the window. Further, the doctors and paramedics who treated the applicant at Hospitals no. 33 and 39 did not record any marks left by electrodes. Several patients from the hospital testified that they had not noticed any burns on the applicant's head or ears, although the applicant had mentioned to them that he had been tortured with electrodes.

131. Therefore, on the sole basis of the pre-trial material in the Court's possession, it is difficult to reach any conclusion "beyond reasonable doubt" as to what exactly happened in Leninskiy district police station on 19 September 1998. At the same time the Court notes that its inability to make any conclusive findings in this respect derives from the failure of the authorities to carry out an effective and adequate investigation and from the Government's refusal to provide the materials from the investigation.

132. The Court observes that before the accident the applicant had no apparent mental problems. As to his psychological condition, it is true that one of his former colleagues described him as having a weak personality. In addition, psychological testing at work had shown that the applicant had a tendency to avoid conflict and was a sensitive person. However, these characteristics do not necessarily mean that the applicant was predisposed to suicide, as the authorities suggested. On the contrary, a genuine attempt at suicide may require a certain personal resolve. The Court further notes that the forensic examination carried out in 2001 by experts (see paragraph 47 above), failed to reveal any suicidal tendencies at the relevant time. In the absence of any further information from the Government in this respect, the Court draws the conclusion that the applicant did not, before the accident, suffer from any mental deficiency which would influence the outcome of this case.

133. Indeed, the applicant was subjected to a very stressful situation, having been wrongfully suspected of such an appalling crime. However, no plausible explanation has been adduced as to why the applicant – who knew he was innocent - would attempt suicide if, as the authorities suggested, no pressure had been put upon him.

134. Furthermore, the Court takes note of the evidence which was produced before the Leninskiy District Court. Thus, the court heard evidence from VZ, who testified that he had been subjected to torture with an electrical device in exactly the same way as the applicant. Further, the court interviewed VK, who confirmed that she had heard from her colleagues that the applicant had attempted suicide because he had been tortured. Finally, the court examined the "confession" written by the applicant, which also indirectly confirmed his version of events.

135. In these circumstances, despite the fact that the judgment of 30 November 2005 has not yet become final, the Court is prepared to accept that while in custody the applicant was seriously ill-treated by agents of the State, with the aim of extracting a confession or information about the offences of which he was suspected. The ill-treatment inflicted on him caused such severe physical and mental suffering that the applicant attempted suicide, resulting in a general and permanent physical disability. In view of the Convention case-law in this respect and in particular the criteria of severity and the purpose of the ill-treatment (see, among other authorities, *İlhan v. Turkey* [GC], no. 22277/93, § 85, ECHR 2000-VII), the Court concludes that the ill-treatment at issue amounted to torture within the meaning of Article 3 of the Convention.

136. There has consequently been a violation of Article 3 on that account.

D. Other complaints under Article 3

137. The applicant maintained that the ill-treatment at issue became possible, *inter alia*, because of serious procedural shortcomings in the course of the criminal investigation of which he had been the subject in connection with the disappearance of MS. However, in view of its above findings, the Court does not deem it necessary to consider this aspect of the case separately.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

138. The applicant also claimed to have been denied an effective remedy in respect of his Convention complaint of ill-treatment, in breach of Article 13, which states:

Article 13 - Right to an effective remedy

> "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."

He submitted that, in cases of alleged ill-treatment contrary to Article 3, the State authorities were under an obligation under Article 13 to investigate promptly and impartially.

139. The Government's arguments on account of that complaint did not differ from their submissions under Article 3 of the Convention.

140. The Court recalls that Article 13 of the Convention requires that where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach. The Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. As a general rule, if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; see also *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I).

141. However, the scope of the State's obligation under Article 13 varies depending on the nature of the applicant's complaint, and in certain situation the Convention requires a particular remedy to be provided. Thus, in cases of suspicious death or ill-treatment, given the fundamental importance of the rights protected by Articles 2 and 3, Article 13 requires (in addition to the payment of compensation where appropriate) a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97,

§§ 161-162, ECHR 2002-IV; *Assenov and Others v. Bulgaria*, cited above, § 114 et seq.; *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005).

142. On the basis of the evidence adduced in the present case, the Court has found that the State authorities were responsible under Article 3 of the Convention for the injuries sustained by the applicant on 19 September 1998. The applicant's complaints in this regard were therefore "arguable" for the purposes of Article 13 (see the *Boyle and Rice v. the United Kingdom* judgment of 27 April 1988, Series A no. 131, p. 23, § 52). The authorities thus had an obligation to carry out an effective investigation into the circumstances applicant's fall from the window. For the reasons set out above (see the Section I of the "Law" part of the judgment) no sufficiently effective criminal investigation can be considered to have been conducted. The Court finds therefore that the applicant has been denied a sufficiently effective investigation in respect of the ill-treatment by the police and thereby access to any other available remedies at his disposal, including a claim for compensation.

143. Consequently, there has been a violation of Article 13 of the Convention on that account.

III. ALLEGED VIOLATION OF ARTICLES 34 AND 38 OF THE CONVENTION

144. In his post-admissibility observations the applicant also complained that the non-disclosure of the materials of the investigation by the respondent Government was incompatible with their obligations under Articles 34 and 38 § 1 (a) of the Convention. Article 34 reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Article 38 § 1 (a) reads as follows:

> "1. If the Court declares the application admissible, it shall
>
> (a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities".

145. Having regard to its above reasoning leading to the findings under Articles 3 and 13 of the Convention, the Court considers that it is not necessary to examine these complaints separately under Articles 34 and 38 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

146. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. The applicant's claims for just satisfaction

147. First, the applicant claimed pecuniary damages relating to ongoing medical treatment of the ailments resulting from the accident of 19 September 1998. He indicated that since 1998 various charitable organisations and private donors had covered the costs of his medical treatment. However, he could not expect them to support him for years to come. Therefore, he needed to find other resources. According to the report of Dr L. Magnutova (see above), the estimated cost of each hospital stay of the applicant, who needed to be admitted at least two or three times a year, was RUR 60,000 . In addition, the applicant had to spend RUR 300 – 500 daily on medicines and personal hygiene items. Consequently, the total amount of his expenses for medical purposes was as much as RUR 362,500 annually. Based on this assumption the applicant claims RUR 23,562,500 to cover his future medical expenses up to the age of 65.

148. The applicant further indicated that he had been officially granted first-degree disability status. He was unable to work and earn money, needed constant nursing and, since his family was unable to pay for such services, his mother had had to leave her job to take care of him. The loss of her earnings, he argued, should be regarded as a material loss. Further, the applicant claimed the amount of his own lost earnings. Basing his calculation on the official statistical data on the average salary in Russia during the relevant period, the applicant claimed RUR 2,736,384 in compensation for his lost income and RUR 513,072 in compensation for his mother's lost income.

149. In sum, the applicant claimed RUR 27,351,812 for pecuniary damage (about EUR 794,000 at the current official exchange rate).

150. The applicant also claimed compensation for non-pecuniary damage. He indicated that he had been subjected to torture with electrodes in the police station, which had caused him severe physical and mental suffering. Moreover, his fall from the window had resulted in a very serious and painful trauma. His legs were paralysed, he could move around only in a wheelchair and would never have children. For the rest of his life the applicant would be dependent on other people. He could not work and experience professional development and advancement in his career. The building where he lived had no elevator and he had to undertake strenuous

efforts every time he wanted to go out. Most of the public buildings in Russia lacked special access facilities for wheelchair users. As a result, his movements and social contacts were very limited. All these factors caused him constant and severe mental anguish.

151. Finally, his sufferings had been aggravated by the authorities' consistently negative attitude towards him and their refusal to recognise their liability for the accident. He had been labelled humiliatingly as a person of unstable character who had tried to excuse his attempted suicide by accusing police officers. This made the applicant feel miserable, helpless and frustrated.

152. On the basis of the above the applicant claimed RUR 22,530,000 in respect of non-pecuniary damage (approximately EUR 654,000 at the current official exchange rate).

B. The Government's position on just satisfaction claims

153. In reply to the applicant's claims for just satisfaction the Government noted that the civil proceedings initiated by the applicant before the Leninskiy District Court of Nizhniy Novgorod were still pending. These proceedings had been stayed at the applicant's own request pending the result of the criminal investigation. The time-limit for completion of the investigation had been extended until 2 April 2005 by the Deputy Prosecutor General. Hence, the Government concluded, since the proceedings at national level had not yet been completed, the applicant had an opportunity to obtain compensation in the domestic courts. Therefore, his claims for just satisfaction were premature.

154. Alternatively, the Government regarded the amount claimed by the applicant as excessive and unsubstantiated.

C. The Court's assessment

1. Pecuniary damage

155. At the outset, the Court considers that the fact that the applicant may still receive an award in respect of pecuniary damage under the domestic legal proceedings does not deprive him of his right to claim compensation under Article 41 of the Convention. The Court may examine this issue even if domestic proceedings of a similar nature are still pending; any other interpretation of Article 41 of the Convention would make this provision ineffective (see, *mutatis mutandis*, *De Wilde, Ooms and Versyp v. Belgium (former Article 50)*, judgment of 10 March 1972, Series A no. 14, § 14 et seq.).

156. The Court further reiterates that there must be a clear causal connection between the damage claimed by the applicant and the violation of the Convention and that this may, in the appropriate case, include compensation in respect of loss of earnings (see *Barberà, Messegué and Jabardo v. Spain (former Article 50)*, judgment of 13 June 1994, Series A no. 285-C, §§ 16-20).

157. The Court has found that the applicant was tortured, as a result of which he attempted suicide. The authorities are thus responsible for the consequences ensuing from the incident of 19 September 1998. The applicant is now unable to work, and a considerable amount of money is required to continue his treatment. Consequently, there is a causal link between the violation found and the reduction in the applicant's earnings and his future medical expenses (see, by contrast, *Berktay v. Turkey*, no. 22493/93, § 215, 1 March 2001, where no casual link between the ill-treatment and the current psychological problems of the applicant was established by the Court).

158. The Court further reiterates that a precise calculation of the sums necessary to make complete reparation *(restitutio in integrum*) in respect of the pecuniary losses suffered by an applicant may be prevented by the inherently uncertain character of the damage flowing from the violation (see *Young, James and Webster v. the United Kingdom (former Article 50),* judgment of 18 October 1982, Series A no. 55, § 11). An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved the more uncertain the link between the breach and the damage becomes (see *Orhan v. Turkey*, no. 25656/94, § 426 et seq., 18 June 2002). The question to be decided in such cases is the level of just satisfaction, in respect of either past or future pecuniary loss, which it is necessary to award to an applicant, and is to be determined by the Court at its discretion, having regard to what is equitable (see *Sunday Times v. the United Kingdom (former Article 50),* judgment of 6 November 1989, Series A no. 38, p. 9, § 15, and *Lustig-Prean and Beckett v. the United Kingdom (Article 41),* nos. 31417/96 and 32377/96, §§ 22-23, ECHR 2000).

159. The Court notes that the applicant's claim as regards future medical expenses and loss of income was based on the report of Dr L. Magnutova, indicating the estimated annual cost of medical treatment for the applicant, the official data on average salaries in Russia and the assumption that he would have continued working until the age of 60 and that his life expectancy would be 65. The Government did not produce any alternative calculation in respect of the alleged future expenses or loss of income.

160. The Court observes that in some previous cases where the loss of future earnings was at issue, the Court based its calculations on the actuarial calculations of capital needed for maintaining a certain level of income, produced by the applicants' representatives (see *Aktaş v. Turkey*,

no. 24351/94, § 350, ECHR 2003-V, and *Orhan v. Turkey*, cited above, § 433). The same approach may be applied to the calculation of future expenses. In the present case, however, the overall amount claimed by the applicant was calculated simply by multiplying his annual medical expenses by average life expectancy in Russia. The amount claimed under the head of loss of future income was calculated in the same way.

161. Therefore, even assuming that all the calculations and data supplied by the applicant are correct, the Court considers that the method of calculation applied in the present case is not in line with the Court's approach to the calculation of future losses. Furthermore, the calculation of his lost income does not include the amount which he collects as a disability pension. Therefore, the Court cannot accept the final figure claimed under this head by the applicant.

162. Nonetheless, bearing in mind the uncertainties of the applicant's situation, and the fact that he will undeniably suffer significant material losses as a result of his complete disability and the need for constant medical treatment, the Court considers it appropriate, in the present case, to make an award in respect of pecuniary damage based on its own assessment of the situation (see, *mutatis mutandis*, *Avşar v. Turkey*, no. 25657/94, § 442, ECHR 2001-VII; *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 127, ECHR 2001-V; and *Orhan v. Turkey*, cited above, § 438). Given the seriousness of the applicant's condition, the need for specialised and continuous medical treatment and his complete inability to work in the future, the Court awards him EUR 130,000 under this head, plus any tax that may be chargeable on this amount.

2. Non-pecuniary damage

163. The Court reiterates that at the time of the accident the applicant was a healthy young man in permanent employment. While in the hands of the police he was subjected to torture, which caused him severe mental and physical suffering. Then, after the accident, he underwent several operations on his spine. Now he has lost his mobility and sexual and pelvic function, and is unable to work or have children. He has to undergo regular medical examinations, and the risk of aggravation of his condition persists. Given the exceptionally serious consequences of the incident of 19 September 1998 for the applicant, the Court awards him EUR 120,000 in compensation for non-pecuniary damage, plus any tax that may be chargeable on this amount.

D. Default interest

164. 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. *Dismisses* the Government's objection as to the non-exhaustion of domestic remedies and accepts the applicant's status as a victim of the alleged violation;

2. *Holds* that there has been a violation of Article 3 of the Convention in respect of the failure to conduct an effective investigation into the applicant's fall from the window of the police station on 19 September 1998;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment inflicted on the applicant while in police custody;

4. *Holds* that, in view of the above findings, it is not necessary to examine the other complaints submitted by the applicant under Article 3 of the Convention;

5. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the ill-treatment complained of;

6. *Holds* that there is no need to examine separately the applicant's complaint under Article 34 and 38 § 1 (a);

7. *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 130,000 (one hundred and thirty thousand euros) in respect of pecuniary damage and EUR 120,000 (one hundred and twenty thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on these 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;

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

Done in English, and notified in writing on 26 January 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President