



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

FIRST SECTION

CASE OF BARABANSHCHIKOV v. RUSSIA

(Application no. 36220/02)

JUDGMENT

STRASBOURG

8 January 2009

FINAL

08/04/2009

This judgment may be subject to editorial revision.

In the case of Barabanshchikov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 36220/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vladimir Aleksandrovich Barabanshchikov (“the applicant”), on 31 July 2002.

2. The applicant was represented by Mr V. Komarichev, a lawyer practising in Lipetsk. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been severely beaten by police officers and that there had been no effective investigation of his complaints of ill-treatment.

4. On 5 September 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government’s objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1961 and lives in the village of Terbuny, Lipetsk Region.

A. Applicant's arrest and ill-treatment by the police

7. On 7 August 2001 the applicant bought sugar from Ms D. He paid with a hundred-dollar note. When Ms D. attempted to exchange the note for Russian roubles, she was told that the note was counterfeit. Ms D. lodged a complaint with the Lipetsk Town Police Department alleging that the applicant had given her a counterfeit note.

8. On the same day police officers stopped the applicant's car and arrested him on suspicion of fraud and use of counterfeit currency. During his arrest the applicant attempted to pass several dollar notes to his friend, who returned the notes to the applicant following an order from a police officer.

9. The applicant was taken to the Oktyabrskiy District police station.

10. According to the applicant, he refused to answer the investigator's questions and police officers hit him several times with rubber truncheons on the head, back and legs. The beatings alternated with admonitions to confess his guilt. A police officer twice punched the applicant on the ear and once hit him on both ears with both hands at the same time. The police officers continued hitting the applicant's legs and head with rubber truncheons. The applicant tried to shy away from the punches, but once he bent forward on the chair, he received a series of truncheon blows to his chest and back. The applicant fell on the floor. The policemen continued hitting and kicking him on the back and legs. They forced the applicant to confess to the use of counterfeit currency.

11. The Government submitted that after the applicant had been taken to the police station, an investigator of the Lipetsk Town Police Department, Ms Z., had questioned him. The applicant confessed that he had been involved in the distribution of the counterfeit bills. In particular, he stated that he had bought three counterfeit hundred-dollar notes from an unidentified man and had asked his friend, Mr Ma., to exchange those notes for Russian roubles. Mr Ma. had told him that the notes were counterfeit and had refused to take them. On 7 August 2001 the applicant had bought sugar from Ms D. and had paid with one of those notes. The Government enclosed a copy of the applicant's confession and the record of his questioning. At the bottom of his confession statement the applicant noted as follows:

“The confession statement is handwritten by me; no moral or physical pressure [was] applied”.

The Government noted that the applicant had been advised of his right to the services of counsel prior to the entry of his guilty plea. However, he had expressly waived that right, making a handwritten entry to that effect in the interrogation record.

12. On 8 August 2001 the applicant was placed in the temporary detention facility of the Oktyabrskiy District police station. According to the Government, on his admission to the facility the applicant signed an entry in a registration log that he had “a slash wound on his left forearm and a bruise on the left side of the body which he had inflicted on himself on 8 August 2001 in the Oktyabrskiy District police station” and that he had no complaints about the state of his health. The Government submitted an extract from the registration log copied by hand by a warder and certified by the head of the detention facility. According to the extract, submitted by the Government, on the same day the applicant was also examined by a prison otolaryngologist, who did not establish any signs of an ear trauma.

13. On 9 August 2001 the applicant was brought to the Oktyabrskiy District Prosecutor who authorised his placement in custody due to the gravity of the charges against him. The applicant complained to the prosecutor that the police officers had severely beaten him up after his arrest. On the same day, upon a prosecutor’s request, the police investigator, Ms Z., ordered a medical expert examination of the applicant. The relevant part of the investigator’s decision read as follows:

“On 9 August 2001, when [the applicant] was brought to the Lipetsk Town Prosecutor for an authorisation of his placement in custody, [he] complained that he had been beaten up by police officers. The police officers, who had arrested [the applicant], stated that during the arrest [the applicant] had lost consciousness twice.”

The investigator put several questions to an expert concerning possible injuries on the applicant’s body, their severity and nature.

14. Several hours later, at approximately 6.00 p.m., the medical expert examined the applicant. The relevant part of his report, issued on 13 August 2001, read as follows:

“2.1 When examined: [there is] a bruise of a crimson and bluish colour in the projection of the 9-11 ribs on the left side, along the scapular line; [it is] moderately saturated, has a shape of a stripe [and] measures 4 centimetres in width and 7.5 centimetres in length. In the projection of the right edge of the right shoulder-blade [and] on the right side of the parietal region of the head [there are] abrasions having an elongated form, [which are] covered with dry and somewhat raising crusts and [which] measure 0.3 centimetres in width and 3.5 centimetres in length and 0.2 centimetres in width and 0.8 centimetres in length, respectively. No other injuries were discovered.

Conclusions.

3.1. During the medical expert examination of [the applicant] the following injuries were discovered: a bruise on the left side of the lumbar region, abrasions on the right shoulder-blade and the right side of the parietal region of the head.

3.2. These injuries were caused as a result of traumas to the indicated body parts by a blunt firm object having a narrow, possibly elongated surface: cannot be considered as causing damage to health.

3.3. The type, character and intensity of those injuries allow the conclusion that they were caused within three to five days before the expert examination, thus not excluding the possibility that they were caused ... on 7 August 2001.

3.4. It is impossible to assess those injuries with a view to determining whether they were caused as a result of a fall or an impact (impacts) with a certain object, as the circumstances of the alleged "fall" are unknown."

15. On 11 August 2001 a medical emergency team was twice called to the applicant following his complaints of severe heart pain and dizziness.

16. On the following day the applicant complained to warders of severe pain in the right side of the chest and back. An emergency team was called and he was taken to the Lipetsk Regional hospital. The applicant, without providing any further explanation, complained to the hospital doctors that he had been beaten up on 7 August 2001. The hospital report on the applicant's medical examination stated the following:

"1. Consultation of a urologist. Diagnosis: an injury to the right kidney. Treatment of this injury in the urological department for ten days. Subsequent supervision by a surgeon at the place of residence.

2. Consultation of an otolaryngologist. Diagnosis: two-sided adhesive otitis media, posttraumatic, deformation of the external nose and nasal septum deviation. The patient has suffered from those two conditions for a long time and [they] were not caused by a head injury received approximately a week ago.

3. Consultation of a neurosurgeon. Diagnosis: Posttraumatic asthenic syndrome. [The applicant] needs supervision by a neurologist at the place of residence..."

The report also indicated that the applicant had bruises to the ribs and the right side of the back.

17. The applicant remained in the hospital until 22 August 2001.

B. Proceedings upon the applicant's complaints about the ill-treatment

18. On 19 October 2001 an assistant prosecutor of the Oktyabrskiy District of Lipetsk, Ms F., dismissed the applicant's complaint about the beatings. The one-page decision read as follows:

“On 8 October 2001 the prosecutor’s office of the Oktyabrskiy District of Lipetsk received documents... pertaining to the inquiry into [the applicant’s] complaints about the beatings by police officers on 7 August 2001.

During the interview [the applicant] refused to give explanations about the beatings in the lawyer’s absence. After [he] was told that the lawyer’s presence was not necessary in this case, [the applicant] again refused to provide any explanations and did not substantiate his refusal.

Therefore, it is impossible to establish the circumstances of the event.

On the basis of the abovementioned.... [the applicant’s] request for institution of criminal proceedings against the police officers is dismissed because there is no indication of a criminal offence.”

19. On 19 November 2001 the Oktyabrskiy District Prosecutor ordered an additional inquiry into the applicant’s ill-treatment complaints.

20. Three days later the applicant unsuccessfully requested the investigator to authorise an additional medical expert examination and complained again about the beatings.

21. On 7 December 2001 the assistant prosecutor, Ms F., issued a report confirming the lawfulness of her decision of 19 October 2001. The assistant found as follows:

“While being questioned, [the applicant] explained that on 7 August 2001 he had been arrested... and brought to the Oktyabrskiy District police station in Lipetsk. At the police station he had been questioned by police officers, Mr S., Mr M. and Mr Ye. During the interrogation the police officers, Mr S. and Mr Ye., had beaten [the applicant], hitting him on the head, in particular on the ears and the back of the head, and on the right side of the back and kicking him in the groin. Mr M. had not taken part in the beatings. Following the beatings, [the applicant] had written a confession statement.

Mr S., who was questioned on the facts, stated that on 7 August 2001 he, together with Mr Ye. and Mr M., had talked to [the applicant] in an investigation room of the Oktyabrskiy District police station; [the applicant] had been arrested on suspicion of use of counterfeit notes. [The applicant] had voluntarily provided an explanation of the circumstances leading to his arrest. No moral or physical pressure had been applied to [the applicant]. After having talked to [the applicant], Mr S. and Mr Ye. had left, and Mr M. had stayed with [the applicant].

Mr Ye. gave identical statements.

Mr M. gave statements similar to those of Mr S. and Mr Ye., adding that after Mr S. and Mr Ye. had left the room, [the applicant] had been apprised of his [rights] guaranteed by Article 51 of the Russian Constitution and the circumstances mitigating the punishment had been explained to him. [The applicant] had expressed a wish to write a confession statement... pertaining to his crime: a sale of counterfeit US dollars.

During confrontation interviews in which [the applicant] participated... Mr S., Mr M. and Mr Ye. confirmed their statements.

As follows from expert report no. 785 issued on 13 August 2001, [the applicant] had a bruise to the left side of the back, abrasions to the right shoulder-blade and the right side of the head, which could not be considered as causing damage to [his] health.

As follows from statements by Mr P. and Mr A., police officers... from the Lipetsk Town Police Department, who had taken part in [the applicant's] arrest on 7 August 2001, when [the applicant] had been brought to the Oktyabrskiy District police station, he had lost consciousness in the duty unit and had fallen from his own height on to the concrete floor. After he had regained consciousness, [the applicant] had explained that he had had a heart attack and had asked for medicines. They think that [the applicant] faked the fainting.

Mr Za., a police officer...from the Lipetsk Town Police Department, who had also taken part in [the applicant's] arrest, gave identical statements.

During an examination of [the applicant] by an otolaryngologist... on 9 August 2001, no signs of an ear trauma were discovered.

There is entry no. 1110 made on 9 August 2001 in the registration log... of the temporary detention facility of the Lipetsk Town Police Department concerning [the applicant] in which he noted that "he had inflicted a slash wound to his own right forearm and a bruise to the left side of the body on 8 August 2001 in the Oktyabrskiy District police station. He had had no complaints about the state of his health." That entry had been made by [the applicant]; [the fact] is corroborated by his signature.

In his statement made to the Oktyabrskiy District Prosecutor [the applicant] asked for an additional medical examination because he had sustained a kidney injury and had spent ten days – from 12 to 22 August 2001 – in the Lipetsk Regional Hospital undergoing treatment. Taking into account those circumstances, a forensic medical examination was performed with a view to determining the severity of the injuries sustained by [the applicant] and establishing a causal link between the sustained injuries and [the applicant's] stay in the Lipetsk Regional Hospital where he had been diagnosed with "a kidney injury".

As follows from report no. 7320 of the forensic medical examination issued on 7 December 2001, [the applicant's] stay in the hospital for the treatment of an injury to the right kidney was not connected to [his] injury sustained on 7 August 2001, as the initial examination had not established bruises on the chest and back, although they had been recorded on admission to the Lipetsk Regional Hospital. Thus, it can be concluded that those injuries could have been sustained by [the applicant] after his examination by the medical expert on 9 August 2001.

Taking into account the above-mentioned, it should be concluded that during the inquiry [the investigator] did not obtain any objective data showing that the actions of the police officers contained elements of a criminal offence, and thus there are no grounds for quashing the decision of 19 October 2001 by which an institution of criminal proceedings was refused."

22. The applicant learned about the decision of 7 December 2001 at the trial.

C. Criminal proceedings against the applicant and examination of the ill-treatment complaint by the criminal courts

23. The applicant was additionally charged with theft and forgery of documents. On 7 December 2001 the authorised period of his detention expired. Five days later he was committed to stand trial before the Oktyabrskiy District Court of Lipetsk. The applicant lodged a complaint with the District Court, alleging that he had been ill-treated by the police officers after his arrest.

24. At the trial the applicant repeated his statements given on 7 August 2001, save for the fact that prior to his arrest he had known that the hundred-dollar notes were counterfeit.

25. On 10 January 2002 the Oktyabrskiy District Court found the applicant guilty of theft of documents and use of counterfeit currency, acquitted him of the remaining charges and sentenced him to five years and six months' imprisonment. The District Court based its judgment, in particular, on the applicant's testimony, statements by witnesses, a record of the search on the applicant's person and seizure of the hundred-dollar notes, and an expert opinion indicating that the notes were counterfeit. Having examined the expert report of 13 August 2001, the hospital report of 12 August 2001, extracts from the detention facility's registration logs pertaining to the applicant's admission on 8 August 2001 and the prosecutor's decisions of 19 October and 7 December 2001, the District Court dismissed the applicant's ill-treatment complaint as unsubstantiated.

26. The applicant's lawyer lodged an appeal statement, complaining, in particular, that the applicant had been beaten up by the police officers after the arrest.

27. On 7 February 2002 the Lipetsk Regional Court upheld the judgment. The Regional Court found that the District Court had lawfully concluded that the fact of the ill-treatment had not been proven. Several police officers testified that the applicant had fallen in the police station and had hit his head.

II. RELEVANT DOMESTIC LAW

Investigation of criminal offences

28. The RSFSR Code of Criminal Procedure (in force until 1 July 2002, "the CCrP") established that a criminal investigation could be initiated by an investigator upon the complaint of an individual or on the investigative authorities' own initiative when there were reasons to believe that a crime had been committed (Articles 108 and 125). A prosecutor was responsible for general supervision of the investigation (Articles 210 and 211). He could

order a specific investigative action, transfer the case from one investigator to another or order an additional investigation. If there were no grounds to initiate a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect, which had to be notified to the interested party.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

29. The applicant complained that after his arrest he had been subjected to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation of that incident. The Court will examine this complaint from the standpoint of the State's negative and positive obligations flowing from Article 3, which reads as follows:

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

A. Submissions by the parties

30. The Government argued that the complaint was manifestly ill-founded. The police officers had not subjected the applicant to inhuman or degrading treatment. The Government put forward several explanations as to the cause of at least some of the applicant's injuries. In particular, they argued that the applicant could have sustained certain injuries when he had been attacked near the Oktyabrskiy District police station by Ms D. and Mr Me., persons from whom the applicant had bought sugar using the counterfeit note. The Government produced copies of handwritten statements made on 19 October 2005 by the police officers, Mr A. and Mr Za. Mr Za. stated that he had arrested the applicant, whose name he did not remember, and had brought him to the police station. Near the police station they had been approached by Ms D. who “had attempted to argue with the arrested person, had attacked him”. Mr Za. noted that the police officers had “pulled her away from the arrestee.” Mr A. wrote that “the victims had tried to beat [the applicant] up, but they had been pushed aside”.

31. Relying on the assistant prosecutor's report of 7 December 2001 and the handwritten statement by the police officer, Mr Za., made on 19 October 2005, the Government further argued that the applicant had faked fainting and had fallen in the duty unit of the Oktyabrskiy District police station, hitting his head on the concrete floor.

32. Furthermore, the Government noted that a slash wound on the applicant's left forearm and a bruise on the left side of the body had been self-inflicted. Without providing any details, the Government submitted that the applicant had injured himself on 8 August 2001 in the Oktyabrskiy District police station. According to the Government, the applicant had made an entry to that effect in the registration log of the detention facility (see paragraph 12 above).

33. Finally, the Government submitted that on 30 November 2001 an additional forensic medical examination of the applicant had commenced. That examination had resulted in report no. 7320 issued on 7 December 2001. According to that report, the applicant could have sustained the kidney injury between 9 and 12 August 2001 because the expert who had performed the initial examination of the applicant on 9 August 2001 had not recorded bruises on the applicant's chest and back and the applicant had not complained about the pain in the kidney to that expert.

34. The Government also stressed that the applicant's allegations of ill-treatment had been thoroughly examined by the prosecution authorities and domestic courts. Following questioning of the police officers, the applicant's allegations were found to be unsubstantiated.

35. The applicant disputed every assertion made by the Government as to the cause of his injuries. In particular, he argued that none of his injuries had been self-inflicted and that the Government had not presented any evidence to the contrary. He noted that the Government, alleging that he had signed an entry in the registration log on 8 August 2001, had produced an extract handwritten by a warder. The extract did not bear the applicant's signature. He further noted that he had not been attacked by Ms D. and Mr Me. He also disputed the Government's arguments that he could have sustained certain injuries between 9 and 12 August 2001. The applicant argued that during that period he had been in custody in the hands of the police and that the Government had not provided any plausible explanation as to the cause of his injuries during that period.

36. The applicant insisted that he had consistently complained about the beatings whenever he had been able to do it freely: to the medical emergency team, to the hospital doctors, prosecutors and domestic courts. He relied on the conclusions made by the medical expert on 13 August 2001 that his injuries could have been caused by a firm blunt elongated object. He pointed out that such a description corresponds to the description of a rubber truncheon used by the police officers during the beatings. The applicant further noted that his complaints of ill-treatment to the domestic authorities were futile and his requests for an additional forensic medical examination had gone unanswered.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

38. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

39. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudla v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

40. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-... (extracts); *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the

right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 38; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

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

i. Establishment of facts

41. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

42. Where domestic proceedings have taken place, it is not the Court’s task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, p. 24, § 32).

43. In the present case it was not disputed by the parties and the Court finds it established that on 7 August 2001 the applicant was arrested and brought to the Oktyabrskiy District police station. On the following day he was admitted to the temporary detention facility of the police station where he was detained throughout the criminal proceedings against him. The Court notes with regret that the applicant was not medically examined immediately after his arrest on 7 August 2001. There is also no evidence, and the Government did not argue to the contrary, that a prison doctor examined the applicant before his admission to the temporary detention facility on 8 August 2001. At the same time the Court reiterates the Government’s submission that on his admission to the detention facility the applicant made an entry in the facility registration log that on 8 August 2001

in the Oktyabskiy District police station he had inflicted a slash wound on his own left forearm and a bruise on the left side of his body (see paragraph 12 above). Without prejudice to the examination of the question of the cause and severity of the injuries which will be carried out below in the context of compliance with Article 3 of the Convention, the Court thus finds it established that on the day after his arrest the applicant had a slash wound to his left forearm and a bruise to the left side of his body. On 9 August 2001 the applicant was examined by a medical expert who recorded bruises on the left side of the lumbar region, abrasions on the right shoulder-blade and the right side of the head (see paragraph 14 above). On 12 August 2001 emergency doctors were called to the applicant in view of his complaints of severe pain in the chest and back. The applicant was transferred to the hospital where he was diagnosed, *inter alia*, with an injury to the right kidney and a head injury. The hospital report also indicated that the applicant had bruised ribs and bruises on the right side of the back (see paragraph 16 above). The applicant underwent ten days' treatment in the hospital and was released on a condition of subsequent supervision by a urologist and neurologist.

44. In the first place, the Court observes that the Government did not claim that the injuries sustained by the applicant could have dated from a period prior to his being arrested. In response to the findings in the medical reports, the Government put forward several versions of events which could have led to the applicant sustaining at least some of his injuries.

45. In particular, relying on the handwritten statements by the two police officers made on 19 October 2005, the Government argued that the victims of the applicant's crime had attacked him near the police station (see paragraph 30 above). However, the Court is not convinced by that explanation. It firstly notes that that version of events was never raised before the Oktyabrskiy District prosecutor's office and was never examined during the prosecutor's inquiry into the applicant's complaints of ill-treatment. The Court observes, and the Government did not argue to the contrary, that domestic authorities did not take any action against the applicant's alleged attackers, that they were never subject to any form of investigation and were not even questioned about the alleged attack. Furthermore, the Court considers it extraordinary that, in the absence of any official records, in October 2005, that is more than four years after the applicant's arrest, the police officers were able to recollect the exact circumstances surrounding the applicant's transfer to the police station and the names of the victims who had allegedly attacked him. The Court also does not lose sight of the fact that the police officers did not claim that the victims had actually hit the applicant. On the contrary, they insisted that they had opposed the assault.

46. The Court further reiterates the second explanation adduced by the Government, that the applicant had hit his head on the concrete floor when

he had faked fainting in the duty room of the police station. The Court considers that the Government's explanation sits ill with the nature of the applicant's injury as recorded in the medical expert report on 13 August 2001 (see paragraph 14 above). While the Court does not exclude the possibility of accidents occurring in detention, it does not lose sight of the expert's finding that the applicant's injuries, including an abrasion to the right side of the head, were caused by "a blunt firm object with a narrow, possibly elongated surface". The Court notes that this description corresponds to physical sequelae from beating with a stick or a rubber truncheon rather than to injuries sustained as a result of a collision with a concrete floor. This finding is also supported by the expert's reluctance to conclude that the injuries could have resulted from a fall. Furthermore, although unconvinced by the Government's argument, the Court still considers it necessary to note that the Government did not provide any explanation why, in the circumstances as described by them, a doctor was not immediately called to the applicant to provide him with medical assistance and to document his injuries.

47. Furthermore, the Government, relying on an extract from a registration log, argued that on 8 August 2001, when already at the Oktyabrskiy District police station, the applicant had injured himself, causing a slash wound to the left forearm and a bruise to the left side of the body (see paragraph 32 above). In this connection the Court accepts the applicant's argument that that extract is of little evidential value as it had been copied by hand by a warder and did not bear the applicant's signature. The Court observes that it was open to the Government to submit a photocopy of the corresponding page from the registration log to support their allegation that the applicant had made an entry in the log noting that the injuries had been self-inflicted. However, no such document was presented. The Court finds it peculiar that the Government preferred to submit a handwritten copy made by a facility warder. Furthermore, the Court notes that the Government did not provide any explanation as to how and when the applicant could have injured himself while being interrogated in the Oktyabrskiy District police station. The Court also does not lose sight of the fact that neither the forensic experts nor the hospital doctors recorded any self-inflicted injuries on the applicant's body.

48. Finally, as a way of explaining the applicant's remaining injuries which had been recorded in the hospital report on 12 August 2001 but had not been discovered by the expert on 9 August 2001, the Government merely stated that the injuries had occurred between 9 and 12 August 2001 and thus they could not possibly have resulted from the alleged beating on 7 August 2001. In this connection, the Court firstly notes that the medical expert who examined the applicant on 9 August 2001 did not only fail to record certain of the applicant's injuries, such as an injury to the right kidney, which were later discovered in the hospital on 12 August 2001, but

also omitted to mention in his report a slash wound to the applicant's forearm which, as was pointed out by the Government, was sustained on 8 August 2001. Therefore, the Court attaches no evidentiary weight to the fact that certain injuries on the applicant's body were recorded for the first time by the hospital doctors on 12 August 2001. Furthermore, although the effectiveness of the investigation into the applicant's complaints of ill-treatment will be examined below, the Court would already stress at this juncture that it is struck by the fact that the expert examination on 9 August 2001 was ordered by the same police investigator, Ms Z., who had questioned the applicant after his arrest and could have witnessed the alleged beatings (see paragraphs 11 and 13 above). That police investigator also formulated questions to the medical expert. The Court entertains doubts whether this fact could have influenced the expert's findings.

49. The Court further observes that the applicant provided a detailed description of the ill-treatment to which he had allegedly been subjected and indicated its place, time and duration. It notes the consistency of the allegations made by the applicant that he had been ill-treated by police officers while in custody, and the fact that he maintained his allegations whenever he was able to make statements freely before the investigating authorities or the domestic courts. At the same time the Court notes that it was open to the Government to refute the applicant's allegations by providing their own plausible version of events and submitting evidence to corroborate their version. Indeed, the Government did not provide any plausible explanation as to how the applicant had acquired the injuries.

50. In these circumstances, bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody, and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court considers that it can draw inferences from the Government's conduct and finds it established to the standard of proof required in the Convention proceedings that the injuries sustained by the applicant were the result of the treatment of which he complained and for which the Government bore responsibility (see *Selmouni v. France* [GC], no. 25803/94, § 88, ECHR 1999-V; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004; *Mikheyev v. Russia*, no. 77617/01, §§ 104-105, 26 January 2006; and *Dedovskiy and Others v. Russia*, no. 7178/03, §§ 78-79, 15 May 2008). The Court, therefore, shall proceed to an examination of the severity of the treatment to which the applicant was subjected, on the basis of his submissions and the existing elements in the file.

ii. Assessment of the severity of ill-treatment

51. In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or

degrading treatment. The Court has already noted in previous cases that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see *Salman v. Turkey* [GC], no. 21986/93, § 114, ECHR 2000-VII). According to the Court's consistent approach, treatment is considered "inhuman" if it is premeditated, applied for hours at a stretch and causes either actual bodily injury or intense physical or mental suffering. It is deemed to be "degrading" if it is such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92). The question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI).

52. The Court reiterates that it has found it established that the applicant was beaten up by the police officers and that as a result of those beatings he sustained injuries. The Court does not discern any circumstance which might have necessitated the use of violence against the applicant. It has never been argued that the applicant had resisted arrest, had attempted to escape or had not complied with lawful orders from the police officers. Furthermore, there is no indication that at any point during their arrest or subsequent detention at the police station he threatened the police officers, for example by openly carrying a weapon or by attacking them (see, by contrast, *Necdet Bulut v. Turkey*, no. 77092/01, § 25, 20 November 2007, and *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 62, 20 June 2002). It thus appears that the use of force was retaliatory in nature and aimed at debasing the applicant and forcing him into submission. In addition, the treatment to which the applicant was subjected must have caused him mental and physical suffering, even though it did not apparently result in any long-term damage to health.

53. Accordingly, having regard to the nature and the extent of the applicant's injuries, the Court concludes that the State is responsible under Article 3 on account of the inhuman treatment to which the applicant was subjected by the police and that there has thus been a violation of that provision.

(c) Alleged inadequacy of the investigation

54. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1

of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. An obligation to investigate “is not an obligation of result, but of means”: 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. Thus, the investigation of 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. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev*, cited above, § 107 et seq., and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 102 et seq.).

55. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 for the ill-treatment of the applicant (see paragraph 53 above). The applicant’s complaint in this regard is therefore “arguable”. The authorities thus had an obligation to carry out an effective investigation into the circumstances in which the applicant sustained his injuries (see *Krastanov v. Bulgaria*, no. 50222/99, § 58, 30 September 2004).

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

57. The Court reiterates that the applicant was entirely reliant on the prosecutor to assemble the evidence necessary to corroborate his complaint. The prosecutor had the legal powers to interview the police officers, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for establishing the truth of the applicant’s account. His role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offences but also to the pursuit by the

applicant of other remedies to redress the harm he had suffered (see paragraph 28 above).

58. The Court will therefore first assess the promptness of the prosecutor's investigation, viewed as a gauge of the authorities' determination to prosecute those responsible for the applicant's ill-treatment (see *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V). In the present case the applicant complained of ill-treatment to the Oktyabrskiy District Prosecutor on 9 August 2001 (see paragraph 13 above). It appears that the prosecutor's office launched its inquiry immediately after being notified of the alleged beatings.

59. However, with regard to the thoroughness of the inquiry, the Court notes some discrepancies capable of undermining its reliability and effectiveness. Firstly, a thorough evaluation was not carried out with respect to the quantity and nature of the applicant's injuries. The Court has already found it striking that the initial examination of the applicant by a forensic expert was ordered by the same police investigator who could have witnessed the applicant's beatings (see paragraph 48 above). The Court further reiterates that proper medical examinations are an essential safeguard against ill-treatment. The forensic doctor must enjoy formal and *de facto* independence, have been provided with specialised training and been allocated a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). When the doctor writes a report after the medical examination of a person who alleges having been ill-treated, it is extremely important that the doctor states the degree of consistency with the allegations of ill-treatment. A conclusion indicating the degree of support to the allegations of ill-treatment should be based on a discussion of possible differential diagnoses (non-ill-treatment-related injuries – including self-inflicted injuries – and diseases). That was not done in the present case. In his report of 13 August 2001 the expert not only failed to document the applicant's injuries properly, but he also did not make any reference to the degree of support to the applicant's allegations of ill-treatment (see paragraph 48 above). Taking into account the serious defects of the initial expert report, the Court finds it regrettable that the additional expert examination only commenced on 30 November 2001, that is almost four months after the applicant's ill-treatment had taken place. The Court notes that a delay in requesting an additional expert opinion led, among other things, to serious discrepancies between the findings of doctors who had examined the applicant in the Lipetsk Regional hospital and the conclusions of the forensic medical expert.

60. The Court also considers it extraordinary that in delivering her decision of 19 October 2001 the assistant prosecutor did not make any reference to the medical evidence collected during the inquiry and merely dismissed the applicant's complaints because he had insisted on assistance by his counsel (see paragraph 18 above). It was not until 7 December 2001

when the assistant prosecutor restated the expert and hospital reports which listed the injuries sustained by the applicant. However, she limited herself to a selective reiteration of the expert findings (see paragraph 21 above) and did not attempt to examine the medical evidence before her or to draw conclusions on that basis. In this connection the Court is concerned that the lack of any “objective” evidence - which medical reports could have been – was subsequently relied on by the assistant prosecutor as a ground for her decision not to institute criminal proceedings against the police officers (see paragraph 21 above).

61. Secondly, the Court observes a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authorities. It is apparent from the decision submitted to the Court that the assistant prosecutor based her conclusions mainly on the testimonies given by the police officers involved in the incident. Although excerpts from the applicant’s testimony were included in the decision not to institute criminal proceedings, the assistant prosecutor did not consider that testimony to be credible, apparently because it reflected a personal opinion and constituted an accusatory tactic by the applicant. However, the investigator did accept the police officers’ testimonies as credible, despite the fact that their statements could have constituted defence tactics and have been aimed at damaging the applicant’s credibility. In the Court’s view, the prosecution inquiry applied different standards when assessing the testimonies, as that given by the applicant was deemed to be subjective but not those given by the police officers. The credibility of the latter testimonies should also have been questioned, as the prosecution investigation was supposed to establish whether the officers were liable on the basis of disciplinary or criminal charges (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

62. The Court further observes that the assistant prosecutor’s decisions did not include any statements from witnesses who were not police officers. While the investigating authorities may not have been provided with the names of individuals who could have seen the applicant at the police station or later in the detention facility or might have witnessed his alleged beatings, they were expected to take steps on their own initiative to identify possible eyewitnesses. Furthermore, it appears that the investigator took no meaningful steps to search the premises where the applicant had allegedly been ill-treated. The Court therefore finds that the investigating authorities’ failure to look for corroborating evidence and their deferential attitude to the police officers must be considered to be a particularly serious shortcoming in the investigation (see *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, § 106).

63. Furthermore, the Court finds it striking that the report on the lawfulness of the decision of 19 October 2001 by which the applicant’s complaints were dismissed for the first time was issued by the same

assistant prosecutor who had taken the above-mentioned decision. As regards the judicial proceedings, the Court notes that while dealing with the applicant's complaints of ill-treatment the domestic courts did not make any findings on the basis of the medical reports pertaining to the applicant's injuries (see paragraph 25 above). They concluded that the applicant's allegations were "not convincing" by endorsing testimonies given by the police officers. Both the District and Regional courts relied heavily on the assistant prosecutor's report of 7 December 2001. In fact, it appears that the domestic authorities did not make any meaningful attempt to bring those responsible for the ill-treatment to account.

64. Having regard to the above failings of the Russian authorities, the Court finds that the investigation carried out into the applicant's allegations of ill-treatment was not thorough, adequate or effective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

65. The applicant complained under Articles 5, 6 §§ 2 and 3 and Article 13 of the Convention that he had been unlawfully detained, that he had not been assisted by counsel on 7 August 2001 and that counsel had not been invited to an interview with the assistant prosecutor on 19 October 2001, that the domestic courts had refused to observe certain items of evidence, that his request for various expert examinations had not been successful, and that the investigating authorities and domestic courts had committed various procedural violations.

66. However, having regard to all the material in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. Article 41 of the Convention provides:

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

A. Damage

68. The applicant claimed 170,000 euros (EUR) in respect of non-pecuniary damage.

69. The Government submitted that the sum claimed was excessive and unsubstantiated.

70. As regards the applicant's claims in respect of non-pecuniary damage, the Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court further observes that it has found a particularly grievous violation in the present case. The Court accepts that the applicant suffered humiliation and distress on account of the ill-treatment inflicted on him. In addition, he did not benefit from an adequate and effective investigation of his complaints about the ill-treatment. In these circumstances, it considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Nevertheless, the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

71. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Court and this is not a matter which the Court is required to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the ill-treatment of the applicant by the police officers and the ineffectiveness of the investigation into the incident admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;

3. *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 15,000 (fifteen 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 that amount;

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

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

Done in English, and notified in writing on 8 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President