



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

1959 · 50 · 2009

FIRST SECTION

CASE OF VLADIMIR FEDOROV v. RUSSIA

(Application no. 19223/04)

JUDGMENT

STRASBOURG

30 July 2009

FINAL

30/10/2009

This judgment may be subject to editorial revision.

In the case of Vladimir Fedorov v. Russia,

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

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 7 July 2009,

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

PROCEDURE

1. The case originated in an application (no. 19223/04) 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 Fedorov (“the applicant”), on 2 March 2004.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

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

4. On 7 November 2006 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 1976 and lived until his arrest in the town of Prokopyevsk in the Kemerovo Region. He is now serving his sentence in a correctional colony in Kemerovo.

A. Applicant's arrest and alleged ill-treatment in a police station

7. On 12 March 2003, at approximately 10 a.m., police officers of the Rudnichniy District Police Department in Prokopyevsk stopped the applicant and his friend, Ms S., in a street and took them to the Rudnichniy District police station.

8. The applicant provided the following description of the subsequent events. He was placed in office no. 17 where five police officers, D., A., I., K. and Ko. severely beat him up. Ms S. was left in a hall, near office no. 17, and heard him screaming. She saw the applicant, covered with injuries and barely walking, two hours later. On 13 March 2003, unable to bear the beatings, the applicant wrote a statement, prompted by the police officers, in which he confessed to having committed a robbery. He was released on the following day under his own recognisance not to leave the town.

9. On 15 March 2003 the applicant attended the Central Trauma Unit where he was examined. The examining doctor recorded the following injuries on the applicant's body: injuries to the kidneys, injuries and bruises on the upper extremities, buttocks and left shank and an injury to the soft tissue of the head. Treatment was recommended.

10. On 20 March 2003 the applicant lodged a complaint with the Prokopyevsk Town Prosecutor, seeking institution of criminal proceedings against the police officers who had ill-treated him on 12 and 13 March 2003.

11. Five days later the Prokopyevsk Town prosecutor's office remitted the applicant's complaint to the Prokopyevsk Town Police Department with a request to conduct an official inquiry into the events of 12 and 13 March 2003.

12. On 7 April 2003 the head of the Prokopyevsk Town Police Department issued a decision, approving the findings of the official police inquiry into the applicant's complaints. The decision read as follows:

“On 25 March 2003 the police department received [the applicant's] complaint from the town prosecutor's office; [in that complaint the applicant] indicates that the police officers of the district police station applied psychological and physical pressure to him and his acquaintance, Ms S., in order to extract a confession statement.

According to [the applicant], on 12 March 2003, at approximately 10.00 a.m., he and Ms S. were arrested by a police officer, D., and taken to the Rudnichniy District Police Department, where in office no. 17, [officer] D., having handcuffed [the applicant] to the chair back, beat him with a shovel handle.

[The applicant] indicated that on a number of occasions, in the police station between 12 and 14 March 2003, the police officers D., A., I., K. and Ko. had taken him from a detention unit to the service garage, where [they] had beaten him up, had buried him naked in the snow, had threatened him and his girlfriend with violence, [and] had applied psychological pressure.

Ms S. explained that after [she had been] taken to the police station, she had been near office no. 17 for approximately two hours and had heard [the applicant] screaming. After [the officer] D. had questioned her, she was placed in a detention unit where she remained until 9.00 a.m. on 13 March 2003. Ms S. also asserts that psychological pressure was applied to her.

The police officer, D., stated that on the basis of information received pertaining to an armed robbery, on 12 March 2003, at approximately 10.00 a.m., he had arrested [the applicant]. As the latter had attempted to hide on the premises of a psychiatric hospital and a [hospital] staff member had called [the police], [the applicant] was taken to the police station in a police car. On the same day criminal case no. 665913 was opened pursuant to Article 162 § 2 of the Russian Criminal Code in respect of the robbery.

[The officer] D. also explained that Ms S. had voluntarily gone to the police station. D. had a talk with her (not an [official interrogation]) as she had close ties to [the applicant] and could have certain information. Ms S. was not detained in the detention unit.

A police officer working with arrestees, Mr Se., stated in his explanation note, that Ms S. had been registered by housing maintenance authorities (registration no. 1309) and, on an order from [officer] D., [he] had verified information about her in the address inquiry office. However, she had not been placed in the detention unit.

All the police officers, who were named in [the applicant's] complaint and statements, save for Mr K. who had been on annual leave since 24 March 2003, firmly deny that physical force, threats or psychological pressure were applied to [the applicant].

However, taking into account that on 15 March 2003 [the applicant] applied to the Central Trauma Unit (certificate no. 1983), which recorded injuries, [and having regard to] discrepancies between statements of individuals and police officers, it is necessary to perform certain investigative actions to establish the truth, which is impossible to do within the limits of the official inquiry and is within the competence of the prosecution authorities."

13. On 15 April 2003 the applicant was re-arrested and placed in a temporary detention ward.

14. Three days later an assistant of the Prokopyevsk Town Prosecutor, having examined the medical certificate of 15 March 2003 and the conclusions of the official police inquiry, dismissed the applicant's request

for institution of criminal proceedings against the police officers because “there was no objective data” confirming the applicant’s allegations.

15. On 5 May 2003 the applicant underwent a chest X-ray examination. As is apparent from a medical certificate issued by a prison doctor on 26 May 2004, the X-ray showed that the applicant had a fracture in the front part of the ninth rib in the consolidation phase.

16. Relying on medical evidence in support of the applicant’s allegations of ill-treatment, the applicant’s father complained to the Prokopyevsk Town Prosecutor about the assistant prosecutor’s decision of 18 April 2003. On 1 October 2003 the Town Prosecutor quashed the decision of 18 April 2003, pointing to the incompleteness of and defects in the assistant prosecutor’s decision, and authorised an additional inquiry.

17. On 13 October 2003 an assistant of the Prokopyevsk Town Prosecutor, once again relying on the police officers’ denials of the use of force, refused to institute criminal proceedings against them. The relevant part of the decision reads as follows:

“On 15 March 2003, in the trauma unit, [the applicant] was diagnosed with several injuries; however, in the course of the inquiry it has been impossible to establish the time and mechanism of their appearance without a forensic medical examination. The circumstances of [the applicant’s] beatings as indicated by him were not corroborated by any objective data. The police officers ... interrogated in the course [of the inquiry] strongly object to [the applicant’s] arguments concerning the application of unlawful investigation methods...”

18. On 10 March 2004 the Prokopyevsk Town Prosecutor sent a letter to the applicant’s father informing him that his complaints had been examined and had been dismissed by a decision of 13 October 2003. The Town Prosecutor also informed the applicant’s father that he had no standing in the proceedings pertaining to the alleged beatings of the applicant and that, therefore, he had no right to appeal against the decision of 13 October 2003.

19. On the same day the Prokopyevsk Town Prosecutor sent a letter to the applicant, notifying him of the decision of 13 October 2003. The Prosecutor added that the decision of 13 October 2003 had been lawful and that there were no grounds to annul it. As shown by the postmark, the letter was served on the applicant on 17 March 2004.

B. Trial and appeal proceedings

20. In the meantime, on 15 September 2003, the Rudnichnyi District Court of Prokopyevsk found the applicant guilty of aggravated theft, fraud and robbery and sentenced him to seven years and six months’ imprisonment. The District Court based the conviction on the applicant’s partial confession given in open court, statements by the victims and witnesses, including Ms S., a record of a search in the applicant’s flat showing that the victims’ belongings had been found and seized, records of

identification parades and other material evidence. The applicant's confession which he had given on 13 March 2003 did not serve as the basis of his conviction. The District Court examined the applicant's allegations of police brutality. It noted that the prosecution authorities had conducted an inquiry into the applicant's complaints about the beatings and had decided not to institute criminal proceedings because the allegations had not been proven.

21. The applicant and his lawyer appealed, arguing, *inter alia*, that the District Court had not examined his ill-treatment complaints thoroughly and that it had disregarded the medical evidence supporting the applicant's version of events.

22. On 18 November 2003 the Kemerovo Regional Court upheld the applicant's conviction, endorsing the reasons given by the District Court.

23. According to the Government, on 20 October 2006 the case file pertaining to the inquiry into the applicant's ill-treatment complaints was destroyed due to the archiving time-limit.

C. Opening of the criminal investigation into the ill-treatment complaints

24. On 18 January 2007 a deputy prosecutor of the Kemerovo Region instituted criminal proceedings against the police officers who, according to the applicant, had tortured him in March 2003.

25. On 18 May 2007 an investigator of the Prokopyevsk Town Prosecutor's office closed the criminal proceedings, finding that there was no *prima facie* case of ill-treatment. The investigator based his decision on statements by the applicant and Ms S., who had confirmed their allegations of police brutality, and statements by a number of police officers, investigators and a judge who had come into contact with the applicant in March 2003. Due to the remoteness of the events in question the interrogated officials could not recall certain details of the applicant's arrest and his subsequent detention in the police station or even if they had seen or talked to the applicant on 12 and 13 March 2003. The police officers, the alleged perpetrators of the offence, were also interrogated. They fiercely denied that force had been used and also had difficulties recalling either the applicant himself or the details of his presence in the police station. The investigator questioned two persons who had allegedly been detained in the police station together with the applicant in March 2003. Those persons did not remember the applicant and merely stated that during their detention in the police station they had not been ill-treated and had not heard anyone complain about police brutality.

The investigator had been unable to examine the medical evidence, including the X-ray records made in May 2003 and records of the medical

emergency unit of the Prokopyevsk Town Hospital, as they had been destroyed due to the archiving time-limit.

The investigator concluded that the applicant's ill-treatment allegations were not supported by any evidence, save for statements given by him and his relatives. The investigator noted that those statements had to be treated with caution as they had been made by persons having a direct interest in the case.

26. It appears that, on an unspecified date, the decision of 18 May 2007 was annulled and a new round of criminal proceedings commenced.

27. The applicant lodged a complaint with the Prokopyevsk Town Prosecutor, seeking the transfer of the case file to the Kemerovo Regional Prosecutor's office for further investigation. He also asked to change the legal classification of the police officers' actions and to ensure his and his relatives' safety.

28. On 27 July 2007 a deputy to the Prokopyevsk Town Prosecutor dismissed the applicant's complaint in full.

29. On 6 August 2007 the applicant received a letter from the Prokopyevsk Town Prosecutor, informing him that the criminal proceedings were stayed as "it was impossible to identify persons who could be charged" with a criminal offence against the applicant.

II. RELEVANT DOMESTIC LAW

A. Investigation into criminal offences

30. The Code of Criminal Procedure of the Russian Federation (in force since 1 July 2002, "the CCrP") establishes that a criminal investigation can be initiated by an investigator or a prosecutor on a complaint by an individual or on the investigative authorities' own initiative, where there are reasons to believe that a crime was committed (Articles 146 and 147). A prosecutor is responsible for overall supervision of the investigation (Article 37). He can order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. If there are no grounds to initiate a criminal investigation, the prosecutor or investigator issues a reasoned decision to that effect which has to be notified to the interested party. The decision is amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction within a procedure established by Article 125 of the CCrP (Article 148). Article 125 of the CCrP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

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

31. Article 1064 § 1 of the Civil Code of the Russian Federation provides that damage caused to the person or property of a citizen must be compensated for in full by the tortfeasor. Pursuant to Article 1069, a State agency or a State official will be liable to a citizen for damage caused by their unlawful actions or failure to act. Such damage is to be compensated for at the expense of the federal or regional treasury. Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that compensation must be awarded for non-pecuniary damage irrespective of any award for pecuniary damage.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that on 12 and 13 March 2003 he had been subjected to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation into the incident. The Court will examine this complaint from the standpoint of the State's 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

33. In their initial observations lodged with the Court on 5 March 2007 the Government submitted that the applicant had failed to exhaust the domestic remedies available to him under Articles 125 and 148 of the Russian Code of Criminal Procedure. They stressed that he had not appealed against the decision of 13 October 2003 to the Rudnichniy District Court of Prokopyevsk. In the alternative, the Government, relying on statements by the Prosecutor General's office and the Ministry of Internal Affairs, noted that the applicant had not been subjected to treatment in violation of the Article 3 guarantees.

34. In their further observations submitted to the Court on 27 November 2007, the Government pointed to the institution of the criminal proceedings in respect of the applicant's ill-treatment complaints and stated that this time the applicant had failed to appeal against the deputy prosecutor's decision of 27 July 2007. They further noted that another form of remedy was open to

the applicant. He could have brought a civil action under Articles 151 and 1069 of the Russian Civil Code seeking compensation for pecuniary and non-pecuniary damage caused to him by public officials. According to the Government, such an action would have had very strong prospects of success, as in 2004 the Supreme Court of the Karachayeva-Cherkessiya Republic had delivered a judgment accepting an action brought by a certain individual against prosecution authorities and awarding him 10,000 Russian roubles in compensation for damage.

35. The applicant submitted that having learnt about the prosecution's decision of 13 October 2003 by which his ill-treatment complaints had been dismissed, he had not appealed against it because the Rudnichniy District Court had already examined his ill-treatment complaints and had dismissed them, relying on the prosecutor's decision of 18 April 2003 which had been similar to the one issued on 13 October 2003. The applicant did not expect that an appeal against that decision to the same court would have been any more effective.

B. The Court's assessment

1. Admissibility

36. The Court notes that the Government listed three possible forms of remedy which could have been used by the applicant: a complaint against the prosecutor's decision of 13 October 2003 to the Rudnichniy District Court, an appeal against the prosecutor's decision of 27 July 2007 and a civil action for damages.

(a) General principles

37. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention - with which it has close affinity -, that there is an effective remedy available in respect of the alleged breach in the domestic system whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

38. Under Article 35 of the Convention, normally recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). Article 35 also requires that the complaints made before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200).

39. Furthermore, in the area of the exhaustion of domestic remedies, there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement.

40. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot*, cited above, § 34). It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports of Judgments and Decisions* 1996-IV).

(b) Application of the general principles to the present case

(i) Alleged failure to appeal against the assistant prosecutor's decision of 13 October 2003

41. The Court reiterates that the applicant's allegations of ill-treatment were initially examined by the assistant prosecutor who, in a decision of 18 April 2003, decided not to institute criminal proceedings. Following the applicant's father's complaint to a higher-ranking prosecutor, that decision was quashed on 1 October 2003 and a new round of a prosecution inquiry was authorised. However, merely thirteen days later, on 13 October 2003, the assistant prosecutor closed the inquiry, refusing to institute criminal proceedings. Under Articles 125 and 148 of the Russian Code of Criminal Procedure that decision was amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction (see paragraph 30 above). The parties did not dispute the fact that the applicant had not appealed to a higher-ranking prosecutor. However, the applicant argued that he had made use of the judicial avenue for the purposes of exhausting remedies, by raising his ill-treatment complaint before the Rudnichniy District Court and then on appeal before the Kemerovo Regional Court.

42. As regards an appeal to a higher-ranking prosecutor, the Court has previously held that such an appeal does not constitute an effective remedy within the meaning of Article 35 of the Convention (see *Belevitskiy v. Russia*, no. 72967/01, § 60, 1 March 2007).

43. The position is, however, different with regard to the possibility of challenging before a court of general jurisdiction a prosecutor's decision not to investigate complaints of ill-treatment. The Court has previously found that in the Russian legal system the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003, and *Belevitskiy*, cited above, § 61).

44. The Court observes that in the present case the applicant did not make use of the judicial appeal, in the formal sense, as laid down by Article 125 of the Russian Code of Civil Procedure, by instituting judicial proceedings against the assistant prosecutor's decision of 13 October 2003. Instead, he raised the ill-treatment issue before the Rudnichniy District Court, the trial court which determined the criminal charge against him, and then on appeal before the Kemerovo Regional Court.

45. In this respect, the Court reiterates its finding made in the *Belevitskiy* case (cited above, § 64) that an ill-treatment complaint raised before a trial court cannot, as a general rule, be regarded as a part of the normal process of exhaustion in respect of the complaints the applicant made to the Court. At the same time the Court accepted that in certain circumstances a more flexible approach in matters of exhaustion might be called for, taking into

account that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. The Court noted that the stressful situation in which persons held in custody often found themselves, together with an absence of legal training and professional legal assistance, might be taken into account when deciding whether an applicant was exempted from pursuing a formal channel of judicial appeal (*ibid*, § 66).

46. Shortly after the *Belevitskiy* judgment had been adopted, the Court identified another situation which called for a more flexible application of the exhaustion rule. The Court again examined a case in which the applicants had not brought a formal complaint against the prosecutor's refusal to institute criminal proceedings against police officers, but had opted to raise the ill-treatment complaint before the trial and appeal courts. Applying the approach adopted in the above cited *Belevitskiy* case, the Court found as follows:

“since the same domestic courts, to which a formal criminal complaint laid, examined the substance of the applicants' complaints about the ill-treatment in the police station and the prosecutor's inactivity, the applicants cannot be said to have failed to exhaust domestic remedies. It follows that the complaint cannot be declared inadmissible for non-exhaustion of domestic remedies.” (see *Akulinin and Babich v. Russia*, no. 5742/02, § 33, 2 October 2008)

47. The Court considers that this finding is fully applicable to the circumstances of the present case. The Court firstly observes that the applicant raised an ill-treatment complaint before the Rudnichniy District Court during the trial proceedings against him, complaining to the trial court about police brutality and the prosecutor's indifference to his claims. At that time the prosecutor's decision of 18 April 2003, refusing institution of criminal proceedings, was still valid and a new round of the prosecution inquiry had not yet been authorised (see paragraphs 14 and 20 above). The Court notes that the District Court accepted the applicant's complaint alleging ill-treatment and the inadequacy of the prosecutor's investigation into the events in question. It took cognisance of the merits of the applicant's claims, enquired of the prosecutor's office about the investigation, examined the reasonableness of the assistant prosecutor's decision of 18 April 2003 and based its conclusion on the findings made in that decision, taking the view that the assistant prosecutor's assessment could not be said to be wrong. The court's reasoning was not confined to the compatibility of the applicant's complaint with the formal requirements.

48. Furthermore, the applicant and his lawyer once again drew the attention of the domestic authorities to the alleged violation of the applicant's rights by raising the ill-treatment complaint in their statements of appeal against the judgment of 15 September 2003. The Court does not lose sight of the fact that neither the applicant nor his lawyer cited the assistant prosecutor's decision of 13 October 2003, while complaining

about the prosecutor's failure to conduct an effective inquiry. However, the Court does not find it surprising in a situation where, as is apparent from the materials submitted by the parties (see paragraph 19 above), the decision of 13 October 2003 had not yet been notified to the applicant. The Kemerovo Regional Court, on appeal, examined the merits of the applicant's complaint and dismissed it, endorsing the reasons given by the District Court.

49. The Court observes that the Government did not argue that, in pursuing this avenue of judicial review, the applicant had removed from the courts the option of examining the relevant issues. The Court reiterates that the applicant learned about the decision of 13 October 2003 after the trial. The Court does not find it unreasonable that, after being apprised of that decision - in a situation where the trial and appeal courts had analysed the applicant's ill-treatment complaint and the assistant prosecutor's decision of 18 April 2003, which was fairly similar to that of 13 October 2003, being based on the same evidence and containing the same findings - the applicant did not lodge a separate complaint with the same court following the formal procedure as required by the Russian Code of Criminal Procedure (see paragraph 30 above). In circumstances where the domestic courts at two levels of jurisdiction examined and dismissed the applicant's ill-treatment complaints, basing their conclusions on the assistant prosecutor's findings, it is not apparent that a challenge to the assistant prosecutor's decision of 13 October 2003 through the avenue of a separate criminal procedure before the same courts would have been any more successful, or would have been decided on the basis of any other issues. The Court does not lose sight of the fact that the Government did not argue otherwise. In the light of the foregoing, the Court considers that it has not been established with sufficient certainty that the remedy advanced by the Government could have been effective in the particular circumstances of the present case (see, for similar reasoning, *Vladimir Romanov v. Russia*, no. 41461/02, §§ 50-52, 24 July 2008).

50. The Court reiterates that the objection of non-exhaustion of domestic remedies cannot be raised against the applicant if, in spite of the latter's failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the claim (see, *mutatis mutandis*, *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007; *Skalka v. Poland* (dec.), no. 43425/98, 3 October 2002; *Metropolitan Church of Bessarabia and Others v. Moldova* (dec.), no. 45701/99, 7 June 2001; and *Edelmayer v. Austria* (dec.), no. 33979/96, 21 March 2000). The Court therefore considers that the circumstances of the present case are similar to those examined by the Court in the *Akulinin and Babich* case (cited above) and finds that by raising, before the trial and appeal courts, a complaint about ill-treatment and the authorities' failure to investigate, the applicant provided the domestic authorities with the opportunity to put right the alleged violation. It follows that the applicant cannot be said to have failed

to exhaust domestic remedies, in so far as he did not lodge a separate judicial complaint against the assistant prosecutor's decision of 13 October 2003, and that this part of the Government's objection as to the non-exhaustion of domestic remedies should be dismissed.

(ii) *Civil action*

51. The Court observes that the Government, without providing any further explanation, suggested that an action for damages lodged with a court could have been an effective remedy in the applicant's case for his complaints about the alleged ill-treatment in the police station. At the same time, without providing a copy of the relevant judgment, they supplied an example from domestic practice showing that by using the means in question it would have been possible for the applicant to obtain compensation for damage. In this connection, the Court observes that, in the absence of documents supporting the Government's assertion, it is unable to identify the relevance of that judgment to the issue of the effectiveness of an action for damages as a remedy in the circumstances of the present case. Furthermore, in the Court's view, the one case cited by the Government does not suffice to show the existence of settled domestic practice that would prove the effectiveness of the remedy.

52. In any event, the Court reiterates its finding in a number of cases that in situations of wilful ill-treatment the breach of Article 3 cannot be remedied exclusively through an award of compensation to the victim. This is so because, if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice (see, among many other authorities, *Krastanov v. Bulgaria*, no. 50222/99, § 60, 30 September 2004, and *mutatis mutandis*, *Yaşa v. Turkey*, 2 September 1998, *Reports* 1998-VI, § 74; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 79, ECHR 1999-IV; *Velikova v. Bulgaria*, no. 41488/98, § 89, ECHR 2000-VI; *Salman v. Turkey* [GC], no. 21986/93, § 83, ECHR 2000-VII; *Gül v. Turkey*, no. 22676/93, § 57, 14 December 2000; *Kelly and Others v. the United Kingdom*, no. 30054/96, § 105, 4 May 2001; and *Avşar v. Turkey* [GC], no. 25657/94, § 377, ECHR 2001-VII).

53. It is apparent from the above that a judicial award of compensation to the applicant represents only one part of the group of measures necessary to provide redress for ill-treatment by State agents (see, *mutatis mutandis*, *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, § 56, 20 December 2007). In particular, in the case of *Vladimir Romanov v. Russia* (cited above, §§ 71-91), the Court found that a successful civil action could not, in the

absence of an efficient investigation into the alleged instance of ill-treatment, provide the applicant with the appropriate redress and remove his victim status within the meaning of Article 34 of the Convention for his complaints raised before the Court under Article 3 of the Convention.

54. The Court also reiterates its finding in the context of a complaint under Article 13 of the Convention that there is no case-law authority for Russian civil courts being able, in the absence of any results from a criminal investigation, to consider the merits of a civil claim relating to alleged serious criminal actions (see *Tarariyeva v. Russia*, no. 4353/03, ECHR 2006-... (extracts); *Isayeva v. Russia*, no. 57950/00, § 155, 24 February 2005; and *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 147, 24 February 2005). The Court stressed that while the Russian civil courts in theory have the capacity to make an independent assessment of fact, in practice the weight attached to a preceding criminal inquiry is so important that even the most convincing evidence to the contrary furnished by a plaintiff would be discarded and such a remedy would prove to be only theoretical and illusory (see *Menesheva v. Russia*, no. 59261/00, § 77, ECHR 2006-III). The Court has found that in a case where criminal proceedings against public officials were discontinued without any finding of guilt, any other remedy available to the applicant, including a claim for damages, had limited chances of success and could be regarded as theoretical and illusory rather than practical and effective (see *Dedovskiy and Others v. Russia*, no. 7178/03, § 101, 15 May 2008).

55. The Court therefore finds that the question whether an action for damages could have been considered an accessible and effective remedy capable of providing the applicant with adequate redress for the alleged violation of his rights under Article 3 of the Convention is closely linked to the question whether the investigation into the events in question was prompt, thorough and effective. However, that issue relates to the merits of the applicant's complaints under Article 3 of the Convention. The Court therefore decides to join this issue to the merits.

(iii) Failure to appeal against the decision of 27 July 2007

56. The Court notes the further argument by the Government that a judicial complaint against the decision of 27 July 2007 could have provided the applicant with redress for the alleged violation of his rights. In this connection, the Court reiterates that on 18 January 2007 criminal proceedings were instituted against the police officers who had allegedly taken part in the events of March 2003. The applicant lodged a procedural request seeking, *inter alia*, a transfer of the case to the office of a higher-ranking prosecutor for further investigation. The complaint was dismissed by a decision of a deputy Town Prosecutor of Prokopyevsk on 27 July 2007.

57. The Court observes that the deputy prosecutor's decision of 27 July 2007 did not bar or preclude in any way the further investigation into the

applicant's ill-treatment complaints. It was a mere interlocutory decision pertaining to certain procedural aspects within the criminal investigation into the impugned events of March 2003. The Court reiterates that the decisive question in assessing the effectiveness of a remedy concerning a complaint of inhuman and degrading treatment is whether the applicant could have raised that complaint before a prosecutor in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention. The remedy can be either preventive or compensatory in nature (see, among other authorities, *Koval v. Ukraine*, no. 65550/01, § 94, 19 October 2006). The Court notes that the Government did not explain how a judicial appeal against an interlocutory prosecutor's decision could have offered such preventive or compensatory redress, or both, for allegations of treatment which had been contrary to Article 3 of the Convention (see, for similar reasoning, *Ostrovar v. Moldova* (dec.), no. 35207/03, 22 March 2005). Accordingly, the Court does not consider that the Government have discharged the burden upon them of proving that a complaint against the decision of 27 July 2007 was capable of providing redress in respect of the applicant's Convention complaint.

58. If, however, this part of the Government's objection is interpreted as implying that the applicant's complaints under Article 3 are premature, as the criminal proceedings were re-opened and are now still pending, the Court first reiterates that if an individual raises an arguable claim that he has been seriously ill-treated by the police, a criminal 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, Decisions and Reports 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 (see *Yoyler v. Turkey*, no. 26973/95, 13 January 1997, and *Akdivar and Others v. Turkey*, 30 August 1996, § 68, Reports 1996-IV). If the remedy chosen is adequate in theory, but in the course of time proves to be ineffective, the applicant is no longer obliged to pursue it (see *Tepe v. Turkey*, 27244/95, Commission decision of 25 November 1996, DR 87-A, p. 90, as confirmed in *Mikheyev v. Russia*, no. 77617/01, § 86, 26 January 2006).

59. The Court notes that in the present case the criminal proceedings were instituted against the police officers almost four years after the alleged instance of ill-treatment in the police station in March 2003. The investigation is still pending. The applicant and the Government disagree as to the effectiveness of this investigation. The Court therefore considers that this limb of the Government's objection as to non-exhaustion of domestic remedies raises issues which are linked to the merits of the applicant's

complaints under Articles 3 of the Convention. The Court therefore decides to join this issue to the merits.

(c) The Court's decision on the admissibility of the complaint

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

2. Merits

(a) Establishment of the facts

61. 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*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

62. 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*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of the 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, § 32).

63. In the present case it was not disputed between the parties, and the Court finds it established, that on 12 March 2003 the applicant was arrested and taken to the Rudnichniy District police station, where he was detained until his release on 14 March 2003. On the day following his release the applicant requested medical assistance at the Central Trauma Unit in Prokopyevsk. According to the medical certificate drawn up in the unit, the applicant was diagnosed with injuries to the kidneys, injuries and bruises on

the upper extremities, buttocks and left shank and an injury to the soft tissue of the head (see paragraph 9 above). Furthermore, on 5 May 2003 the applicant had a chest X-ray which revealed that he had a fracture in the front part of the ninth rib in the consolidation phase (see paragraph 15 above).

64. In the first place, the Court observes that the Government did not claim that the applicant's injuries could have dated from a period prior to his being arrested or could have been sustained in the period between his release from the police station and his admittance to the Central Trauma Unit. In response to the findings of the medical reports the Government, citing the Prosecutor General's Office and the Ministry of Internal Affairs, merely stated that the applicant had not been subjected to treatment in breach of Article 3 of the Convention. The Court 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. If the Government considered the applicant's allegations to be untrue, it was open to them to refute them by providing their own plausible version of events and submitting, for instance, witness testimony and other evidence to corroborate their version. Indeed, the Government did not provide any explanation as to how the applicant had acquired the injuries. Furthermore, although the effectiveness of the investigation into the applicant's ill-treatment complaints will be examined below, the Court would already stress at this juncture that it is struck by the fact that, despite the seriousness of the applicant's allegations, the investigating authority did not advance any version of events, while declining to institute criminal proceedings against the police officers. It apparently did not occur to either the investigators or the trial and appeal courts that the applicant's injuries should be accounted for. The Court further notes that it was open to the respondent Government to submit a copy of the complete investigation file relating to the applicant's ill-treatment complaints. The Government, citing the destruction of the documents, failed to provide the Court with the materials, confining themselves to submitting a copy of the decision issued by the head of the Prokopyevsk Town Police Department on 7 April 2003, approving the findings of the official police inquiry into the applicant's complaints.

65. 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*, cited above, §§ 104-105; and *Dedovskiy and Others v. Russia*, no. 7178/03, §§ 78-79, 15 May 2008). The Court shall therefore proceed to the examination of the merits of the case on the basis of the applicant's submissions and the existing elements in the file.

(b) Alleged inadequacy of the investigation

66. In paragraphs 55 and 59 above, the Court found that the questions whether the applicant complied with the requirement to exhaust domestic remedies in spite of failing to lodge a civil action seeking compensation for damage caused by the alleged ill-treatment, and whether his complaints under Article 3 of the Convention were premature in view of the ongoing investigation at national level, were closely linked to the question whether the investigation into the events at issue was effective. It thus decided to join those issues to the merits and will examine them now. Before embarking on an analysis of how the investigation unfolded, the Court considers it necessary to reiterate the principles which govern the authorities' duty to investigate ill-treatment occurring as a result of the use of force by State agents.

67. 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.). Finally, the investigation must be expeditious. In

cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV). 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*, 9 June 1998, § 67, *Reports* 1998-IV) and to the length of time taken for the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

68. Turning to the facts of the present case, the Court observes that the applicant was entirely reliant on the prosecution authorities to assemble the evidence necessary for corroborating 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 the purpose of establishing the veracity of the applicant's account. The prosecutor's role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offence but also to the pursuit by the applicant of other remedies to redress the harm he had suffered (see paragraph 30 above). The Court notes that the prosecution authorities, who were made aware of the applicant's alleged beating, initiated an investigation which has not yet resulted in criminal proceedings against the perpetrators of the beating. The investigation was closed and re-opened and is currently pending. In the Court's opinion, the issue is consequently not so much whether there has been an investigation, since the parties do not dispute its existence, as whether it has been conducted diligently, whether the authorities have been determined to identify and prosecute those responsible and, accordingly, whether the investigation has been "effective".

69. The Court will therefore first assess the promptness of the prosecutor's investigation, as a gauge of the authorities' determination to prosecute those responsible for the applicant's ill-treatment (see *Selmouni*, cited above, §§ 78 and 79). In the present case the applicant brought his allegations of ill-treatment to the attention of the authorities by filing a complaint with the Prokopyevsk Town Prosecutor (see paragraph 10 above). The Prokopyevsk Town Prosecutor's office did not launch an investigation after being notified of the alleged beatings. Instead it remitted the applicant's complaint to the Prokopyevsk Town Police Department, a State authority whose employees were implicated in the events which were to be looked into, with an order to conduct an official police inquiry. The Court is mindful of the fact that in the present case the initial investigative steps, which usually prove to be crucial for the establishment of the truth in cases of police brutality, were conducted by the police force itself (see paragraph 12 above). Furthermore, the Court considers it particularly striking that despite the fact that the police inquiry resulted in the finding

that certain investigative steps on the part of the prosecution authorities were needed “to establish the truth”, no such steps were taken. On 18 April 2003 the assistant prosecutor refused to institute criminal proceedings against the police officers, entirely basing his decision on statements they had made during the official police inquiry (see paragraph 14 above). In addition, in the period immediately following the events in question no attempts were made to conduct a forensic medical examination of the applicant. The Court reiterates in this connection 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 have a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). The Court notes with concern that the lack of a forensic medical examination was invoked by the assistant prosecutor as a ground for a refusal to institute criminal proceedings in respect of the applicant’s complaints (see paragraph 17 above).

70. The Court further observes that the investigation became protracted. The Court finds it striking that for a period of over three years between October 2003 and January 2007 there were no further developments. Since being re-opened in January 2007 the investigation has remained pending and the police officers have not yet been committed to stand trial. The Government failed to provide any explanation for the protraction of the criminal proceedings. In such circumstances the Court is bound to conclude that the authorities failed to comply with the requirement of promptness (see *Kişmir v. Turkey*, no. 27306/95, § 117, 31 May 2005, and *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, ECHR 2007-...).

71. With regard to the thoroughness of the investigation, the Court notes a number of significant omissions capable of undermining its reliability and effectiveness. Firstly, no evaluation was carried out with respect to the quantity and nature of the applicant’s injuries. In issuing their decisions the investigators confined themselves to a restatement of the medical certificates which listed the injuries sustained by the applicant. The Court finds it striking that the assistant prosecutor failed to order a forensic examination of the applicant or at least to take statements from the doctors attending the applicant. The Court also considers it extraordinary that, while dealing with the applicant’s complaint in 2003 when the medical evidence was still available to the prosecution authorities, the assistant prosecutor did not attempt to examine the medical evidence before him and to draw conclusions on that basis.

72. Secondly, the Court observes that there was a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authorities. It is apparent from the decisions submitted to the Court that the investigators based their conclusions mainly on the testimonies given by the police officers involved in the incident. Although

excerpts from the testimonies of the applicant and his female friend, Ms S., were included in the decisions on the refusals to institute criminal proceedings, the investigators did not consider those testimonies to be credible, apparently because they reflected personal opinions and constituted an accusatory tactic by the applicant and Ms S. However, the investigators 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 those given by the applicant and Ms S. were 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).

73. The Court further observes that in 2007, after the criminal proceedings had been opened, the investigator questioned two individuals who had been detained with the applicant at the Rudnichniy police station in March 2003. The excerpts from their testimonies were included in the decision of 18 May 2007. Those individuals did not witness the beatings, did not remember the applicant and merely attested that they had not heard any complaints of police brutality (see paragraph 24 above). The Court firstly finds it inexplicable that it was not until January 2007, almost four years after the events under consideration, that the investigators attempted for the first time to collect statements from possible eyewitnesses. In this connection, the Court notes that 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 might have witnessed his alleged beatings, they were expected to take steps of their own initiative to identify possible eyewitnesses. The Court also observes that, due to the protraction of the investigation, the individuals in question could no longer recall the details of their detention at the Rudnichniy police station or provide the authorities with any valuable information.

74. Furthermore, it appears that the investigators 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*, 25 September 1997, § 106, *Reports* 1997-VI).

75. 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, expeditious or effective. The Court recognises that the investigation is still pending but, considering its length

so far and the very serious shortcomings identified above, the Court does not consider that the applicant should have waited for completion of the investigation before bringing his complaint to the Court (see *Angelova and Iliev*, cited above, § 103, and *Mikheyev*, cited above, § 121). Furthermore the Court does not lose sight of the fact that the applicant lodged his application before the Court on 2 March 2004, that is after the authorities had closed the investigation into his ill-treatment complaints. The Court is mindful of the fact that the investigation was re-opened only in January 2007. Accordingly, the Court dismisses the Government's objection as to non-exhaustion of domestic remedies, in so far as it concerns the applicant's failure to await the outcome of the domestic criminal proceedings.

76. Furthermore, in the light of the finding that the reaction of the Russian authorities to the applicant's ill-treatment complaints was not adequate and effective and, particularly, taking into account that the criminal proceedings against the police officers were opened almost four years after the alleged events, that the proceedings are still pending and that the investigation has not yet resulted in any finding of guilt, the Court has strong doubts that the applicant would have had a realistic opportunity of applying effectively to a court with a civil action, seeking compensation for damage caused as a result of treatment sustained at the hands of the police. In particular, the Court cannot overlook the fact that by the time the criminal proceedings against the police officers were finally instituted in January 2007, the case file pertaining to the initial inquiry into the applicant's ill-treatment complaints had already been destroyed, medical evidence was no longer available, and witnesses either could not be identified or did not remember the events in March 2003. In such a situation, the Court finds it implausible that the perpetrators of the offence against the applicant would ever be brought to justice and convicted. The prosecutor's decision of 6 August 2007, authorising a stay in the criminal proceedings on the ground that it was impossible "to identify persons who could be charged", supports the Court's finding to that effect (see paragraph 29 above).

77. In this connection, the Court reiterates its finding that in the absence of any results from the criminal investigation, the Russian civil courts are unable to determine the merits of a civil claim relating to alleged serious criminal actions (see *Dedovskiy and Others*, cited above, § 101). In other words, the Court considers that in the circumstances of the present case a civil action which, according to the Government, is available to the applicant, would not offer sufficient prospects of success and can be regarded as theoretical and illusory rather than practical and effective. The Court therefore dismisses the second limb of the Government's objection as to the non-exhaustion of domestic remedies and holds that there has been a violation of Article 3 of the Convention under its procedural limb.

(c) Alleged ill-treatment of the applicant: assessment of the severity of ill-treatment

(i) General principles

78. 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*, 15 November 1996, § 79, *Reports* 1996-V). 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*, 28 October 1998, § 93, *Reports* 1998-VIII).

79. 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 *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

80. 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*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

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

81. The Court reiterates that it has found it established that the applicant was beaten up by police officers and that as a result of that beating he sustained serious injuries (see paragraphs 63-65 above). The Court does not discern any circumstance which might have necessitated any use of violence

against the applicant. Furthermore, there is no indication that at any point during his 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 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

83. Lastly, the applicant complained under Articles 5 and 6 of the Convention that he had been detained without any legal order from 12 to 14 March 2003, that the criminal proceedings against him had been unfair in that the domestic courts had been biased, had misinterpreted the facts, had convicted him of crimes he had not committed and had not applied the domestic law correctly, refusing to dismiss the robbery charge.

84. Having regard to all the materials 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

85. 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.”

86. On 15 March 2007 the Court invited the applicant to submit his claims for just satisfaction. The applicant did not submit any such claims within the required time-limits.

87. In such circumstances the Court would usually make no award. In the present case, however, the Court has found a violation of the applicant's right not to be subjected to inhuman and degrading treatment. Since this right is of an absolute nature, the Court finds it possible to award the

applicant 10,000 euros (EUR) by way of non-pecuniary damage (compare *Mayzit v. Russia*, no. 63378/00, §§ 87-88, 20 January 2005, *Igor Ivanov v. Russia*, no. 34000/02, §§ 48-50, 7 June 2007, *Chember v. Russia*, no. 7188/03, § 77, 3 July 2008, *Nadrosov v. Russia*, no. 9297/02, § 55, 31 July 2008, *Rusu v. Austria*, no. 34082/02, § 62, 2 October 2008 and, most recently, *Kats and Others v. Ukraine*, no. 29971/04, § 149, 18 December 2008), plus any tax that may be chargeable.

88. 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. *Decides* to join to the merits the Government's objections as to the exhaustion of domestic remedies in respect of the applicant's complaint about ill-treatment in March 2003, in so far as those objections concern the applicant's failure to lodge a civil action and the fact that the criminal proceedings pertaining to his ill-treatment complaints are still pending, and *rejects* them;
2. *Declares* the complaint concerning the ill-treatment of the applicant by police officers and the ineffectiveness of the investigation into the incident admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the inhuman and degrading treatment to which the applicant was subjected on 12 and 13 March 2003 in the Rudnichniy District police station;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the applicant's complaint about the inhuman and degrading treatment to which he was subjected in the Rudnichniy District police station;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten 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;

Done in English, and notified in writing on 30 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President