



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

FIRST SECTION

CASE OF SHERSTOBITOV v. RUSSIA

(Application no. 16266/03)

JUDGMENT

STRASBOURG

10 June 2010

FINAL

22/11/2010

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

In the case of Sherstobitov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 16266/03) 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 Valeriy Aleksandrovich Sherstobitov (“the applicant”), on 14 April 2003.

2. The applicant was represented by Mr K. Kozhakhmetov, a lawyer practising in Krasnoyarsk. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been subjected to ill-treatment in police custody, that his detention had been unlawful and unreasonably long and that the criminal proceedings against him had been excessively long.

4. On 6 July 2007 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and lives in Krasnoyarsk.

1. The applicant's arrest and questioning at the police station

6. On 29 January 2002 Ts. and V. were drinking beer at a bus stop, where they saw the applicant and B., a nine-year-old boy. They were under the impression that the applicant was making sexual advances to B. and asked the assistant from a shop nearby to call the police. The shop assistant called the security guards from her company. Two guards, T. and S., arrived and took the applicant and B. to the police station at about 1 a.m. on 30 January 2002.

7. At the police station, the applicant was placed in an “administrative” cell with three other detainees. According to K. and N., police officers on duty at the police station at the time, N. had to remove the applicant from the cell because other detainees verbally and physically attacked him. The applicant did not dispute the account of his placement in the cell provided by K. and N. However, he denied having been beaten by the other detainees. According to him, the police officer removed him from the cell as soon as one of the detainees started making threats to him. The detainee did not have time to hit him.

8. At about 4 a.m. on 30 January 2002 the applicant was taken to a separate room for questioning. According to the applicant, three police officers handcuffed him, verbally insulted him and hit him on the head, legs, back and crotch with rubber truncheons. They kicked and punched him. Then they removed the handcuffs, took off his sweater and a jacket and continued the beatings, questioning him about the boy. At about 6 a.m. they brought a rubber truncheon with a condom put over it. They pulled down the applicant's pants, inserted the truncheon up his anus and put a gas mask over his head. He screamed and they stopped. After that he wrote a confession dictated by the policemen, who held the rubber truncheon in front of him throughout that time. At about 1 p.m. the applicant was taken to the investigator's office. The applicant told the investigator about the beatings. The policemen took him out of the office and punched him again.

9. According to policeman Nik., he took part in the applicant's questioning together with policemen Gr. and P. The applicant had bruises and scratches on his face when they saw him for the first time. It was obvious that he had been beaten up. His clothes were covered with dust and shoe prints were visible on them. Nik. realised that other detainees had beaten the applicant up. The applicant was at first ashamed to tell them what had happened but then confessed. None of the policemen put any psychological or physical pressure on him. Gr. confirmed Nik.'s version of the events. P. later testified that he had no recollection of the applicant's questioning.

10. On the same day at 10 p.m. the applicant was taken to the temporary detention centre, where the officer on duty documented his injuries. Then the applicant was taken to State Hospital no. 7. The doctor examined him and noted numerous bruises, scratches on the face, neck, back and arms, and

abrasions on the back and chest. The doctor stated that those injuries were not of a serious nature and had not caused any “health impairment” or “loss of working capacity”.

11. According to the applicant, other persons detained at the temporary detention centre could see bruises and abrasions on his face. He also had scratches on his chin caused by the gas mask. The handcuffs left abrasions on his wrists. There were scratches on the neck and bruises on the chest, buttocks, legs and back. The skin of the anus was damaged and bleeding.

12. According to the materials in the investigation file, none of the persons detained at the temporary detention unit recalled that the applicant had had injuries on his face and body. Nor did they remember that he had told them about the beatings by the policemen.

2. Criminal proceedings against the applicant

(a) Investigation and first trial

13. On 1 February 2002 the investigator ordered the applicant's detention pending investigation, noting that he was charged with a serious criminal offence and might abscond.

14. On 8 February 2002 the investigator authorised the applicant's continued detention pending investigation. In particular, she noted as follows:

“Given that [the applicant] might abscond or reoffend, and having regard to the gravity of the charges..., [he] should remain in custody.”

15. On 10 April 2002 the Kirovskiy District Court of Krasnoyarsk dismissed the applicant's request to be released pending investigation and trial. The applicant appealed. He argued, *inter alia*, that he was not a repeat offender, that he had a permanent place of residence and employment and that he had to provide special care for his elderly parents.

16. On 7 May 2002 the Krasnoyarsk Regional Court upheld the decision of 10 April 2002 on appeal. In particular the court noted:

“[The applicant] is charged with a very serious criminal offence. His remand in custody and indictment have been conducted in accordance with law. The [District] Court's decision to dismiss the [applicant's] application for release was therefore justified.”

17. On 30 April 2002 the prosecutor approved the bill of indictment and on 7 May 2002 the Kirovskiy District Court of Krasnoyarsk received the case file.

18. On 31 May 2002 the court opened the trial. It held four hearings in total. The first two hearings, on 31 July and 8 August 2002, were adjourned following requests submitted by the applicant and his counsel to study the case file and to obtain medical documents and materials concerning the applicant's allegations of ill-treatment from the prosecutor's office.

19. On 26 August 2002 the District Court found the applicant guilty of sexual assault of a minor and sentenced him to eight years' imprisonment. On 29 October 2002 the Krasnoyarsk Regional Court quashed the applicant's conviction on appeal, noting that the trial court had failed to establish the exact time of the crime and to consider an application by the applicant for certain evidence to be declared inadmissible. The court further ordered that the applicant should remain in custody.

(b) Second trial

20. On 25 November 2002 the case file was returned to the District Court. On 17 December 2002 the trial was suspended pending consideration of a request by the prosecutor for supervisory review of the judgment of 29 October 2002.

21. On 31 December 2002 the District Court extended the applicant's detention pending trial until 28 March 2003. In particular, the court noted:

“After having heard [the applicant], his counsel..., who argued that the applicant should be released pending trial given that he was employed, could provide positive references and had two elderly parents who needed his financial support, and the prosecutor, who argued that it was necessary to extend [the applicant's] detention, the court finds that it is necessary to extend [the applicant's] detention until 28 March 2003 since, after [the applicant's] conviction on 26 August 2002 was quashed on appeal, the trial was adjourned pending consideration of the prosecutor's application for supervisory review of the appeal judgment of 29 October 2002. The preventive measure was imposed on the applicant in accordance with the law and was justified.”

22. On 4 January 2003 the Presidium of the Regional Court dismissed the prosecutor's request for supervisory review and returned the case file to the District Court, which opened the trial on 16 January 2003.

23. On 23 January 2003 the Regional Court upheld the decision of 31 December 2002 on appeal. The court noted as follows:

“[The applicant] is charged with a very serious criminal offence. The indictment and the decisions to remand [the applicant] in custody and to subsequently extend his detention were in accordance with the law.”

24. On 26 March 2003 the District Court further extended the applicant's detention until 28 June 2003. In particular, the court noted:

“The preventive measure in the form of detention imposed earlier on the defendant was lawful and justified. At the present time it is still necessary to detain [the applicant] as the circumstances justifying his placement in custody have not ceased to exist.”

25. On 3 April 2003 the Regional Court upheld the decision of 26 March 2003 on appeal.

26. On 23 April 2003, for an unknown reason, the applicant was not transported to the courthouse and his counsel did not appear in court. The District Court adjourned the hearing.

27. On 6 May 2003 the District Court commissioned a new comprehensive forensic medical examination of the victim.

28. On 25 June 2003 the District Court ordered the applicant's release on an undertaking not to leave town. The court noted that the proceedings had been stayed pending two expert examinations, that the investigation had been completed and the victim and all witnesses had been questioned. It further noted that the applicant had a permanent place of residence and employment and could not interfere with the proper administration of justice. On 8 July 2003 the Regional Court upheld the decision of 25 June 2003 on appeal.

29. On 26 August 2003 the District Court granted the prosecutor's request for a forensic psychiatric examination of the victim and stayed the proceedings, which were resumed on 18 December 2003.

30. On 16 June 2004 the District Court found the applicant guilty of sexual assault of a minor and sentenced him to eight years' imprisonment. The applicant was placed in custody on the same day. According to the Government, the trial comprised nineteen hearings. Eight of them were adjourned because of the witnesses' failure to appear in court.

31. On 14 October 2004 the Regional Court upheld the applicant's conviction on appeal.

(c) Supervisory review of the applicant's conviction and the third trial

32. On 21 March 2006 the Presidium of the Regional Court quashed the applicant's conviction by way of supervisory review and remitted the case to the trial court for fresh consideration. The applicant was released on an undertaking not to leave town. In particular, the court indicated as follows:

“The [trial] court failed to comply with the law requiring objective consideration of the case ... [and] found the applicant guilty on the basis of assumptions. The time and place of the crime as established by the court are a supposition (evening of 29 January in a flat at an unidentified address).

The court's findings are not supported by the evidence examined at the trial. It failed to take into account circumstances which could have been decisive for the findings with regard to the applicant's guilt.”

33. Following the receipt of the case file, on 26 April 2006 the District Court scheduled the trial for 10 May 2006. According to the Government, the District Court held at least twenty-seven hearings. Thirteen hearings were adjourned because of the witnesses' failure to appear in court.

34. On 14 June 2007 the District Court adjourned the hearing owing to the illness of the applicant's counsel. On 2 and 23 July 2007 the hearings were adjourned since the prosecutor and the applicant's counsel were on vacation.

35. On 10 December 2007 the District Court acquitted the applicant. As regards the confession written by the applicant on 30 January 2002, the

court accepted his explanation that it had been dictated to him by the police officers and dismissed it as inadmissible evidence. The court further noted that the applicant's version of the events in that regard had been corroborated by other evidence examined by the court.

36. According to the Government, on 19 December 2007 the Regional Court upheld the applicant's acquittal on appeal.

3. Investigation into the applicant's allegations of ill-treatment in police custody

37. On 31 January 2002 the applicant was questioned by investigator E. in connection with the criminal case against him. The applicant refused to answer her questions in the absence of a lawyer and informed her that the police officers had beaten and tortured him to make him confess.

38. On 1 February 2002 the applicant met the district prosecutor Ger. The prosecutor allegedly refused to accept the applicant's written statement concerning the ill-treatment and advised him to submit it to the investigator in charge of the criminal case against him. The investigator agreed to take the statement only on 5 February 2002. On 7 February 2002 the applicant reiterated his allegations during questioning in the presence of the lawyer. On 15 February 2002 the investigator registered the applicant's complaint and forwarded it to the prosecutor's office.

39. On 23 April 2002 the Kirovskiy District Prosecutor's Office opened a criminal investigation. On 15 May 2002 the applicant was granted victim status.

40. On an unspecified date the investigator questioned Ts. and V., two women who had facilitated the applicant's arrest. According to them, Ts. had told the applicant that the police would arrest him and he had hit her in the face. She had punched him back and scratched his face. V. could not provide any details with regard to the incident as she had been severely inebriated at the time of the alleged altercation between Ts. and the applicant.

41. On 4 May 2002 the investigator questioned T., a security guard from a private company, who had taken the applicant to the police station. He provided the following account of events:

"I entered the shop and asked the shop assistant why she had called us. [She] said that the women had asked her to do it. I went out of the shop. There were two women and a man in camouflage clothing. He was holding [the applicant]. A nine-year-old boy was standing next to them. The women told us that [the applicant] was selling the boy to the passing-by drivers. We took [the applicant] and the boy into [our] car. We did not use truncheons or physical force against the applicant since [he] was calm. We took [the applicant] and the boy to [the police station]. The applicant was seated on a bench. He was not put in a cell while I was at the police station, where I spent 20-30 minutes...

I don't think that [the applicant] had any abrasions or injuries. [He] was decently dressed and clean.”

42. On 17 May 2002 the investigator questioned N., an officer on duty at the police station on 30 January 2002. N. submitted as follows:

“Then I brought [the applicant] to an administrative cell where there were three men being held. While I was booking another person, the detainees started a fight with [the applicant]. I immediately opened the cell to take [the applicant] out, but [the others] had already hit him several times. I took [the applicant] out of the cell. He had blood over his face. I think his lip was cut. I took him to [the bathroom] where [he] washed his face. After that I did not place him in the cell as the other detainees kept shouting obscenities about him.”

43. On 18 May 2002 the investigator questioned Ya., one of the persons detained with the applicant, who provided the following account of the events:

“In the night of 29 January 2002 I was taken to [the police station]. I was placed in an administrative cell... There were two other men held there. They were in their thirties. Later another man, who was arrested for the sexual assault of a boy, was brought to [the police station]. I heard the policemen talk about it. That man was not placed in the cell. He remained seated on a bench. I remember that the other detainees and myself asked him for a cigarette. He did not give us any although he was smoking. I was let go at about 3 a.m. ... While I was at the police station, that man was not placed in the cell with other detainees. There were no conflicts or altercations between him and others...”

I did not see any injuries on his face.”

44. On 20 May 2002 the investigator questioned K., another person held at the police station on 30 January 2002. She submitted as follows:

“When my brother and myself were brought to [the police station], [the applicant] was already there. When other men heard why he had been arrested, they started swearing, but I would not say that they were aggressive. In my presence [the applicant] was not placed in the cell. He either walked around or sat on one of the chairs. Then the policemen took him away. At that time he was wearing clean clothes. He had no injuries on his face.”

45. On 27 November 2002 a forensic expert examined the relevant medical documents concerning the applicant and concluded as follows:

“According to the medical documents concerning the medical aid provided to [the applicant] on 30 January 2002, [he] had numerous bruises of the soft tissue, scratches on the face, neck, back and hands, and abrasions on the back and chest. None of them caused any health impairment or loss of working capacity. It is impossible to determine the origin and the time of the said injuries since the medical documents do not contain any specific details (of their size, shape, colour and nature).”

46. K.'s brother submitted that he had very poor eyesight and had slept all the time after he had been placed in a cell with another man.

47. On an unspecified date the investigator questioned other persons who had been detained at the police station on 30 January 2002. B.

confirmed that the applicant had been placed in the cell with other men who had beaten him. She further submitted that, after the applicant's placement in the cell, she had heard loud voices and sounds of a fight. Ro. and Ru. told the investigator that they had been brought to the police station from a sobering-up centre and that they had not been put in a cell. According to the documents submitted by the Government, no attempt was made to question Z., Kov., Dzh., Kon. and Kh., who had also been detained at the police station on 30 January 2002.

48. On an unspecified date the investigator commissioned a graphological forensic examination of the applicant's handwritten confession. The expert report stated as follows:

“[The applicant] wrote the confession on 30 January 2002 under the influence of a temporary natural distraction which could have been external (uncomfortable position) or internal (unusual state caused by extreme emotional disturbance, restraint, irritation, etc.) or both. It is impossible to determine the type of distraction (external or internal) or its source.”

49. In 2002 and 2003 the proceedings were discontinued on seven occasions. Each time the investigator closed the file for lack of *corpus delicti* and the supervising prosecutor quashed the relevant decision, noting that the investigation had been incomplete and based on insufficient and inconclusive evidence.

On 12 April 2003 the investigator closed the case once more. Her decision was upheld by the District Court on 5 January 2004. On 17 February 2004 the Regional Court quashed the decision of 5 January 2004 and discontinued the proceedings, noting that the thrust of the applicant's complaint was to challenge the validity of the confession he had made on 30 January 2002 and that the lower court had not been in a position to consider it.

50. On 13 January 2006 the Krasnoyarsk Region First Deputy Prosecutor quashed the decision of 12 April 2003 and reopened the case.

51. On an unspecified date the investigator commissioned a forensic examination of the applicant's clothing, which did not reveal any traces of blood on the clothes, including the underwear. As regards the applicant's damaged jacket, the expert submitted as follows:

“The damage to the back of the applicant's jacket is a tear which resulted from overstretching of the loosest part of the fabric, probably when some part of the jacket (the sleeve or the front) was yanked in the course of a fight. It is impossible to determine the source of the damage (whether it could have been a rubber truncheon).”

52. The case was closed again on 17 February 2006. Relying on the medical documents, including the forensic report of 27 November 2002, the medical forensic report that showed that there had been no blood on the applicant's clothes, the statements made by Ts., V., the police officers on duty on the day of the applicant's arrest, the persons detained with the

applicant at the police station and the alleged perpetrators, the investigator noted, in particular, as follows:

“The preliminary investigation has demonstrated that all the bodily injuries incurred by [the applicant] were caused by Ts. and V. and subsequently [the detainees] in the administrative cell. However, in an attempt to render inadmissible the evidence obtained against [the applicant], he denies those facts, alleging that the injuries were inflicted by the police officers...”

53. On 15 August 2007 the Deputy Regional Prosecutor quashed the decision of 17 February 2006 and reopened the case owing to the incompleteness of the investigation.

54. On 17 September, 14 December 2007 and 21 January 2008 the investigation was stayed pending various forensic expert examinations. It appears that the investigator commissioned an additional forensic medical examination of the applicant's injuries and an examination of the applicant's handwritten confession.

55. According to the medical forensic examination of 18 September 2007, the applicant had spots on the left part of his body which could have been caused by the impact of a blunt object or objects under any circumstances from at least three to six months before the examination. The expert could not determine the cause and exact time of the injuries owing to the scarcity of information in the relevant medical documentation.

56. According to the expert report concerning the applicant's handwritten confession, the expert was unable to conclude whether the applicant had been in a state of fear or under psychological or physical pressure owing to the insignificant volume of the text submitted for examination.

57. On 26 March 2008 the investigation was resumed and a month later it was closed again. The investigator noted that the applicant's allegations had not been supported by any other evidence gathered. He relied, *inter alia*, on the testimonies provided by Ts. and V., the police officers on duty at the police station on the day of the applicant's arrest, the alleged perpetrators, including Nik., who claimed that the applicant had confessed voluntarily to the crime, and the persons detained at the police station, and forensic reports. The investigator summed up his conclusion as follows:

“The evidence gathered in the course of the investigation is not sufficiently reliable to show that the applicant was subjected to psychological and physical pressure, including ill-treatment, by the policemen.

It has been established in the course of the investigation that the bodily injuries incurred by [the applicant] resulted from an altercation with Ts. and V. and subsequently from his placement in the administrative cell.

... No proof has been established in the course of the investigation to support [the applicant's] allegations. Accordingly, there are grounds to believe that [the applicant]

has intentionally concealed the circumstances in which he was beaten in order to mislead the investigation.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Pre-trial detention

58. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic (Law of 27 October 1960, “the old CCrP”). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, “the new CCrP”).

59. The Russian Constitution of 12 December 1993 provides that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22). Under the old CCrP, a decision ordering pre-trial detention could be taken by a prosecutor or a court (Articles 11, 89 and 96). The new CCrP requires a decision by a court on a reasoned request by a prosecutor supported by appropriate evidence (Article 108 §§ 1 and 3-6).

60. Before 14 March 2001, pre-trial detention was authorised if the accused was charged with a criminal offence carrying a sentence of at least one year's imprisonment (Article 96). The amendments of 14 March 2001 repealed the provision that permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they had committed. The new CCrP reproduced the amended provisions (Article 97 § 1 and Article 108 § 1) and added that a defendant should not be remanded in custody if a less severe preventive measure was available.

61. Under the new CCrP, “preventive measures” include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (Article 112). When deciding on a preventive measure, the competent authority is required to consider whether there are “sufficient grounds to believe” that the accused would abscond during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

62. Before 15 June 2001 the old CCrP set no time-limit for detention pending trial. On 15 June 2001 a new Article 239-1 entered into force which established that the period of detention during the trial could not generally exceed six months from the date on which the court received the file. However, if there was evidence to show that the defendant's release might impede the thorough, complete and objective examination of the case, a

court could – of its own motion or following a request by a prosecutor – extend the detention by no longer than three months. These provisions did not apply to defendants charged with particularly serious criminal offences. The new CCrP provides that the term of detention during the trial is calculated from the date on which the court received the file up to the date on which the judgment is given. The period of detention during the trial may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

B. Investigation of criminal offences

63. In response to a complaint alleging a criminal offence, the investigator is under an obligation to verify the complainant's allegations (Article 144 of the new CCrP).

64. Should there be sufficient grounds to believe that a crime has been committed, the investigator initiates a criminal investigation (Article 145 of the new CCrP).

C. Right to rehabilitation

65. Every person who has been acquitted has a right to rehabilitation, which includes compensation for pecuniary and non-pecuniary damage and reinstatement of his or her employment, pension, housing and other rights (Article 133 of the new CCrP).

66. A person who is acquitted after a criminal prosecution may recover, *inter alia*, lost earnings, pension and other benefits as well as legal fees and other litigation expenses he or she incurred (Article 135 of the new CCrP).

D. Compensation for damage resulting from criminal prosecution

67. The following provisions of the Russian Civil Code are relevant to the present case:

Article 1070: Responsibility for damage caused by unlawful acts of investigative authorities, prosecuting authorities and courts

“1. Damage caused to a person as a result of unlawful conviction, unlawful criminal prosecution, ... unlawful pre-trial detention ... shall be compensated [by the State] ... in full, irrespective of the fault of the [police], prosecutor's office or the court.”

Article 1100: Grounds for compensation for non-pecuniary damage

“Compensation for non-pecuniary damage shall be afforded irrespective of the fault of the tortfeasor if:

... the damage is caused to a person as a result of his unlawful conviction, unlawful criminal prosecution, [or] unlawful pre-trial detention...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

68. The applicant complained that he had been subjected to torture and inhuman and degrading treatment in contravention of Article 3 of the Convention, which reads as follows:

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

69. The Government denied the applicant's allegations of ill-treatment. They considered that the applicant had sustained the injuries as a result of the altercations he had had with Ts. and then with the persons detained with him in the same cell at the police station. In the Government's view, most of the injuries had been inflicted by Ts., that is before the applicant had been taken into police custody. As regards the incident at the police station, the Government noted that altercations between inmates were very common in all member States of the Council of Europe and could not be ruled out completely despite the effectiveness of the control and security measures employed. Nevertheless, the authorities had taken the measures necessary to protect the applicant's life and health given that the fight between him and the other detainees had been promptly stopped by the police officer on duty. They further reasoned that the injuries the applicant had sustained had not been sufficiently serious to attain “a minimum level of severity”. Nor could they have amounted to “inhuman and degrading” treatment. Lastly, they observed that the Russian authorities had conducted a thorough investigation into the applicant's allegations of ill-treatment.

70. The applicant maintained his complaint. He contended that the medical documents and the witnesses' statements constituted sufficient evidence that supported his allegations of ill-treatment. He noted that the Government's argument that most of the injuries had been inflicted on him during the fight with Ts. was in contradiction with the medical evidence. In particular, her alleged kicks and punches could not have left scratches on his body, for the simple reason that he had had several layers of winter clothes on him. As regards the alleged fight between him and other persons detained at the police station, the applicant noted that the Russian authorities had failed to identify the participants in the fight and those allegations had been made only by two police officers. None of the persons detained at the police station had witnessed the fight. Lastly, the applicant submitted that

the authorities had failed to carry out an effective investigation into his complaint about the ill-treatment. At the early stages of the proceedings, the investigator had ignored his complaint. When the criminal case had been opened, the authorities had done nothing to examine his injuries and to determine their origin. The forensic medical examination had taken place approximately ten months after the events in question. The witnesses had not been questioned promptly either. The investigation had not been thorough. The case had been closed and reopened on numerous occasions. When reopening the case, each time the superior prosecutor had noted that the investigation had been incomplete and its findings contradictory.

A. Admissibility

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

B. Merits

1. Alleged ill-treatment

72. The Court has stated on many occasions that 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 and degrading treatment or punishment, irrespective of the victim's conduct (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

73. The Court further reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita*, cited above, § 121).

74. Where an individual claims to have been injured as a result of ill-treatment in custody, the Government are under an obligation to provide a complete and sufficient explanation as to how the injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

75. Turning to the circumstances of the present case, the Court firstly observes that the applicant's allegations that he was raped with a rubber truncheon are not supported by the medical documentation submitted by the

parties. Nor did the subsequent inquiry conducted by the authorities elucidate the disputed facts. In such circumstances, the Court finds it impossible to establish “beyond reasonable doubt” whether or not the applicant was raped by the policemen.

76. As regards the injuries the applicant complained of, the Court notes that the medical evidence submitted by the parties conclusively demonstrates that the applicant sustained numerous bruises, scratches on the face, neck, back and arms, and abrasions on the back and chest.

77. The Court further observes that the parties disagreed as to the cause of the injuries. The applicant asserted that he had been beaten by the police officers. The Government, however, suggested that most of the injuries had been sustained by the applicant as a result of the fight with Ts. prior to his arrest and that the remaining injuries had been inflicted by some unidentified persons detained with the applicant at the police station.

78. While the Court may accept that the scratches on the applicant's face might have been caused by Ts., it is not, however, convinced by the Government's explanation in respect of the other injuries sustained by him. The Government have not provided any forensic evidence to substantiate their speculation that the bruises and abrasions found on the applicant's body could have been caused by Ts. Furthermore, apart from rather general statements made by the police officer on duty on the relevant day that some persons had assaulted the applicant (see paragraph 42 above) and B.'s testimony that she had heard something that could have been a fight (see paragraph 47 above), there is nothing in the Government's submissions that could provide an evidentiary basis for their conjecture and rebut the presumption of their responsibility for the injuries inflicted on the applicant while he was in the care of the State. Accordingly, the responsibility for the applicant's injuries lay with the domestic authorities.

79. The Court further reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, 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 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 94, *Reports of Judgments and Decisions* 1998-VIII).

80. The Court is not convinced by the Government's argument that the injuries the applicant sustained had not been sufficiently serious to attain “a minimum level of severity”. Even though, as the doctor had indicated, those injuries had not caused any “health impairment” or “loss of working capacity”, this fact alone cannot rule out a finding that the treatment was severe enough to be considered inhuman or degrading. The Court considers

that the decision of the officer at the temporary detention centre who discovered the injuries on the applicant's body to send him to hospital and the numerous abrasions and bruises diagnosed by the doctor who examined the applicant indicate that his injuries were sufficiently serious to amount to ill-treatment within the scope of Article 3 (compare *Assenov and Others*, cited above, § 95).

81. Having regard to the above, the Court concludes that on 30 January 2002 the applicant was subjected to ill-treatment for which responsibility lay with the domestic authorities and which amounted to inhuman treatment contrary to Article 3 of the Convention. It follows that there has been a violation of Article 3 of the Convention under its substantive limb.

2. Adequacy of the investigation

82. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and 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. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others*, cited above, § 102).

83. 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 (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

84. An investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others*, cited above, §§ 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

85. Furthermore, the investigation must be expeditious. In cases examined under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita*, cited above, §§ 133 et seq.). Consideration has been 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 the length of time taken to complete the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

86. Turning to the facts of the present case, the Court observes that the authorities did carry out an inquiry into the applicant's allegations of ill-treatment. It is not convinced, however, that the inquiry was sufficiently thorough, prompt and expeditious to meet the requirements of Article 3.

87. In this connection the Court notes that the applicant brought his allegations of ill-treatment to the attention of the investigator in charge of his case on 31 January 2002, that is, on the day following the incident. However, his complaint was officially registered with a delay of two weeks and the investigation was opened more than two months after that, on 23 April 2002, which undoubtedly caused a loss of precious time and serious complications in the investigation.

88. Admittedly, at the initial stage of the investigation, the authorities took the necessary steps to verify the applicant's accusations. They questioned the witnesses and commissioned forensic examinations. However, the Court finds it striking that the first forensic medical examination was conducted only in November 2002, almost ten months after the applicant had sustained the injuries. Furthermore, the Court cannot but notice that the scope of the examination was rather limited. The experts merely reviewed the medical documents in the applicant's file. They did not actually examine the applicant until September 2007, more than five years after he had sustained the injuries. In such circumstances, the Court is not surprised that the experts were unable to produce any conclusive findings as to the cause of the applicant's injuries.

89. Furthermore, the Court notes that, at the initial stage, the investigation was considerably prolonged by repeated attempts by the investigator to close the case in the absence of sufficient grounds. From 2002 to 2003 the case was closed and reopened on seven occasions. Each time, when reopening the case, the supervising prosecutor noted that the relevant investigator's decision had been based on insufficient and inconclusive evidence.

90. Lastly, having regard to the evidence from the investigation submitted by the Government, the Court is not convinced that the Russian authorities made thorough efforts to elucidate the circumstances of the incident. As regards Ts.'s allegations that she had beaten up the applicant,

the investigator gave no reasons why, in the absence of any corroborating evidence, he accepted as credible the version of events provided by a person who had been in an inebriated state at the relevant time. Nor is it clear why the authorities were unable to establish the identity of the persons who had been detained with the applicant at the police station and who had allegedly assaulted him. Even though the names of those persons were known to the authorities, only some of them were questioned and denied that they had beaten the applicant and no explanation was provided as to why it was impossible to question the rest of them.

91. The Court does not lose sight of the fact that the applicant was acquitted on all charges and the trial court established that the confession had actually been dictated to him by police officers. However, there is no mention of this fact in the evidence from the investigation submitted by the Government. Contrary to the trial court's findings, the investigator reiterated that the applicant had voluntarily confessed to the crime, as one of the policemen alleged.

92. The foregoing considerations are sufficient to enable the Court to conclude that the investigation into the applicant's complaint of ill-treatment in police custody cannot be considered "effective". There has therefore been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

93. The applicant complained that the investigation into his allegations of ill-treatment had been ineffective, contrary to Article 13 of the Convention, which provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

94. The Court observes that this complaint concerns the same issues as those examined above under the procedural limb of Article 3 of the Convention (see paragraphs 82-92 above) and should accordingly be declared admissible. However, having regard to its conclusion above under Article 3, the Court considers it unnecessary to examine those issues separately under Article 13.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

95. The applicant complained that his arrest and pre-trial detention had been unlawful. He further alleged that his pre-trial detention had been excessively long. He relied on Article 5 of the Convention, which, in so far as relevant, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

96. The Government contended that, following his acquittal, the applicant had lost his victim status in respect of his complaints under Article 5 of the Convention. Furthermore, in their view, it remained open to the applicant to bring a civil claim for compensation for the damage allegedly resulting from unlawful and unreasonably lengthy pre-trial detention as provided for in Articles 1070 and 1100 of the Russian Civil Code. As regards the alleged unlawfulness of the applicant's pre-trial detention, the Government conceded that from 25 November to 31 December 2002 his detention had not been authorised by a court order. They further submitted that the applicant had been remanded in custody pending investigation and trial owing to the gravity of the charges against him. In addition, it had been made known to the judicial authorities that, if released, the applicant could have absconded. Lastly, they argued that, as the applicant had been accused of having molested a boy of less than fourteen years of age with a learning disability, his pre-trial detention had also been necessary to ensure his own safety and security of person.

97. The applicant maintained his complaints. As regards the length of his pre-trial detention, he noted that, when extending his detention, the authorities had referred predominantly to the gravity of the charges against him. At no time had they considered whether the length of his pre-trial detention had been reasonable or furnished any justification when extending it.

A. Admissibility

1. The applicant's victim status

98. The Court reiterates that under Article 34 of the Convention it “may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the

Convention or the Protocols thereto". It falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-III).

99. The Court also reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Eckle v. Germany*, 15 July 1982, §§ 69 et seq., Series A no. 51; *Amuur v. France*, 25 June 1996, § 36, *Reports* 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

100. Turning to the circumstances of the present case, the Court observes that on 10 December 2007 the applicant was acquitted on the charges against him and advised of his right to "rehabilitation". His acquittal was upheld on appeal on 7 February 2008. According to the text of the judgment of 10 December 2007, the trial court advised the applicant of the possibility of claiming compensation for pecuniary or non-pecuniary damage and having his "employment, pension, housing and other rights" reinstated. It remained silent, however, as to the applicant's right to liberty.

101. In view of the above, the Court concludes that at no point did the Russian authorities acknowledge, at least, in substance, that the applicant's detention was unlawful or that it had been based on insufficient reasons or had exceeded a reasonable time. The Court therefore finds that the applicant can still claim to be the "victim" of a breach of Article 5 of the Convention and dismisses the Government's objection.

2. Domestic remedies

102. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

103. The Court reiterates that, in accordance with the Convention institutions' case-law, where lawfulness of detention is concerned, an action for damages against the State is not a remedy which has to be used because the right to have the lawfulness of detention examined by a court and the right to obtain compensation for any deprivation of liberty incompatible with Article 5 are two separate rights (see, among other authorities, *Włoch*

v. Poland, no. 27785/95, § 90, ECHR 2000-XI). Furthermore, the Court has already found that Russian law does not provide for State liability for detention which is not based on “relevant and sufficient” reasons or which exceeds a “reasonable time”. This state of Russian law precludes any legal opportunity for the applicant to receive compensation for his detention, which was effected in breach of Article 5 § 3 of the Convention (see *Korshunov v. Russia*, no. 38971/06, § 62, 25 October 2007, and *Govorushko v. Russia*, no. 42940/06, § 60, 25 October 2007).

104. Turning to the circumstances of the present case, the Court observes that the applicant brought complaints challenging the lawfulness and length of his pre-trial detention in the course of the criminal proceedings against him. They were considered and dismissed by domestic courts at two levels of jurisdiction. In such circumstances, the Court considers that the applicant made use of the remedies available to him at domestic level.

105. In the light of the foregoing, the Court concludes that the Government's objection of non-exhaustion must be dismissed.

3. Compliance with the six-month rule

106. The Court reiterates that, according to Article 35 § 1 of the Convention, it may only deal with the matter within a period of six months from the date on which the final decision was taken.

107. The Court observes that the applicant's complaint concerns, *inter alia*, the alleged unlawfulness of his arrest on 30 January 2002 and ensuing pre-trial detention, which comprised the following periods: (1) from the day of his arrest on 30 January 2002 until 26 August 2002, when he was convicted by a court at the first level of jurisdiction; and (2) from 29 October 2002, when his conviction was quashed on appeal, until 25 June 2003, when he was released from custody on an undertaking not to leave town.

108. The Court further observes that the applicant lodged his application on 14 April 2003. It follows that the Court may examine only the lawfulness of the second period of the applicant's pre-trial detention, which commenced on 29 October 2002 and ended on 25 June 2003. The Court therefore considers that the part of the applicant's complaint under Article 5 § 1 of the Convention concerning the arrest and detention orders issued before that date has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention for non-compliance with the six-month time-limit.

109. The Court notes that the remainder of the complaints under Article 5 §§ 1 and 3 are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *Whether the applicant's pre-trial detention was compatible with Article 5 § 1*

(a) General principles

110. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While, in the first place, it is for the national authorities, notably the courts, to interpret and apply domestic law, the position is different in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (see, among other authorities, *Duiyeb v. the Netherlands* [GC], no. 31464/96, §§ 44-45, 4 August 1999). Furthermore, the “lawfulness” of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see, among the most recent authorities, *Bakmutskiy v. Russia*, no. 36932/02, § 109, 25 June 2009).

(b) The applicant's detention from 29 October to 31 December 2002

111. The Court notes that on 29 October 2002 the Krasnoyarsk Regional Court quashed the applicant's conviction on appeal and remitted the case to the trial court for fresh consideration. The court noted, *inter alia*, that the applicant should remain in custody (see paragraph 19 above).

112. In this connection the Court reiterates that a judicial decision to maintain a custodial measure would not breach Article 5 § 1 provided that the court “had acted within its jurisdiction ... [and] had the power to make an appropriate order” (see *Korchuganova v. Russia*, no. 75039/01, § 62, 8 June 2006). It is not in dispute that on 29 October 2002 the appeal court acted within its powers and there is nothing to suggest that its decision to maintain the applicant's custodial measure was invalid or unlawful under domestic law at the relevant time. However, the Court observes that, when ordering that the applicant should remain in custody, the Regional Court gave no reasons for its decision. It also failed to set a time-limit for the continued detention or for its periodic review. It follows, therefore, that the applicant remained in a state of uncertainty as to the grounds for his detention from 29 October to 31 December 2002, when the trial court re-examined the issue of detention.

113. The question thus arises whether this could be considered to be “an appropriate order”. The Court has already found a violation of Article 5 § 1 (c) of the Convention in a number of cases concerning a similar set of facts. In particular, it has held that the absence of any grounds given by judicial authorities in their decisions authorising detention for a prolonged period of time is incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see *Khudoyorov v. Russia*, no. 6847/02, § 134, 8 November 2005; *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006; and *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002). Permitting a prisoner to languish in detention without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Khudoyorov*, cited above, § 142).

114. The Court sees no reason to reach a different conclusion in the present case. It considers that the order of 29 October 2002 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness, which together constitute the essential elements of the “lawfulness” of detention within the meaning of Article 5 § 1.

115. There has therefore been a violation of Article 5 § 1 (c) of the Convention on account of the applicant's detention from 29 October to 31 December 2002.

116. In view of the above finding, the Court does not consider it necessary to examine separately the question whether in the circumstances of this case it was incumbent on the trial court, as the Government maintained, to re-examine the issue of the applicant's detention on 25 November 2002.

(c) The applicant's detention from 31 December 2002 to 25 June 2003

117. The Court observes that during the period under consideration the District Court extended the applicant's detention twice, namely on 31 December 2002 until 28 March 2003 and on 26 March until 28 June 2003. Those decisions were upheld by the Regional Court on appeal on 23 January and 3 April 2002 respectively. The applicant was to remain in custody because of the gravity of the charges against him.

118. The Court further observes that the trial and appeal courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. The question whether the reasons relied upon by the courts were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3 of the Convention.

119. The Court finds that there has been no violation of Article 5 § 1 of the Convention on account of the applicant's detention from 31 December 2002 to 25 June 2003.

2. *Whether the length of the applicant's entire pre-trial detention exceeded the "reasonable time" requirement set forth in Article 5 § 3*

120. The Court reiterates that, in determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance (see, among other authorities, *Wemhoff v. Germany*, 27 June 1968, § 9, Series A no. 7, and *Labita*, cited above, §§ 145 and 147). In view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent court" (see *Panchenko v. Russia*, no. 45100/98, §§ 91 and 93, 8 February 2005, with further references). It follows that the applicant's detention from 26 August 2002, the date of his original first-instance conviction, to 29 October 2002, the date on which that conviction was quashed on appeal and his case was remitted for a new trial, cannot be taken into account for the purposes of Article 5 § 3. Accordingly, the period to be taken into consideration comprised two terms, the first lasting from 30 January 2002 to 26 August 2002 and the second from 29 October 2002 to 25 June 2003, and amounted in total to fourteen months and twenty days (see, among other authorities, *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007).

121. As regards the reasons underlying the applicant's detention, the Court observes that the domestic authorities consistently relied on the gravity of the charges against him as the sole factor justifying his remand in custody. In this connection the Court reiterates that, although the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or reoffending, the need to continue the deprivation of liberty cannot be assessed from a purely abstract point of view, taking into consideration only the gravity of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Panchenko*, cited above § 102; *Ilijkov v. Bulgaria*, no. 33977/96, § 81, 26 July 2001; and *Letellier v. France*, 26 June 1991, § 51, Series A no. 207). This is particularly true in the Russian legal system, where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of the issue whether the evidence that has been obtained supports a reasonable suspicion that the

applicant has committed the alleged offence (see *Khudoyorov*, cited above, § 180). In the instant case, beyond two references to the possibility that the applicant might abscond or reoffend in the two initial detention orders (see paragraphs 13 and 14 above), the domestic authorities did not mention any concrete facts corroborating the detention orders.

122. Furthermore, the domestic courts refused to take into account any specific facts put forward by the applicant and his counsel in the applications for release. It follows from the court orders authorising the applicant's pre-trial detention that the gravity of the charges carried such a preponderant weight that no other circumstances could have secured his release. The Court reiterates that any system of mandatory detention pending trial is incompatible *per se* with Article 5 § 3 of the Convention, it being incumbent on the domestic authorities to establish and demonstrate the existence of concrete facts outweighing the rule of respect for individual liberty (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, with further references). In the instant case the domestic authorities did not mention any concrete facts corroborating the detention orders.

123. The Court further observes that during the entire period under consideration the authorities did not consider the possibility of ensuring the applicant's attendance by the use of other "preventive measures" – such as bail – which are expressly provided for by Russian law to secure the proper conduct of criminal proceedings. In that context, the Court would emphasise that under Article 5 § 3 the authorities are obliged to consider alternative measures of ensuring an accused's appearance at trial when deciding whether he or she should be released or detained. Indeed, the provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Khudoyorov*, cited above, § 183, and *Dolgova v. Russia*, no. 11886/05, § 47, 2 March 2006). In the Court's view, the authorities should either have considered having recourse to such alternative measures or should at the very least have explained in their decisions why such alternatives would not have ensured that the trial would follow its proper course. This failure is made all the more inexplicable by the fact that since 1 July 2002 the Code of Criminal Procedure has expressly required the domestic courts to consider less restrictive "preventive measures" as an alternative to custody (see paragraph 61 above).

124. Lastly, the Court finds that the Government's argument that the applicant's detention was necessary "to ensure his safety and security of person" in view of the nature of the offence he had been charged with is without merit and unsupported by any evidence.

125. Having regard to the above, the Court considers that by failing to address specific facts or consider alternative "preventive measures" and by relying solely on the gravity of the charges, the authorities extended the

applicant's detention on grounds which, although “relevant”, cannot be regarded as “sufficient” to justify its duration.

126. There has therefore been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

127. The applicant complained that the criminal proceedings against him had been excessively long, in contravention of Article 6 of the Convention, which reads, in so far as relevant, as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

128. The Government contested that argument. They submitted that, following his acquittal, the applicant could no longer claim to be the victim of the alleged violation. They further reasoned that, in any event, the length of the criminal proceedings against the applicant had been compatible with the reasonable-time requirement set forth in Article 6. The domestic courts had held the hearings without undue delays. In addition, the applicant himself had contributed to the length of the proceedings. On many occasions, the hearings had been adjourned because of his counsel's failure to appear.

129. The applicant maintained his complaint. He submitted that considerable delays in the proceedings had been attributable to the Russian authorities. The trial court had been unable to deliver the verdict in accordance with the law and twice his conviction had been quashed on appeal. Furthermore, the prosecutor had failed to ensure the witnesses' presence in court, which had also caused delays in the proceedings. Lastly, in his view, the trial court had not scheduled the hearings regularly and only after his complaints had been communicated by the Court to the Government had the hearing of the case proceeded without delays.

A. Admissibility

130. With regard to the Government's objection that the applicant has lost his victim status, the Court reiterates that an applicant who complains about the length of criminal proceedings is not prevented from claiming to be a “victim” by the fact that the proceedings ended in his acquittal in so far as the acquittal, not being directly connected to the length of the proceedings, cannot be regarded as reparation for the alleged damage (see *Wall v. Poland* (dec.), no. 58369, 1 October 2002).

131. Having regard to the above, the Court considers that the applicant can still claim to be the “victim” of a breach of Article 6 of the Convention

in so far as he alleged that the criminal proceedings against him had been unreasonably long. It therefore dismisses the Government's objection.

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

B. Merits

1. The period under consideration

133. The Court notes that the applicant was arrested on 30 January 2002. The criminal proceedings against him ended on 7 February 2008, when the Regional Court upheld his acquittal on appeal. The Court further notes that the period from 14 October 2004, when the applicant's second conviction became final and no proceedings were pending, to 21 March 2006, when his conviction was quashed by way of supervisory review and the case was remitted to the trial court for fresh consideration, should not be taken into account (see, for example, *Brovchenko v. Russia*, no. 1603/02, § 97, 18 December 2008). Accordingly, the criminal proceedings against the applicant lasted approximately four years and seven months. This period spanned the investigation stage and the judicial proceedings, where the courts reviewed the applicant's case three times at two levels of jurisdiction, his conviction having been quashed by way of supervisory review after the second trial and the case having been remitted for a fresh examination.

2. Reasonableness of the length of the proceedings

134. The Court reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Nakhmanovich*, cited above, § 95).

135. The Court concedes that the case was rather complex. It concerned the sexual assault of a child with a learning disability and required comprehensive forensic analysis and examination. However, in the Court's view, the complexity of the case alone does not suffice to account for the length of the proceedings in the instant case.

136. The Court considers that the applicant did not cause any significant delays in the proceedings. The fact that the proceedings were adjourned in June and July 2007 owing to his counsel's sickness and vacation leave had little effect on the overall length of the proceedings.

137. As regards the conduct of the authorities, the Court considers that the prosecutor's office promptly completed the investigation and prepared the case for trial. The trial court scheduled and held hearings at regular intervals without undue delay and cannot be said to have remained inactive. However, most of the court hearings had to be adjourned because of the witnesses' failure to appear. During the second trial, which lasted approximately a year and a half, the court had to adjourn eight out of nineteen hearings scheduled. During the third trial, which lasted approximately a year and eight months, thirteen out of twenty-seven hearings were adjourned for the same reason. The Court discerns no indication in the case file that the trial court availed itself of the measures existing under national law to discipline the absent witnesses and obtain their attendance, in order to ensure that the case was heard within a reasonable time (see *Zementova v. Russia*, no. 942/02, § 70, 27 September 2007; *Sidorenko v. Russia*, no. 4459/03, § 34, 8 March 2007; and *Sokolov v. Russia*, no. 3734/02, § 40, 22 September 2005). The Court therefore finds that the delay occasioned by the witnesses' failure to attend hearings and the trial court's failure to ensure their attendance is attributable to the State.

138. The Court further observes that the superior courts quashed the applicant's conviction twice. As a result, the applicant had to stand trial three times. Although the Court is not in a position to analyse the legal quality of the domestic courts' decisions, it considers that, since the remittal of cases for re-examination is frequently ordered as a result of errors committed by lower courts, the repetition of such orders within one set of proceedings may disclose a serious deficiency in the judicial system (see, *mutatis mutandis*, among other authorities, *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003). The fact that the domestic courts heard the case several times did not absolve them from having to comply with the reasonable-time requirement of Article 6 § 1 (see, *mutatis mutandis*, *Litoselitis v. Greece*, no. 62771/00, § 32, 5 February 2004).

139. Lastly, the Court notes that the fact that the applicant was held in custody during the first and second trials required particular diligence on the part of the authorities dealing with the case to administer justice expeditiously (see, among other authorities, *Korshunov*, cited above, § 71).

140. Having regard to the foregoing, the Court considers that the length of the criminal proceedings against the applicant did not satisfy the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

141. Lastly, the applicant complained under Article 6 of the Convention that the criminal proceedings against him and the investigation of his allegations of ill-treatment in police custody had been unfair.

142. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione materiae*, the Court finds that there is no 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.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

143. 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

144. The applicant claimed 27,000 euros (EUR) in respect of non-pecuniary damage.

145. The Government submitted that nothing should be awarded to the applicant under this head as it remained open to him to bring a claim for compensation for damage in connection with his “rehabilitation” as provided for by domestic law. They further noted that the injuries that the applicant had sustained resulted from his own acts and should not give rise to any compensation. In any event, they considered the applicant's claims excessive.

146. The Court observes that it has found a combination of grievous violations in the present case. The applicant was subjected to ill-treatment in police custody. The investigation into his allegations of ill-treatment was ineffective. His pre-trial detention from 29 October to 31 December 2002 was unlawful. He remained in custody pending trial for over fourteen months, his detention not being based on sufficient grounds. The criminal proceedings against him have been excessively long. In such circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant the amount sought, namely EUR 27,000, in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

147. The applicant also claimed 20,000 Russian roubles (RUB) for the costs and expenses incurred before the domestic courts, RUB 55,000 for the

costs and expenses incurred for the proceedings before the Court, and RUB 8,400 for the translator's services.

148. The Government contended that the applicant had failed to demonstrate that the costs and expenses he claimed were necessary or reasonably incurred and proposed that the applicant's claim be dismissed in full.

149. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,100, covering costs under all heads, for the proceedings before the Court.

C. Default interest

150. 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 applicant's complaints concerning his ill-treatment in police custody, the ineffectiveness of the ensuing investigation, the unlawfulness and excessive length of his pre-trial detention and the excessive length of the criminal proceedings against him 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 limb;
3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;
4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;
5. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's pre-trial detention from 29 October to 31 December 2002;
6. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

7. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant;
8. *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, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
 - (i) EUR 27,000 (twenty-seven thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;
 - (ii) EUR 1,100 (one thousand one hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President