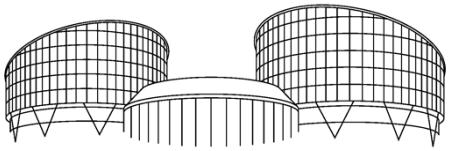

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LOLAYEV v. RUSSIA

(Application no. 58040/08)

JUDGMENT

STRASBOURG

15 January 2015

FINAL

15/04/2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Lolayev v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Erik Møse,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 9 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 58040/08) 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 Alan Khadzhi-Muratovich Lolayev ("the applicant"), on 9 October 2008.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had been unlawfully detained at a police station and ill-treated by police officers, and that there had been no effective investigation in this respect.

4. On 25 March 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and lives in Vladikavkaz.

1. Alleged ill-treatment of the applicant

6. The applicant was a police officer at the Office of the Interior of the Iristonskiy District of Vladikavkaz ("the police station") until 2005.

7. Between 25 and 27 February 2008 a submachine gun disappeared from the police station. The police officers noticed it was missing on 27 February 2008.

8. According to the applicant, on 28 February 2008, in the evening, police officers delivered him to the police station. There they handcuffed him to a chair and ill-treated him overnight, beating him on the back and head and pressing bare electric wires against his ears to make him confess to the theft of the sub-machine gun. He was released from the police station before noon on 29 February 2008.

9. On 3 March 2008 the applicant underwent a medical forensic examination. Forensic report no. 521 attested that he had concussion, abrasions on his head which could have been inflicted by hard blunt objects, areas of pigmentation on his earlobes resulting from healing abrasions which could have been inflicted as a result of the application of low-frequency electrical current, and areas of pigmentation on his lower arms which could have been caused by hard blunt objects, possibly handcuffs. The report stated that the aforementioned injuries could have been inflicted within the period, and in the circumstances, described by the applicant.

2. Investigation into the applicant's allegations of ill-treatment.

10. On 3 March 2008 the applicant complained about the events of 28-29 February 2008 to the prosecutor's office of the Republic of North Ossetia-Alania. The latter referred his complaints to the prosecutor's office of the Pravoberezhniy District of Vladikavkaz and to the prosecutor's office of the Iristonskiy District of Vladikavkaz for inquiry, in letters of 6 and 12 March 2008 respectively. The latter prosecutor's office further transmitted the applicant's complaint to the Vladikavkaz Investigation Department on 18 March 2008.

(a) First refusal to open a criminal investigation

11. On 4 April 2008 the Vladikavkaz Investigation Department refused to institute criminal proceedings in connection with the applicant's allegations. The decision stated that according to the applicant, at 9.15 p.m. on 28 February 2008 he received a phone call from a former colleague at the police station, Ms P., who told him that another former colleague from the same police station, Officer K., had some problems. Ms P. asked the applicant to call Officer K. The applicant called Officer K. The latter said that he had problems and asked the applicant to join him in Officer K.'s car, parked outside the applicant's house, to go to South Ossetia. Officer K. also asked the applicant to take his passport with him. The applicant went outside and joined Officer K. and another man in camouflage uniform in a silver grey Niva-Chevrolet car. The applicant sat in the back seat and they drove off. As they were driving, Officer K. told the applicant that when he started his duty shift he had signed an entry in the register confirming that

he had been issued with a sub-machine gun, but this had not actually been the case, as the gun had not been found. Officer K. asked the applicant to go with him to South Ossetia until everything had "cleared up". Then Officer K. and the other man began contending that it was the applicant who had taken the sub-machine gun, because on the day the sub-machine gun had gone missing he had been at the police station; this was recorded on CCTV. The applicant protested against these allegations, and the man in the camouflage uniform started beating him, while Officer K. pretended to try to separate them. Then they drove to the town centre, stopped at the police station, and the man in the camouflage uniform left. Soon Officer G., the deputy head of criminal investigations and the applicant's former colleague, came out of the police station. The applicant expressed indignation about the police officers' allegations and assault. Officer G. replied that he did not suspect the applicant, but asked him to help them if he could. The applicant said that he could not help them. Then Officer G. left and Officer S. came out of the police station and told the applicant that Mr A.L., the applicant's cousin, would soon arrive. Mr A.L. arrived shortly afterwards, accompanied by officers of the police special unit (SOBR) and asked the applicant to help Officer K. because he was a close friend. The applicant responded that there were no grounds to suspect him and that he did not wish to continue this conversation. Officer S. then said that they had a video recording, and the applicant asked to see it. They went together to the office of the head of criminal investigations on the second floor of the police station, where Officer Z. showed the applicant a recording of him entering and leaving the police station. The applicant explained that during his entire visit to the police station he had been accompanied by police officers. After they left that office Officer S., Mr A.L., and another man, X., whom the applicant did not know, took him to Officer S.'s office, where Mr A.L. again urged him to confess to stealing the sub-machine gun. Then they took him to a different office, where Officers K., D., Kas. and X. handcuffed him to a chair, taped his mouth, put wires against his ears and passed electric current through them. The applicant fell off the chair several times but they put him back and sent the current through the wires to his ears again. He managed to get rid of the tape and spit out the blood that had collected in his mouth. Officer K. started yelling at him, saying that he would receive no pity as the "minister" had personally ordered that he should be "locked up". The applicant then realised that he would not be able to endure the torture and offered to confess in writing that he had thrown the sub-machine gun into the river. However, they were unhappy with this suggestion. Then they took him to Officer K.'s office, where he and Officers D. and X. remained until 11 or 11.30 a.m. on 29 February 2008, when they let him go.

12. The decision further quoted forensic report no. 521 (see paragraph 9 above) and statements by police officers. In particular, Officer Kas. stated that he knew the applicant, as he had worked at the police station until 2005.

On 27 February 2008 they had realised that a sub-machine gun was missing. Officer M. had seen it last when he was on duty; he was subsequently dismissed from the police for its loss. When they tried to establish what had happened, they watched the CCTV records since 25 February 2008, this being the likely date of the sub-machine gun's disappearance. The recording showed the applicant entering the police station; in the film of him leaving he seemed to be holding an unidentified object under his jacket. As the applicant often visited the police station and went into its offices, including the office from which the sub-machine gun might have gone missing, it was decided to invite the applicant, show the recording to him, and ask him to return the weapon. Officer K., a relative of the applicant, was instructed to invite him. On the date in question Officer Kas. saw Officer K. and the applicant in the police station. The applicant did not have any visible injuries, seemed to be in a good mood and asked him how he was doing. An hour later he saw the applicant leaving the police station. Neither he nor any other police officers applied physical force to the applicant. However, Officer Kas. still suspected the applicant of stealing the sub-machine gun and believed that his allegations were an attempt to undermine any possible prosecution for the theft of the weapon. Officer Kas. believed that the applicant had caused the injuries stated in forensic report no. 521 himself, in order to corroborate his submissions.

13. Officer K. stated that he was a distant relative of the applicant. He then corroborated Officer Kas.'s statement concerning the loss of the sub-machine gun, and added that with the help of Ms P. he had contacted the applicant and arranged a meeting with him near his home. Officer K. went there by car alone and, when the applicant joined him, explained the situation to him and asked him to return the sub-machine gun, as otherwise Officer K. and his colleagues would have a lot of problems. The applicant denied being involved in the theft of the weapon, and agreed to go to the police station. On arrival they met Officer G., who also suggested that the applicant return the sub-machine gun. The applicant reiterated that he had nothing to do with its loss. Then Officer K. took him to the office of the head of criminal investigations and left him there with Officer Z. In an hour or an hour and a half he saw the applicant leaving the police station; he was sitting on a bench nearby with Officer Kas. He had not seen the applicant since. From Officer Z. he knew that the latter had shown the applicant the video recording and had asked him to return the sub-machine gun, but nobody had used physical force against him. Officer K. had no idea how the applicant had sustained the injuries or why he had accused the police officers of causing them; he maintained that those allegations were false.

14. Officer S. corroborated Officers Kas.'s and K.'s statements concerning the loss of the sub-machine gun, and added that on the day in question he had seen the applicant and Officer K. on the second floor of the police station. He had asked the applicant to return the sub-machine gun,

explaining that otherwise the police officers would be in serious trouble. However, the applicant denied being involved in its disappearance. Then Officer S. left and went to the first floor. He did not know where the applicant had gone afterwards but he saw no injuries on him. Officer S. did not know how the applicant had sustained the injuries described in forensic report no. 521, as no one in the police station had either ill-treated or insulted him. Officer S. believed that the applicant's allegations were intended to discredit his former colleagues.

15. Officer D. corroborated the statements of Officers Kas., K. and S. concerning the disappearance of the sub-machine gun, and added that on the date in question, when he left the police station on finishing work and was walking towards his car parked nearby, he had seen Officer K. and the applicant entering the police station. He had not spoken to the applicant and had only seen him from a distance. Officer D. had then gone home. He did not know how the applicant could have sustained the injuries stated in forensic report no. 521, as neither Officer D. nor other police officers had ill-treated him.

16. Officer G. corroborated the statements of Officers Kas., K., S. and D. concerning the disappearance of the sub-machine gun, and added that on the day in question, when he left the police station, he had seen the applicant and Officer K. nearby. They were talking peaceably and he did not see any injuries on the applicant's head or body. Officer G. approached them and told the applicant that there were grounds to believe that he had stolen the sub-machine gun and that he must return it. The applicant responded that he had nothing to do with its disappearance. The applicant did not make any complaints concerning the police officers. Officer G. had not seen the applicant since, and believed that his allegations were an attempt to avoid prosecution for the theft of the weapon.

17. The decision concluded that, as a result of the inquiry conducted, the applicant's allegations were not corroborated, and it was doubtful whether he had received the injuries described in forensic report no. 521 in the circumstances described by him. Accordingly, the actions of the police officers disclosed no evidence of a criminal offence.

18. A copy of the decision was sent to the applicant on the same date.

19. On 5 June 2008, following a complaint lodged by the applicant, a senior investigator of the Vladikavkaz Investigation Department set aside the decision of 4 April 2008 as premature, because a number of investigative steps had not been taken. In particular, the investigators were instructed to question the applicant and the police officers who had been on duty on the relevant date, to inspect, in the presence of the applicant, the office where he had allegedly been ill-treated, and to take other investigative measures if they appeared necessary.

20. A copy of the decision was sent to the applicant on the same date.

(b) Second refusal to open a criminal investigation

21. On 15 June 2008 the Vladikavkaz Investigation Department again refused to institute criminal proceedings in connection with the applicant's allegations. The decision reproduced verbatim the decision of 4 April 2008, with the addition of one paragraph. The paragraph concerned the questioning of Officer M., who had served at the police station since 2005. He submitted that he knew the applicant and that the latter frequently came to the police station to see his former colleagues. However, because of the time which had elapsed since then he could not remember whether he had seen the applicant at the end of February 2008, and had no information about whether the applicant had been forcibly held at the police station between 28 and 29 February 2008.

22. On 16 June 2008 a copy of the decision was sent to the applicant, who complained about the decision to the Office of the Prosecutor General. That complaint was subsequently forwarded to the Prosecutor's Office of the Iristonskiy District of Vladikavkaz.

23. On 6 August 2008 the Iristonskiy District Prosecutor's Office allowed the applicant's complaint, found the decision of 15 June 2008 ungrounded, and forwarded the materials concerning the complaint to the Vladikavkaz Investigation Department for it to set aside that decision.

24. On 9 October 2008 a senior investigator of the Vladikavkaz Investigation Department set aside the decision of 15 June 2008 as premature and superficial as, in particular, the circumstances in which the applicant had sustained the injuries had not been established. The investigators were instructed to (i) establish the circumstances in which the injuries had been caused; (ii) inspect in the presence of the applicant the office where he had allegedly been ill-treated; (iii) question Officer Mir.; (iv) question Officer Z.; (v) question Mr A.L.; (vi) add to the case file materials relating to criminal proceedings instituted in connection with the disappearance of the weapon from the police station; and (vii) take other investigative measures if they appeared necessary.

(c) Third refusal to open a criminal investigation

25. On 20 October 2008 the Vladikavkaz Investigation Department again refused to institute criminal proceedings in connection with the applicant's allegations. The decision reproduced verbatim the decision of 15 June 2008, with the addition of two paragraphs setting out the submissions of Officers Mir. and Z. Officer Mir. stated, in particular, that at 8.30 a.m. on 28 February 2008 he had started his 24-hour duty shift at the police station. Because of the time that had passed since then, he could not remember whether the applicant had been delivered to the station during his duty hours, but he was positive that nobody had used physical force on him. Officer Z. stated that after the official weapon had gone missing from the police station it had appeared possible that the applicant had been involved

in its theft, as he had been recorded leaving the police station with his arm pressed against his body. When the applicant was asked why he had held his arm in such a way he responded that that was how he walked. However, it was clear to Officer Z. that he was lying. He was then asked to tell everything he knew about the weapon's disappearance, but he said he knew nothing and left the office. No one either threatened the applicant or applied physical force to him.

26. The applicant was informed of the decision by a letter sent on the same date.

27. On 19 March 2009, following a complaint lodged by the applicant, a senior investigator of the Vladikavkaz Investigation Department set aside the decision of 20 October 2008 as superficial since (i) the circumstances in which the applicant had sustained the injuries had not been established; (ii) neither the applicant nor Mr A.L. had been questioned; and (iii) materials concerning criminal proceedings instituted in connection with the disappearance of the weapon from the police station had not been added to the case file. The investigators were instructed to rectify the above shortcomings.

28. The applicant was informed of the decision by a letter sent on the same date.

(d) Fourth refusal to open a criminal investigation

29. On 30 March 2009 the Vladikavkaz Investigation Department again refused to institute criminal proceedings in connection with the applicant's allegations. A copy of that decision has not been provided to the Court.

30. The applicant was informed of this decision by a letter sent on the same date.

31. On 31 May 2010, following a complaint lodged by the applicant, a senior investigator of the Vladikavkaz Investigation Department set aside the decision of 30 March 2009, on the ground that the investigators had failed to rectify the shortcomings indicated in the decision of 19 March 2009. They were instructed to (i) enclose in the case file materials concerning criminal proceedings instituted in connection with the disappearance of the weapon from the police station; (ii) establish the applicant's whereabouts and question him in relation to the injuries sustained; (iii) establish the whereabouts of Mr A.L. and question him with respect to his meeting with the applicant at the police station; (iv) carry out a forensic medical examination of the applicant with a view to establishing how the injuries had been caused; and (v) take other investigative measures if they appeared necessary.

32. The applicant was informed of the decision by a letter sent on the same date.

(e) Fifth refusal to open a criminal investigation

33. On 25 June 2010 another forensic examination was conducted, apparently on the basis of the materials in the case file. Forensic report no. 98 stated that the applicant had concussion and abrasions on his head which could have been inflicted by hard blunt objects, possibly on 29 February 2008. He also had a scar on his tongue formed as a result of a healed wound, and pink pigmentation of skin on his earlobes and on his right lower arm. On the basis of the materials available it was not possible to determine either when and how those injuries had been caused, or their gravity.

34. On 30 June 2010 the Vladikavkaz Investigation Department once again refused to institute criminal proceedings in respect of the applicant's allegations. The decision reproduced verbatim the decision of 20 October 2008, with an additional paragraph describing forensic report no. 98 of 25 June 2010.

35. A copy of the decision was sent to the applicant on the same date.

36. It appears that the decision of 30 June 2010 was again set aside by a senior investigator of the Vladikavkaz Investigation Department.

(f) Criminal investigation of the applicant's allegations

37. On 16 May 2011, after the Court had communicated the application to the respondent Government, the Iristonskiy Inter-District Investigation Department of Vladikavkaz instituted criminal proceedings against Officers K., Kas. and D. on account of the applicant's ill-treatment.

38. On 7 June 2011 the applicant was granted victim status in the proceedings.

39. In a letter of 3 October 2011 the Prosecutor's Office of the Republic of North Ossetia-Alania informed the applicant that a number of investigative steps had been taken in his case. They included confrontations between the applicant and Officers K., Kas. and D.; identification of the fourth suspect on the basis of photographs; and inspection of the crime scene in the presence of the applicant.

40. On 31 October 2011 the applicant lodged a complaint under Article 125 of the Code of Criminal Procedure with the Leninskiy District Court of Vladikavkaz. He alleged, in particular, that, whereas he had indeed taken part in the confrontations with Officers Kas., D. and K. in September 2011, he had not taken part in the inspection of the crime scene, which had apparently been conducted later, or in the identification of the fourth suspect on the basis of photographs; and that his signature on the records of these investigative actions had been forged. The applicant made a number of other complaints concerning the progress of the investigation.

41. On 2 November 2011 the Leninskiy District Court returned the complaint unexamined, on the ground that the applicant had failed to specify the actions or omissions of the investigators that he was seeking to

have declared unlawful. The applicant was advised that he could resubmit his complaint after it had been rectified.

42. Between 10 and 11.35 a.m. on 13 November 2011 the investigating authorities conducted a confrontation between the applicant and Mr E.L., a relative of both the applicant and Officer K. They were questioned about the events of 28-29 February 2008. The applicant reiterated his account of the events. Mr E.L. stated that during the evening of 28 February 2008 Officer K. had called him and asked to meet him. They met at a supermarket, where Officer K. told him that the applicant was suspected of stealing a sub-machine gun from the police station, and asked him to talk to the applicant. Mr E.L. agreed. On the same date he arrived at the police station and entered an office: he could not remember exactly which one because of the time that had passed since the events. In the office he was left alone with the applicant. When Mr E.L. asked the applicant about the sub-machine gun, the latter replied in a rude manner. Mr E.L. then pushed him and said that that was no way to talk to a relative. The applicant hit Mr E.L. back and this started a fight. Then Officers K. and Dz. appeared and separated them. The applicant said that he would complain about what had happened, and Mr E.L. left. He had not spoken to the applicant since. On 12 October 2011 he met Officer K., who reminded him of those events and said that criminal proceedings had been instituted against him and other police officers in this respect. As Mr E.L. thus became aware that police officers "were suffering" because of injuries he had caused the applicant, he decided to go to the police station and confess. Mr E.L. added that he had not told his relatives about the events of 28 February 2008, so as not to upset them. The applicant contested Mr E.L.'s submissions and insisted on his account of the events. He said that he had no idea why Mr E.L. had contended that he had caused him injuries.

43. The investigator noted that, apart from the concussion and abrasions on the head, according to forensic report no. 98 of 25 June 2010 the applicant also had a scar on his tongue and pink pigmentation of skin on his earlobes and on the right lower arm, and asked Mr E.L. for clarification in this respect. Mr E.L. replied that in the course of the fight he had hit the applicant on the head and face and other places, and that therefore the concussion and the abrasions on the head had most likely been caused by his blows. However, Mr E.L. could provide no information with respect to the scar on the applicant's tongue and the pigmentation of his skin.

44. Between 1 p.m. and 2.45 p.m. on 13 November 2011 the investigating authorities conducted a confrontation between the applicant and Officer Dz. who served at the police station. They were also questioned about the events of 28-29 February 2008. The applicant reiterated his account of the events. Officer Dz. submitted that on 27 February 2008, after it had been established that a sub-machine gun had gone missing and the recording of the applicant leaving the police station had been found on the

CCTV, Officer K. was instructed to invite the applicant to the police station and to ask him to return the weapon. On the date in question Officer Dz. saw Officer K. and the applicant at the police station. The applicant seemed to be in a good mood and did not have any injuries. Officer Dz. was aware that Officer K. had also told Mr E.L., the applicant's relative, that the applicant was suspected of stealing the sub-machine gun, and asked him to come to the police station to talk to the applicant. Mr E.L. arrived at the police station on the same date, and was alone with the applicant in an office for some time, while Officers Dz. and K. stood outside in the corridor. Officer Dz. could not remember exactly which office that was. When they heard noise and the sound of a quarrel in the office, they entered it and saw the applicant and Mr E.L. fighting. When Officers Dz. and K. separated them, the applicant said that he would complain about this. Officer Dz. then left and had not seen the applicant since. In his view, the applicant alleged that he had been beaten by the police officers because Mr E.L. was his relative. He contended that the police officers had not caused any injuries to the applicant. The applicant contested Officer Dz.'s submissions and insisted on his own account of the events. He emphasised that Mr E.L. had not caused the injuries.

45. On 19 February 2012 the criminal proceedings were discontinued on the ground that the actions of Officers K., Kas. and D. disclosed no evidence of a criminal offence.

46. The applicant complained to the Investigating Committee of the Republic of North Ossetia-Alania of a number of breaches in the conduct of the investigation.

47. On 6 April 2012 the Investigating Committee of the Republic of North Ossetia-Alania dismissed his complaint, stating that all the investigative steps had been taken in accordance with the laws on criminal procedure.

(g) Criminal proceedings in connection with the theft of the sub-machine gun

48. On an unspecified date after 27 February 2008 a criminal investigation was instituted in connection with the alleged theft of the sub-machine gun from the police station by an unidentified person.

49. On 24 August 2008 the investigation was suspended on the ground that the person to be charged with the offence could not be identified.

3. Alleged persecution of the applicant

50. According to the applicant, since the events of 28-29 February 2008 the police officers have continued to put pressure on him. In particular, they followed his movements, called him by telephone and tapped his conversations, and visited him at home, interrogating his friends, acquaintances and neighbours about him. Because of this pressure, in September 2010 he had had to close the grocery/delicatessen that he had

been running for several years. Furthermore, in the applicant's submission, he was unable to vote in the election of the Russian President held on 2 March 2008 as a result of that persecution, as he was afraid to leave his home.

51. The applicant submitted a number of complaints to the prosecuting authorities in this respect. They appear to have been dismissed.

II. RELEVANT DOMESTIC LAW

52. Under Article 21 § 2 of the Constitution no one shall be subjected to torture, violence or other severe or degrading treatment or punishment.

53. Article 9 of the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "CCrP") prohibits violence, torture or any other cruel or degrading treatment of participants in criminal proceedings.

54. Article 286 § 3 of the Criminal Code of the Russian Federation provides that the actions of a public official which clearly exceed his authority and entail a substantial violation of an individual's rights and lawful interests, committed with violence or the threat of violence, are punishable by three to ten years' imprisonment, with a prohibition on occupying certain posts or engaging in certain activities for a period of three years.

55. Chapter 12 of the Code of Criminal Procedure ("Arrest of a suspect") regulates arrest (*задержание*). Article 91 sets out the grounds for the arrest of a suspect.

56. Article 92 sets out the procedure for the arrest of a suspect. A record of arrest must be drawn up within three hours of the time the suspect is brought to the investigating authorities or the prosecutor. The record of arrest must include the date, time, place, grounds and reasons for the arrest. It should be signed by the suspect and the person who carried out the arrest. Within twelve hours of the time of the arrest the investigator must notify the prosecutor of it in writing. The suspect must be questioned in accordance with the established procedure and a lawyer must be provided for him/her at his/her request. Before questioning the suspect has the right to a confidential two-hour meeting with a lawyer.

57. Article 125 of the Code of Criminal Procedure provides for judicial review of decisions, acts or inaction on the part of an inquirer, investigator or prosecutor which affect constitutional rights or freedoms. The judge is empowered to verify the lawfulness and reasonableness of the decision, act or inaction and to grant the following forms of relief: (i) to declare the impugned decision, act or inaction unlawful or unreasonable and to order the authority concerned to remedy the violation; or (ii) to dismiss the complaint.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

58. The applicant complained that he had been ill-treated by the police and that there had been no effective investigation into the matter. He relied on Articles 3 of the Convention, which reads as follows:

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

59. In their observations submitted in July and November 2011 the Government argued, firstly, that as a criminal investigation which had opened on 16 May 2011 in connection with the applicant's allegations was pending, the applicant's complaint of the alleged ill-treatment was premature. Secondly, they argued that the applicant had failed to exhaust the available domestic remedies, as he had not appealed to a court against the investigator's refusals to open a criminal investigation. With regard to the applicant's complaint that the investigation into his allegations had been ineffective, the Government submitted that the applicant's Convention rights had not been violated.

60. The applicant maintained his complaint. He insisted that in the evening of 28 February 2008 he had been ill-treated by police officers, and that the ensuing investigation had been manifestly inadequate. The applicant pointed out that basic investigative steps, such as studying the CCTV records of 28 and 29 February 2008, had never been taken. He also noted that the suspicion that he had stolen the sub-machine gun was totally unfounded as, if there had been any incriminating evidence, the investigating authorities would have charged him with theft, rather than having the investigation into the disappearance of the sub-machine gun suspended for failure to identify a culprit.

A. Admissibility

61. As regards the plea of non-exhaustion raised by the Government, the Court notes that it has previously found that the possibility of challenging before a court of general jurisdiction a prosecutor's decision not to investigate complaints of ill-treatment constitutes an effective remedy available in the Russian legal system in respect of such complaints (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003, and *Belevitskiy v. Russia*, no. 72967/01, §§ 54-67, 1 March 2007). At the same time, in a number of cases the Court has held that the applicants were exempted from using this remedy where a refusal to open an investigation had already been quashed by a higher prosecutor. It found that a requirement to appeal yet again against a subsequent refusal would be over-formalistic, and would

place an excessive burden on the applicant (see, among others, *Samoylov v. Russia*, no. 64398/01, § 45, 2 October 2008, and *Georgiy Bykov v. Russia*, no. 24271/03, § 46, 14 October 2010).

62. In the case at hand, although the applicant did not appeal to a court against any of the decisions refusing to institute criminal investigations into his allegations of ill-treatment, between 2008 and 2010 he brought numerous complaints in this regard before the higher investigating and prosecuting authorities, which led to the decisions being quashed four times and an additional inquiry ordered. Therefore, an appeal to a court against any of the decisions refusing to institute criminal proceedings would have been devoid of any sense, as this decision was in any event quashed by the higher investigating or prosecuting authorities. Taking into account also that the investigators responsible for handling the applicant's case were given precise instructions as to which investigative actions had to be taken in the course of the additional inquiry, in the Court's view an appeal to a court could only lead to a repetitive result.

63. Accordingly, the Court considers that in these circumstances the applicant should be dispensed from the requirement to appeal in court against the prosecuting authorities' refusals to open criminal proceedings (see *Samoylov*, cited above, § 45). The Government's objection should therefore be dismissed in this connection.

64. As regards the Government's argument that the complaint was premature because the investigation, which eventually opened on 16 May 2011, was pending, the Court notes that the investigation was closed on 19 February 2012. Accordingly, the Court dismisses the Government's objection in this connection as well.

65. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) 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 alleged ill-treatment of the applicant

(a) General principles

66. The Court has observed on many occasions that Article 3 of the Convention enshrines one of the fundamental values of democratic societies and as such prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see, for example, *Aksoy v. Turkey*, 18 December 1996, § 62, *Reports of Judgments and Decisions* 1996-VI, and *Aydın v. Turkey*, 25 September 1997, § 81, *Reports* 1997-VI). The Court further notes, as it has held on many occasions, that the authorities have an obligation to protect the physical integrity of persons in detention. Where an

individual is taken into custody in good health but is found to have injuries at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see *Ribitsch v. Austria,* 4 December 1995, § 34, Series A no. 336; see also, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch,* cited above, § 34, and *Salman*, cited above, § 100).

(b) Application to the present case

(i) Establishment of the facts

67. The Court observes that from the applicant's submissions, corroborated by statements by Officers K., Kas., S., D., G. and Z., given in 2008 in the course of the domestic inquiry (see paragraphs 11-16 and 25 above), it follows that on 28 February 2008 Ms P. contacted the applicant by telephone at Officer K.'s request and told him that Officer K. needed to talk to him. Officer K. then went to the applicant's address by car. When the applicant came outside and joined Officer K. in his car, the latter told the applicant that a sub-machine gun had gone missing at the police station and that it was suspected that the applicant had taken it; he asked the applicant to go with him to the police station to provide explanations. The applicant agreed. When they arrived at the police station they were met by Officer G., who asked the applicant about the sub-machine gun. The applicant denied any involvement in its disappearance. After Officer G. had left, Officer S. came out of the police station and also asked the applicant about the sub-machine gun. The applicant and Officer K. entered the police station, where they were seen by Officers Kas. and D. The applicant was then taken to an office on the second floor of the police station, where Officer Z. showed him a video recording of himself leaving the police station several days earlier.

68. On the basis of the foregoing the Court finds it established that in the evening of 28 February 2008 Officer K. took the applicant to the police station, where on different occasions he had conversations with Officers K., G., S., and Z., and was at least seen by Officers Kas. and D. The applicant

was then taken to an office where a video recording of him leaving the police station several days earlier was shown to him.

69. The Court further notes that, according to the applicant, he was then taken to a different office and ill-treated by police officers, who beat him and tortured him with electricity, and eventually released him the next morning. According to the police officers, no one ill-treated the applicant and he was released later the same evening.

70. The evidence available does not permit the Court to establish the exact length of time the applicant was held at the police station. However, having regard to the materials in its possession, the Court concludes that he must have been held there for at least several hours during the evening of 28 February 2008.

71. The Court further takes note of forensic report no. 521 of 3 March 2008 (see paragraph 9 above) attesting that the applicant had concussion, abrasions on his head which could have been inflicted by hard blunt objects, areas of pigmentation on his earlobes resulting from healing abrasions which could have been inflicted as a result of the application of low-frequency electrical current, and areas of pigmentation on his lower arms which could have been caused by hard blunt objects, possibly handcuffs. According to the report, the injuries could have been inflicted within the period, and in the circumstances, described by the applicant. It further notes forensic report no. 98 of 25 June 2010, consistent with forensic report no. 521 of 3 March 2008 (see paragraph 33 above).

72. The Court considers that it follows from the forensic reports that the applicant sustained the injuries stated during the evening of 28 February 2008.

73. It further observes that according to the statements of police officer Dz. and the applicant's relative Mr E.L., given in the course of confrontations with the applicant held on 13 November 2011 (see paragraphs 42-44 above), in the evening of 28 February 2008 Officer K. met Mr E.L. He told the latter about the missing sub-machine gun and that the applicant was suspected of stealing it, and asked him to come to the police station and ask the applicant to return it. Mr E.L. agreed. At the police station he was left alone with the applicant in an office, where an argument broke out and developed into a fight, which ended when Officers K. and Dz. entered the office and separated Mr E.L. and the applicant.

74. Therefore, whereas from the applicant's submissions it follows that the injuries in question were caused by police officers who ill-treated him in an office in the police station, the police officers denied ill-treating the applicant, and Mr E.L. submitted that some of the injuries had been caused by his fight with the applicant inside the police station, which was confirmed by Officer Dz.

75. The Court has serious doubts as regards the reliability of statements by Mr E.L. and Officer Dz. It notes, firstly, that the statements were made

for the first time almost four years after the events in question. Although the applicant did submit that shortly after arriving at the police station he had met his other cousin, Mr A.L., this was clearly a different person. The Court notes that neither Mr E.L. nor Officer Dz. were mentioned in the accounts of the events given in 2008 by the applicant or other police officers. Furthermore, whereas Mr E.L. contended that he had hit the applicant on the head and face, he was unable to explain the cause of the other injuries sustained by the applicant, such as the scar on his tongue and the pigmentation on his earlobes and lower arms. Accordingly, the Court is unable to accept Mr E.L.'s and Officer Dz.'s statements as a credible explanation of the injuries caused to the applicant.

76. Therefore, having regard to its findings above that the applicant spent several hours at the police station in the evening of 28 February 2008 and that he sustained the injuries in question during that time, and also having regard to the applicant's consistent and detailed allegations, and in the absence of any plausible explanation as to the origin of those injuries, the Court finds it established that they were caused by the police officers in the circumstances described by the applicant.

(ii) Compliance with Article 3 of the Convention

77. In paragraph 76 above the Court established that the injuries attested by forensic reports no. 521 of 3 March 2008 and no. 98 of 25 June 2010 (see paragraphs 9 and 33 above) were caused to the applicant by police officers while he was being held at the police station in the evening of 28 February 2008. Accordingly, it finds that the applicant was subjected to ill-treatment by police officers in the circumstances described by him (see paragraph 8 above).

78. As to the seriousness of the acts of ill-treatment, the Court reiterates that in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The Court has previously had before it cases in which it has found that there has been treatment which could only be described as torture (see, among others, *Aksoy*, cited above, p. 2279, § 64; *Selmouni v. France* [GC], no. 25803/94, § 105, ECHR 1999-V; *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-IV (extracts); and *Samoylov*, cited above, §§ 52-54, 2 October 2008). The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. The Court also reiterates that, in respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own

conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Selmouni*, cited above, § 99).

79. The Court finds that in the instant case the existence of physical pain or suffering is attested by the medical reports and the applicant's statements regarding his ill-treatment in the police station. In particular, he claimed to have been tortured with electric shocks and handcuffed to a chair with his mouth taped, which was not refuted by the Government. The sequence of events also demonstrates that the pain and suffering was inflicted on him intentionally, in particular with the view of extracting from him a confession to stealing the sub-machine gun from the police station.

80. In these circumstances the Court concludes that, taken as a whole and having regard to its purpose and severity, the ill-treatment at issue amounted to torture within the meaning of Article 3 of the Convention.

81. Therefore, there has been a violation of Article 3 of the Convention under its substantive limb.

2. Effectiveness of the investigation

(a) General principles

82. 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 as to result, but as to 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).

83. Thus, 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 of their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports* 1998-VIII). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman*, cited above, § 106; *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 an investigation which undermines its ability to

establish the cause of injuries or the identity of those responsible will risk falling foul of this standard.

84. Furthermore, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation was 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 has been given to the commencement 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 during the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

(b) Application to the present case

85. The Court observes that a criminal investigation into the applicant's allegations was instituted only on 16 May 2011, after the application had been communicated to the respondent Government. Earlier, a criminal investigation was refused five times, with four refusals being set aside by the higher investigating or prosecuting authority. The very failure to institute criminal proceedings for four years, despite the existence of a medical report attesting to the applicant's injuries, undoubtedly undermined the prospects of a meaningful investigation into the circumstances in which they were caused.

86. Furthermore, although the investigating authorities promptly questioned a number of police officers, a number of investigative steps were taken with inexplicable delay or not taken at all. The Court notes in this regard that each time a refusal to institute a criminal investigation was set aside, the higher investigating or prosecuting authority gave clear instructions concerning the investigative steps to be taken with respect to the applicant's allegations. However, most of these instructions were disregarded by the investigating authorities in charge of the case. Thus, no inspection of the crime scene took place until 2011, and even then it is not clear whether it was properly conducted (see paragraphs 39-40 above). Mr A.L., the applicant's cousin, who, according to the applicant, took part in the events, was never questioned. Evidence submitted to the criminal proceedings in connection with the disappearance of the sub-machine gun from the police station was never included in the case file and none of the decisions to refuse the institution of criminal investigation into the applicant's allegations offered any explanation as to the origin of the injuries found on him.

87. When the investigation was eventually opened, the investigating authorities appear to have accepted all too readily the statements of Mr E.L. and Officer Dz., despite the facts that they did not provide an explanation of the applicant's injuries caused by electric shocks, and they contradicted the

earlier statements of the applicant and other police officers (see paragraph 75 above). This, as well as the fact that on 19 February 2012 the investigation was eventually closed with no one being brought to criminal accountability, further undermines the domestic findings and gives grounds for serious misgivings regarding the efforts to establish the truth (see *Mosendz v. Ukraine,* no. 52013/08, § 98, 17 January 2013).

88. Having regard to the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment.

89. Accordingly, there has also been a violation of Article 3 of the Convention on account of the State's failure to comply with its procedural obligation.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

90. The applicant also complained under Article 13 of the Convention that there had been no effective investigation into his allegations of ill-treatment. Article 13 of the Convention reads as follows:

> "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."

91. The Government argued that the complaint was manifestly ill-founded.

A. Admissibility

92. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

93. Having regard to the finding relating to Article 3 (see paragraphs 85-89 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13 (see, among other authorities, *Velikanov v. Russia*, no. 4124/08, § 70, 30 January 2014).

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

94. The applicant complained under Article 5 of the Convention that he had been kept in detention from the evening of 28 February 2008 until the middle of the day on 29 February 2008 in the absence of any legal order authorising this detention. The relevant part of Article 5 of the Convention reads:

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

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition ..."

95. The Government submitted that there had been no violation of the applicant's rights under Article 5 of the Convention.

96. The applicant maintained the complaint.

A. Admissibility

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

B. Merits

98. The Court has previously noted the fundamental importance of the guarantees contained in Article 5 for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. In order to minimise the risks of arbitrary detention, Article 5 provides a corpus of substantive rights intended to ensure that the act of deprivation of liberty is amenable to independent judicial scrutiny and secures the accountability of the authorities for that measure. The unacknowledged detention of an individual is a complete negation of these guarantees and discloses a very grave violation of Article 5 (see, among other authorities, *Çiçek v. Turkey*, no. 25704/94, § 164, 27 February 2001, and *Luluyev and Others v. Russia*, no. 69480/01, § 122, ECHR 2006-XIII (extracts)).

99. The Court has found it established that the applicant was taken to the police station in the evening of 28 February 2008 and held there for several hours (see paragraph 70 above). The Court reiterates that in order to determine whether there has been a deprivation of liberty, the starting point must be the actual situation of the individual concerned and account must be taken of a whole range of factors arising in a particular case, such as the type, duration, effects and manner of implementation of the measure in question. The distinction between deprivation of, and a restriction upon, liberty is merely one of degree or intensity and not one of nature or substance. Although the process of classification into one or the other of these categories sometimes proves to be no easy task, in that some borderline cases are a matter of pure opinion, the Court cannot avoid making the selection upon which the applicability or inapplicability of Article 5 depends (see *Guzzardi v. Italy*, 6 November 1980, Series A no. 39, §§ 92 and 93, and *H.L. v. the United Kingdom*, no. 45508/99, § 89, ECHR 2004-IX). Article 5 of the Convention may apply to deprivations of liberty of even a very short length (see *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010 (extracts); *X. v. Austria*, no. 8278/78, Commission decision of 3 December 1979; *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 71, 22 May 2008; and *Creangă v. Romania* [GC], no. 29226/03, § 91, 23 February 2012).

100. In the case at hand the Court observes that although the applicant agreed to come to the police station, once inside he was forcibly held in an office by police officers who, moreover, tortured him with the aim of extracting a confession (see paragraph 77-81 above). In such circumstances the Court considers that the hours during which the applicant remained at the police station should be qualified as deprivation of liberty within the meaning of Article 5 of the Convention.

101. The Court notes that the police officers suspected the applicant of stealing a sub-machine gun from the police station, and brought him to the station to receive an explanation from him in this regard. However, although criminal proceedings were instituted in connection with the disappearance of the sub-machine gun, they were discontinued on 24 August 2008, and not only was the applicant never charged with the offence, he never even had the status of a suspect in the case (see paragraphs 48-49 above). His detention at the police station purportedly for questioning thus did not comply with the domestic procedural laws. It was neither acknowledged, nor logged in any custody records. In accordance with the Court's practice, this fact in itself must be considered a most serious failing, since it enables those responsible for an act of deprivation of liberty to conceal their involvement in a crime, to cover their tracks and to escape accountability for the fate of a detainee. Furthermore, the absence of detention records, noting such matters as the date, time and location of detention and the name of the detainee, as well as the reasons for the detention and the name of the

person effecting it, must be seen as incompatible with the very purpose of Article 5 of the Convention (see *Orhan v. Turkey*, no. 25656/94, § 371, 18 June 2002). Having regard to its findings in paragraphs 85-89 above, the Court also notes the authorities' failure to conduct a thorough and prompt investigation of the applicant's complaints in order to bring to accountability those responsible.

102. Accordingly, the Court finds that the applicant was held in unacknowledged detention without any of the safeguards of his right to liberty and security, which constitutes a particularly grave violation of Article 5 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

103. The applicant also complained under Articles 6 §§ 1-3 (a)-(d) and 8 of the Convention about the police putting pressure on him and, in particular, tapping his telephone. With a reference to Article 10 of the Convention, the applicant complained that he was unable to vote in the election of the Russian President on 2 March 2008 because of persecution by the police.

104. Having regard to all the material in the Court's possession and in so far as these complaints fall within its competence, 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 manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

105. 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. Pecuniary damage

106. The applicant claimed 44,000 euros (EUR) and EUR 4,000 for each month from September 2010, when he closed his grocery/delicatessen.

107. The Government found the claim unsubstantiated.

108. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

B. Non-pecuniary damage

109. The applicant claimed EUR 350,000 in respect of non-pecuniary damage caused to him by the violation of his Convention rights.

110. The Government found the claim excessive and submitted that, should the Court find a violation of the applicant's Convention rights, the finding of the violation should constitute sufficient just satisfaction in the present case.

111. The Court considers that the applicant's physical and mental suffering and frustration caused by the unlawful deprivation of liberty, the ill-treatment he was subjected to and the authorities' failure to conduct an adequate investigation into his allegations cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicant EUR 26,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on that amount.

C. Costs and expenses

112. The applicant made no claim for costs and expenses. Accordingly, the Court makes no award under this head.

D. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 3 and 13 of the Convention concerning the applicant's ill-treatment by the police and the absence of an effective investigation in this respect and the complaint under Article 5 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention in that the applicant was subjected to torture;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the State's failure to conduct an effective investigation into the applicant's allegations of ill-treatment;

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 of the Convention;

6. *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 26,000 (twenty-six thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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;

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

Done in English, and notified in writing on 15 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President