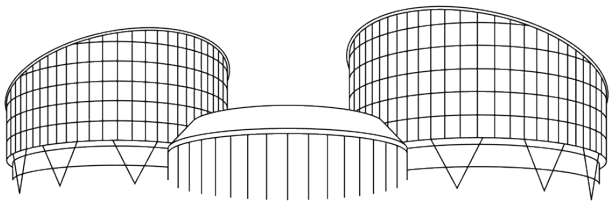

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MAKSIMOV v. RUSSIA

(Application no. 43233/02)

JUDGMENT

STRASBOURG

18 March 2010

FINAL

18/06/2010

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

In the case of Maksimov v. Russia**,**

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 25 February 2010,

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

PROCEDURE

1. The case originated in an application (no. 43233/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Vladimir Vladimirovich Maksimov ("the applicant"), on 22 November 2002.

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

3. The applicant alleged, in particular, that the domestic courts had refused to award him sufficient compensation for the damage caused as a result of the unlawful actions of police officers in April 2000, and that police officers had ill-treated him in December 2001.

4. On 20 May 2005 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and lives in Krasnoyarsk.

A. Attempt to search the applicant's country house in March 2000

7. On 2 March 2000 two police officers came to the applicant's country house, intending to search it. The applicant objected and the police officers left. According to the applicant they returned later that day, climbed over the fence and broke it.

8. On 23 December 2001 the applicant, having been unsuccessful in his attempts to initiate criminal proceedings against the police officers, lodged an action against the local prosecution authorities seeking compensation for damage resulting from their refusal to open a criminal case.

9. On 10 September 2002 the Krasnoyarsk Regional Court, at final instance, dismissed the action, finding that the prosecution authorities had no cause to institute criminal proceedings as the police officers had not searched the applicant's house.

B. Ill-treatment on 24 April 2000

1. Events on 24 April 2000

10. On 24 April 2000, at 2.30 a.m., two police officers, Mr N. and Mr Ne., and officer N.'s relative, Mr V., acting on information that the applicant owned an unregistered weapon, broke into his country house. The applicant and his fifteen-year-old daughter were in the house. The officers told the applicant that a man had been killed in a nearby house and demanded that the applicant hand over his hunting rifle and cartridges.

11. In response to the applicant's assertion that he did not own a weapon, officer N. twice hit him in the head with the hilt of his gun. Threatening to use a gun, he then ordered the applicant to stand with his face to the wall, his hands against the wall and his legs spread. Having learnt that the applicant's daughter was also in the house, officer N. ordered her to come downstairs. When she refused, officer N. shot into the air. As the applicant's daughter still refused to comply, officer N. approached and hit her at least four times in the head with the hilt of his gun. According to the applicant, having dragged the girl downstairs, officer N. continued beating him and his daughter, threatening them with murder.

12. The police officers and Mr V. searched the house. Having found no weapons, officer N. again beat the applicant up. The applicant alleged that officer N. had pressed the gun against his head and had pulled the trigger. No shot was fired because the gun was not loaded. More murder threats followed.

13. The police officers tied the applicant's hands behind his back and took him to another house where the beating and threats continued. The applicant was released several hours later after having promised to come to a police station on the following day.

2. Criminal proceedings

14. On 25 April 2000 the applicant lodged a complaint with the Yemelyanovskiy district prosecutor, describing the events of the previous night. Criminal proceedings were instituted.

15. On 24 July 2000 an investigator discontinued the criminal proceedings, finding that the applicant's complaints were manifestly ill-founded. The investigator observed that medical experts had examined the applicant and his daughter and had diagnosed both of them with closed craniocerebral injuries and concussion. The experts also recorded compound wounds in the parietal region of the applicant's head and four tear-contused wounds on his daughter's head. However, the investigator concluded that there was no evidence in support of the applicant's allegations that the injuries had been caused by officer N.

16. Four days later the Yemelyanovskiy district prosecutor quashed the decision and reopened the investigation.

17. On an unspecified date officer N. was served with the bill of indictment and committed to stand trial before the Yemelyanovskiy District Court of the Krasnoyarsk Region.

18. The applicant and his representative attended the trial hearings. On 4 June 2002 the District Court found the applicant's representative in contempt for having offended the presiding judge and excluded the representative from the courtroom.

19. On 6 June 2002 the Yemelyanovskiy District Court, having established that on 24 April 2000 Mr N. had broken into the applicant's country house, had severely beaten the applicant and his daughter and had searched the house, found him guilty of unlawful breaking and entering into a dwelling and gross abuse of position, and sentenced him to three years and six months' imprisonment. The District Court, without supporting its decision by any reasoning, also awarded 25,000 Russian roubles (RUB, approximately 840 euros) in compensation for non-pecuniary damage to be paid to the applicant and his daughter by Mr N. At the same time the District Court instructed the applicant to bring a separate action for compensation for damage caused to his and his daughter's health by Mr N.'s unlawful actions.

20. The applicant appealed, complaining, *inter alia,* about the unfavourable outcome of the proceedings.

21. On 27 August 2002 the Krasnoyarsk Regional Court, noting that the District Court had not committed any gross violations of the law, upheld the judgment of 6 June 2002. The applicant was present at the appeal hearing.

22. The judgment of 6 June 2002, as upheld on appeal on 27 August 2002, was not enforced in the part concerning compensation for damage, because Mr N. did not have any assets.

3. Tort action against the State authorities

23. On 4 November 2002 the applicant and his daughter lodged an action against the Russian Ministry of Finance, the Krasnoyarsk regional treasury and the Krasnoyarsk regional and Yemelyanovskiy district police departments, seeking compensation for non-pecuniary damage. The applicant argued that the State should bear responsibility for the unlawful actions of its agents, in this case police officer N., who had broken into his house and beaten him and his daughter. He also contended that the compensation awarded to him by the judgment of 6 June 2002 was insufficient and had not even been paid to him.

24. On 3 April 2003 the Sverdlovskiy District Court of Krasnoyarsk dismissed the action, reasoning as follows:

> "Having heard the parties and having studied the case materials, the court makes the following findings.
>
> On 6 June 2002 the Yemelyanovskiy District Court of the Krasnoyarsk Region found Mr N. guilty [of the criminal offences] proscribed by Article 139 § 3 and Article 286 § 3 (a) and (b) of the Russian Criminal Code and sentenced him to three years and six months' imprisonment. [The court] awarded 25,000 roubles in compensation for non-pecuniary damage to [the applicant] (10,000 roubles in his favour and 15,000 roubles to be paid to [his daughter]).
>
> It was established in the court's judgment that on 24 April 2000 Mr N., acting against [the applicant's] will, had entered his dwelling (a country house), where he had fired his gun a number of times. Mr N. had twice hit [the applicant] in the head with the hilt of his gun, causing an abrasion to the applicant's scalp... Mr N. had hit [the applicant's daughter] at least four times in the head with the hilt of his gun, causing a closed craniocerebral injury accompanied by concussion, and four tear-contused wounds...
>
> By virtue of Article 254 of the Russian Code of Civil Procedure an individual has a right to appeal to a court against the actions (inactions) of a State body, a municipal authority or their officials.
>
> According to Article 1069 of the Russian Civil Code damage caused to an individual or a legal entity by the unlawful actions (inactions) of State [and] municipal bodies or their officials... must be compensated. The compensation is to be paid out of the funds of the Treasury of the Russian Federation, the treasury of the constituent element of the Russian Federation or the treasury of the municipal entity respectively.

Article 1069 does not cover the unlawful actions of all employees of a State or municipal body but only those of the officials defined in the annotation to Article 285 of the Russian Criminal Code. Officials are persons who permanently, temporarily or on the basis of a specific authorisation perform functions of public agents or perform managerial, regulatory, administrative or economic functions in State and municipal bodies or State and municipal entities. For liability under Article 1069 of the Russian Civil Code to be invoked the official must have caused the damage in the performance of his duties.

By virtue of Article 49 of the Russian Constitution any person accused of having committed a criminal offence is considered innocent until his guilt is proven according to a federal law and established by a final court judgment.

It was established in the court hearing that after the judgment [of 6 June 2002] had become final, Mr N. was dismissed from [the police service].

By virtue of Article 1070 of the Russian Civil Code damage caused to an individual as a result of his unlawful conviction, the unlawful institution of criminal proceedings against him, his unlawful detention on remand, the unlawful application of a written undertaking not to leave his place of residence or the unlawful imposition of an administrative sanction such as arrest or correctional works should be compensated in full, irrespective of the guilt of the officials of the [police], investigating, prosecuting or judicial authorities, in a procedure established by law and out of the funds of the Treasury of the Russian Federation or, if prescribed by law, the funds of the treasury of the constituent element of the Russian Federation or the municipal entity.

Compensation for damage caused to an individual or a legal entity as a result of the unlawful actions of the [police], investigating or prosecution authorities which did not produce any of the consequences described in paragraph 1 of [Article 1070] should be awarded on the basis of and in line with the procedure established by Article 1069 of [the Russian Civil Code]...

The legal relations between claimants and defendants do not fall within the ambit of Article 1070.

Therefore, [the court] dismisses [the claimant's] claims that the actions (inactions) of the authorities of the Yemelyanovskiy district and Krasnoyarsk regional police departments and the Ministry of the Interior of the Russian Federation were unlawful.

By virtue of Article 151 of the Russian Civil Code a court may order perpetrators to pay monetary compensation for non-pecuniary damage (psychological and physical suffering) to individuals who sustained such damage through actions which violated their personal non-pecuniary rights or otherwise encroached on their non-pecuniary interests, as well as in other cases envisaged by a federal law.

Article 150 of the Russian Civil Code lists life, health, human dignity, personal safety ... among those non-pecuniary interests.

No compensation should be awarded for non-pecuniary damage because, by virtue of the judgment of the Yemelyanovskiy District Court of the Krasnoyarsk Region, the applicant was awarded compensation for non-pecuniary damage to be paid by Mr N., the direct tortfeasor.

> The present judgment has not established responsibility on the part of any officials in causing damage to [the applicant].
>
> In such circumstances the court considers [the claimant's] claims manifestly ill-founded and dismisses them in full."

25. On 16 July 2003 the Krasnoyarsk Regional Court upheld the District Court's judgment, finding that:

> "... in view of the fact that [the applicant] and [his daughter] made use of their right and lodged a claim for compensation for non-pecuniary damage by the direct tortfeasor and that their claims were allowed by the court in the course of the examination of the criminal case; that compensation for non-pecuniary damage constitutes one-off redress; and that dual compensation for non-pecuniary damage caused by the same actions of the person concerned is impossible, the [District] court lawfully dismissed the plaintiffs' claims for compensation for non-pecuniary damage in connection with the unlawful actions of Mr N."

C. Car hijacking in 2001

26. On 2 August 2001 the applicant's car was stolen. On the same day two individuals were arrested and charged with theft. The car was returned to the applicant. On 28 May 2002 the Krasnoyarsk Regional Court, at final instance, found the individuals guilty of the unlawful removal of a car without intent to steal it, acquitted them of a charge of theft and sentenced them to two years' probation.

D. Alleged ill-treatment in 2001

1. Events on 19 December 2001

27. According to the applicant, on 19 December 2001 two police officers, M. and D., stopped him in the street and attempted to carry out a search on his person. The applicant objected and the officers took him to the local police station, where he was beaten up and placed in a temporary detention unit. He was released two hours later without being given any reasons for his arrest.

28. The Government provided a different version of events, insisting that officers M. and D. had taken the applicant to Sverdlovsk district police station in Krasnoyarsk as he had committed an administrative offence proscribed by Article 162 of the RSFSR Code of Administrative Offences. In the station the officer on duty drew up report no. 29384 recording the details of the administrative offence. The report, which was provided to the Court by the Government, consisted of a two-page printed template in which the date, the officer's and applicant's names, the applicant's personal data and a description of the administrative offence had been filled in by

hand. The relevant part reads as follows (the pre-printed part in Roman script and the part written by hand in italics):

"*on 19 December 2001, at approximately 10.20 a.m., at a public transport stop ...* [the applicant] *was in an intoxicated state, walked staggering from one side to another and looked untidy,* thereby committing an administrative offence proscribed by *Article 162 of the Code of Administrative Offences, namely 'appearance in a public place in an intoxicated state'.*

Witnesses, victims_____

[The applicant] was explained to him his rights and duties laid down in *Article 247* of the Code of Administrative Offences.

PERPETRATOR'S EXPLANATIONS.

[I] drank 100 grams of vodka.

...

I, *[the applicant]*, have been informed that my case will be examined by *the Sverdlovskiy district police department*.

Decision taken in the case: *in compliance with Article 162 § 1 of the RSFSR Code of Administrative Offences a warning was issued."*

29. After his release from the police station on 19 December 2001 the applicant was examined by a doctor in the trauma unit of the local hospital and diagnosed with an injury to the left side of his chest. In the absence of visible traces of an injury, the diagnosis was made by means of palpation of the chest, with the applicant complaining of pain. The doctor called the Sverdlovskiy district police department and reported the applicant's injury, allegedly sustained at the hands of the police officers. The officer on duty recorded the conversation in an information log and assigned it case number 014623.

30. On the same day officer D. filed a one-sentence report indicating that on 19 December 2001 at 9.20 a.m., he and officer M. had arrested the applicant because he had been drunk, had been walking unsteadily and looked untidy.

31. On 19 December 2001 a duty police officer questioned the applicant about the circumstances in which he had sustained his injury. The applicant explained that on the morning of the same day he had been approached by two police officers who had asked him to present identification documents. In response to the applicant's statement that he had no papers, a police officer tried to search him. The applicant objected and was taken to the local police station, where he was searched. After the search one of the officers took him to a cell, where he hit the applicant several times in the chest, accompanying the blows with instructions to learn to communicate with the police properly.

32. On the following day officer M. addressed a written explanation to a higher-ranking officer. The explanation read as follows:

> "In response to the questions asked [I] can explain that on 19 December 2001, at approximately 9.20 a.m., when I, a police officer, was on patrol with officer D., we noticed a suspicious man who was dressed untidily (his coat was unbuttoned). Having approached the man, we introduced ourselves and asked him to present identification documents, in response to which [the applicant],... used offensive language and refused to show [the documents], saying that he did not have time. Subsequently we asked [the applicant] to accompany us to the police station... When we arrived at the station, the man was asked to put sharp objects on a shelf. [The applicant] took out a rusty clinch nail and said that he did not have anything else except for a plastic bag with documents which he needed to take to the Sverdlovskiy District Court. We suggested that he go to a cell for administrative arrestees. He entered the cell. Subsequently, a record of administrative arrest was drawn up under Article 162 of the Russian Code of Administrative Offences... After that [the applicant] was released."

2. Complaints to a prosecutor's office

33. On 20 December 2001 the applicant requested the Sverdlovskiy district prosecutor to institute criminal proceedings against the police officers, alleging that he had been unlawfully taken to the police station and that he had been searched and beaten up there. The applicant also claimed that no reports had been drawn up concerning his arrest.

34. On 25 December 2001 the Sverdlovskiy district prosecutor re-directed the applicant's complaint to the Sverdlovskiy district police department, requesting an internal inquiry.

35. On 9 January 2002 the head of the police department issued a report, finding as follows:

> "On 19 December 2001, at approximately 9 a.m., patrol officers [M. and D.] and police trainee, Ms I., started their shift from [the local police station]. At approximately 10.15 a.m. near a house.... officers M. and D. stopped [the applicant], who was in the state of alcohol intoxication, looked untidy, and was walking unsteadily, holding his right hand to his bosom, arousing the officers' suspicion. The police officers brought [the applicant] to the police station as he did not have any identification documents on him. Record [of the arrest] no. 1977 was entered in the arrests registration log in the station. On being signed in [the applicant] was searched in compliance with the requirements of section 11(2) of the Police Act.
>
> Police officer M. drew up administrative offence record no. 29384 in relation to [the applicant's] offence proscribed by Article 162 of the RSFSR Code of Administrative Offences. On 19 December 2001 a decision was issued on the basis of the case file materials: [the applicant was] warned.
>
> The arrests registration log shows that [the applicant] was released at 11 a.m.
>
> In his complaint [the applicant] contended that the police officers had arrested him without any valid reasons; furthermore, the police officers had unlawfully performed a body search on him. After he was brought to the police station he had been beaten up by a police officer.

> Police officers M. and D. explained in their statements that on 19 December 2001 they had arrested [the applicant]; an administrative offence record under Article 162 of the RSFSR Code of Administrative Offences had been drawn up concerning him; no physical force or special measures had been used against [the applicant].
>
> The official internal inquiry did not manage to resolve the discrepancies between the police officers' and [the applicant's] statements."

The materials from the police internal inquiry were sent to the office of the Sverdlovskiy district prosecutor.

36. On 18 January 2002 the prosecutor ordered a graphological analysis of the signature on the report of 19 December 2001 because the applicant claimed that he had not signed any document that day. On 5 February 2002 the Krasnoyarsk town expert bureau submitted an opinion, noting that the data provided insufficient basis for a firm finding to the effect that the applicant had signed the report. However, the experts did not exclude the possibility that the signatures belonged to the applicant.

37. On 18 February 2002 an assistant of the Sverdlovskiy district prosecutor, relying on the results of the internal police inquiry, the graphological expert report and on statements by the applicant, police officers M. and D. and the doctor who had examined the applicant on 19 December 2001, refused to institute criminal proceedings against the police officers, finding no criminal conduct in their actions. In particular, the assistant prosecutor held as follows:

> "Thus, the investigation did not establish the elements of a criminal offence... in the actions of police officers M. and D. [The applicant's] arrest and his signing-in at [the local police station] were performed in compliance with the administrative legal norms; an administrative offence report under Article 162 of the RSFSR Code of Administrative Offences was issued in respect of [the applicant]. On 19 December 2001 it was decided to take administrative action against [the applicant] in the form of a warning. For conduct to form the *corpus delicti* of an offence proscribed by Article 286 of the Russian Criminal Code an official must have committed acts which no one in any circumstances may commit (injuring an individual without any reason). However, it was impossible to reliably establish that [the applicant] had sustained an injury because his diagnosis was called into question and was not monitored in time. No forensic medical expert examination was performed in respect of those injuries."

38. The applicant appealed to the Sverdlovskiy District Court, complaining, *inter alia,* that his arrest on 19 December 2001 and his charging with an administrative offence had been unlawful. He insisted that he had only learned about the administrative charges from the assistant prosecutor's decision.

39. On 11 July 2002 the District Court quashed the decision of 18 February 2002 and authorised the prosecution authorities to perform an additional investigation. In particular, it stressed that the investigating authorities should question the police trainee, Ms I., about the circumstances surrounding the applicant's arrest and the doctor from the trauma unit about the applicant's alleged state of alcohol intoxication. The District Court also

observed that the applicant should lodge a separate complaint concerning the administrative arrest.

40. No appeal was lodged against the decision of 11 July 2002 and it became final. The applicant did not complain of the alleged unlawfulness of his administrative arrest in separate proceedings.

41. On 20 September 2002 a Sverdlovskiy deputy district prosecutor closed the investigation, finding no *prima facie* case to be answered. The decision incorporated the text of the decision issued on 18 February 2002 together with additional paragraphs which read as follows:

> "In the course of the additional investigation the acting head of the trauma unit of Sverdlovsk District, Mr B., was questioned; [he] explained that when a person is admitted to the trauma unit in a state of intoxication, a record in "a criminal registry" log is made stating that the person is in a state of alcohol intoxication. In [the applicant's] case no such record was made; that is why he cannot describe the state in which the applicant had been.
>
> A police officer from the patrol division of the Sverdlovsk district police department, Ms I., when questioned in the course of the additional investigation, explained that in December 2001 she had been a trainee. On 19 December 2001 she was in a patrol unit ... together with police officers M. and D. Between 9.30 a.m. and midday, [the applicant] was brought in; [he] behaved inappropriately and was dressed untidily. The man was placed in a cell for administrative arrestees and an administrative offence record under Article 162 of the RSFSR Code of Administrative Offences was drawn up in respect of his conduct. [The applicant] signed the record."

42. In response to the applicant's complaints about the prosecution authorities' failure to investigate his ill-treatment complaints thoroughly, on 14 November 2002 the Krasnoyarsk Regional Court, at final instance, upheld the decision of 20 September 2002, finding that the deputy prosecutor had thoroughly assessed the evidence and had drawn the correct conclusions.

43. On 30 January 2003 the Krasnoyarsk first deputy regional prosecutor quashed the decision of 20 September 2002, finding that the investigation was incomplete and the decision premature. He ordered a new round of investigations, setting out a list of steps to be taken, including the identification of individuals who might have seen the applicant in the police station. The first deputy also noted a number of inconsistencies in the police officers' statements regarding, among other aspects, the time of the arrest, the applicant's state of intoxication and the absence of identification documents.

44. On 18 March 2003 a deputy prosecutor of the Sverdlovskiy District dismissed the applicant's ill-treatment complaint as manifestly ill-founded. The decision repeated the wording of the previous two decisions refusing the institution of criminal proceedings against the police officers. In addition, a deputy prosecutor cited statements given by police officers M., D. and I. during the additional investigation. Owing to the remoteness of the events the three police officers were unable to recall the exact time when

they had arrested the applicant. The deputy prosecutor also pointed out that the samples of the police officers' handwriting did not allow a forensic expert to make a conclusive finding as to the authorship of the signatures on the record of the applicant's arrest. The final paragraph of the decision read as follows:

> "Thus, the investigation did not establish any criminal conduct ... [in the police officers' D., M., and I.] actions. [The applicant's] arrest and his signing-in at the [local police station] were performed in accordance with the administrative law in force at the material time; an administrative offence record was drawn up in respect of [the applicant]; he appealed against it in accordance with the procedure established by law. On 19 December 2001 [the applicant] was found guilty of [an administrative offence] and a warning was issued. For conduct to form the *corpus delicti* of an offence under Article 286 of the Russian Criminal Code an official must have committed acts which no one in any circumstances may commit. By virtue of sections 10 [and] 11 of the Police Act, police officers must put an end to and prevent the commission of administrative offences, [must] check individuals' identification documents if there are grounds to suspect them of having committed an administrative offence, [must] perform searches on individuals and their personal belongings; and [must] perform administrative arrests and draw up records of administrative actions. According to the Statutes of the Russian Federation Police Officers Patrol Service, patrol units must ensure public safety and preserve public order on their rounds, at their duty points and in the adjacent areas; [they] must prevent and put an end to administrative offences... Mr M. and Mr D. gave statements during the investigation explaining that they had checked [the applicant's] documents because [the applicant] was suspected of having committed an administrative offence."

45. On 16 September 2003 the Krasnoyarsk Regional Court, acting at final instance, dismissed the applicant's complaint against the decision of 18 March 2003, concluding that the deputy prosecutor's findings were correct.

3. Proceedings against officials of the Krasnoyarsk regional prosecutor's office

46. On 18 February 2002 the applicant complained before the courts that officials from the Krasnoyarsk regional prosecutor's office had not examined his complaints properly and had also intercepted his complaints to the Prosecutor General of the Russian Federation. On 17 April 2002 the Krasnoyarsk Regional Court disallowed the claim because the applicant had failed to comply with the procedural requirements for lodging such a complaint.

4. Tort action

47. The applicant brought an action before the Sverdlovskiy District Court against the Russian Ministry of Finance, the Ministry of the Interior, officials of the Krasnoyarsk regional and Sverdlovsk district prosecutors' offices and the Sverdlovskiy district police department. He sought compensation for damage caused by the police officers on 19 December

2001 on account of his arrest, ill-treatment and search and the forgery of administrative records concerning him.

48. On 26 December 2003 the Sverdlovskiy District Court dismissed the applicant's action, relying on the deputy prosecutor's decision of 18 March 2003 and citing Articles 151, 1064 and 1070 of the Russian Civil Code. The reasoning of the District Court read as follows:

> "Taking into account the circumstances established and having regard to the legal norms cited, the court does not see any ground to allow the action as it is unsubstantiated; [the applicant] did not provide the court with any evidence showing that he had sustained damage as a result of unlawful actions on the part of the police officers and prosecution authorities. At the same time, the lawfulness of the police officers' and prosecution authorities' actions ... was thoroughly looked into on a number of occasions and was confirmed by the decision of 17 July 2003 of the Sverdlovsk District Court of Krasnoyarsk, as upheld on appeal by the Krasnoyarsk Regional Court on 16 September 2003.
>
> [The applicant's] allegations that he sustained non-pecuniary damage as a result of unlawful actions on the part of the police officers and prosecution authorities are manifestly ill-founded having regard to the grounds which [the court took into account] in dismissing the action."

II. RELEVANT DOMESTIC LAW

A. Criminal-law remedies against illegal acts of public officials Investigation of criminal offences

49. Article 117 § 2 (f) of the Criminal Code of the Russian Federation makes acts of torture punishable by up to seven years' imprisonment. Under Article 286 § 3 (a) and (c) abuse of an official position associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment.

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

of the CCrP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of the participants in proceedings or prevent access to a court.

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

51. The relevant provisions of the Civil Code of the Russian Federation (of 30 November 1994) read as follows:

Article 150. Incorporeal assets

"1. An individual's life and health, dignity, personal integrity, honour and goodwill, professional reputation, the inviolability of his or her private life, personal and family secrets, the right to liberty of movement and to choose his or her place of temporary and permanent residence, the right to a name, copyright, other personal non-property rights and other incorporeal assets which a person possesses by virtue of birth or by operation of law shall be inalienable and shall not be transferable by any means..."

Article 151. Compensation for non-pecuniary damage

"If certain actions impairing an individual's personal non-property rights or encroaching on other incorporeal assets have caused him or her non-pecuniary damage (physical or mental suffering) ... the court may require the perpetrator to pay pecuniary compensation for that damage..."

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

53. The applicant, invoking Article 13 of the Convention, complained that the domestic courts' refusal to award him sufficient compensation for the damage caused by police officer N. had deprived him of an effective

remedy in respect of his complaint of ill-treatment. Article 13 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."

A. Submissions by the parties

54. The Government submitted that the applicant's right guaranteed by Article 13 of the Convention had been fully respected as police officer Mr N., who had broken into the applicant's house and had beaten him and his daughter up, had been convicted and sentenced to imprisonment. In addition, compensation of RUB 25,000 had been awarded to the applicant and his daughter. The Government stressed that the applicant's tort action against State bodies, including the Yemelyanovskiy district police department which had employed officer N., had lacked any legal basis as "dual compensation for non-pecuniary damage caused by the same actions of the person concerned [was] impossible".

55. The applicant averred that when the domestic courts awarded insufficient compensation for damage caused by the unlawful actions of a State official and when such compensation was not even paid, the State should bear subsidiary liability and should provide compensation for the damage caused by the actions of its agent. However, in his case the domestic courts had unlawfully refused to take into account the particular circumstances: the insufficiency of the compensation, his inability to obtain it and the responsibility of the State to provide effective protection of rights and to remedy violations of those rights, particularly when they had been perpetrated by State agents.

B. The Court's assessment

1. Admissibility

56. Before examining, if necessary, whether the applicant had at his disposal an effective remedy by which to complain about the ill-treatment he had sustained at the hands of the police on 24 April 2000, the Court needs to assess whether Article 13 of the Convention is in fact applicable, taking into account the fact that the Court has not been called upon to address a violation of the applicant's right guaranteed by Article 3 of the Convention.

57. In this connection the Court reiterates its finding in the case of *Klass and Others v. Germany* (6 September 1978, §§ 63-64, Series A no. 28), which read as follows:

> "... Article 13 states that any individual whose Convention rights and freedoms 'are violated' is to have an effective remedy before a national authority even where 'the violation has been committed' by persons in an official capacity. This provision, read literally, seems to say that a person is entitled to a national remedy only if a 'violation' has occurred. However, a person cannot establish a 'violation' before a national authority unless he is first able to lodge with such an authority a complaint to that effect. Consequently,.... it cannot be a prerequisite for the application of Article 13 that the Convention be in fact violated. In the Court's view, Article 13 requires that where an individual considers himself to have been prejudiced by a measure allegedly in breach of the Convention, he should have a remedy before a national authority in order both to have his claim decided and, if appropriate, to obtain redress. Thus Article 13 must be interpreted as guaranteeing an 'effective remedy before a national authority' to everyone who claims that his rights and freedoms under the Convention have been violated."

58. The Court has since translated its finding in *Klass* (cited above) into the notion that a person with an "arguable claim" of being the victim of a violation of a right enshrined in the Convention should be able to seek a remedy (see, for example, *Silver and Others v. the United Kingdom*, 25 March 1983, § 113, Series A no. 61). Ever since, Article 13 has been consistently interpreted by the Court as requiring a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 137, ECHR 2003-VIII).

59. Turning to the circumstances of the present case, the Court observes that the parties did not dispute that on 24 April 2000 the applicant had been subjected to treatment contrary to Article 3 of the Convention. The domestic authorities conducted a criminal investigation into the applicant's grievances and found former police officer N. guilty of gross abuse of position in that he had broken into the applicant's house and had assaulted him and his daughter, causing them serious injury (see paragraph 19 above). The fact that the applicant's allegations of ill-treatment were ultimately substantiated makes his claim an "arguable" one for the purposes of Article 13 of the Convention (see *Kaya v. Turkey*, 19 February 1998, § 107, *Reports of Judgments and Decisions* 1998-I, and *Chahal v. the United Kingdom*, 15 November 1996, § 147, *Reports* 1996-V).

60. The Court does not however lose sight of the fact that the criminal investigation into the applicant's ill-treatment complaints, the promptness and efficiency of which the applicant did not dispute, resulted in the criminal conviction and sentencing of the perpetrator. At the same time, relying on Article 13 of the Convention, the applicant argued that he had been unable to obtain sufficient compensation for the damage resulting from the inhuman treatment inflicted by a State agent. In this regard the Court reiterates that the nature of the right guaranteed by Article 3 of the Convention, being one of the most fundamental in the scheme of the Convention, has implications for the nature of the remedies which must be guaranteed to the applicant. In particular, the Court has already held on a

number of occasions that where the applicant has an arguable claim that he was ill-treated by agents of the State, the notion of an effective remedy for the purposes of Article 13 entails the payment of compensation where appropriate, in addition to a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Aksoy v. Turkey*, 18 December 1996, § 98, *Reports* 1996-VI, and *Aydın v. Turkey*, 25 September 1997, § 103, *Reports* 1997-VI). Seen in these terms the requirements of Article 13 are broader than a Contracting State's procedural obligation under Article 3 to conduct an effective investigation (see *Ergi v. Turkey*, 28 July 1998, § 98, *Reports* 1998-IV, and, *mutatis mutandis, Kaya,* cited above, § 107).

61. Accordingly, it falls to be ascertained whether, apart from benefiting from an effective and prompt investigation into his Article 3 complaints, the applicant was also afforded "an effective remedy before a national authority" within the meaning of Article 13 of the Convention. The Court therefore finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

62. The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The Court has already noted that the scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or the omissions of the authorities of the respondent State (see *Aksoy*, cited above, § 95, and *Menteş and Others v. Turkey*, 28 November 1997, § 89, *Reports* 1997-VIII). The Court further considers that, where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach (see *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 107, ECHR 2001-V (extracts)). Furthermore, in the case of a breach of Articles 2 and 3 of the Convention, compensation for the pecuniary and non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V).

63. Turning to the circumstances of the present case the Court observes, and it was not in dispute between the parties, that the applicant sustained serious injuries resulting from police officer N.'s conduct. The effective investigation into the applicant's ill-treatment complaints alone could not redress the physical and psychological damage flowing from the direct and deliberate invasion of the applicant's bodily integrity and therefore represented only one part of the group of measures necessary to provide redress for the ill-treatment by the State agent (see *Vladimir Romanov v. Russia*, no. 41461/02, § 79, 24 July 2008). The applicant submitted that he had attempted to obtain redress for the ill-treatment suffered by bringing two tort actions. However, he argued that the remedy was not sufficiently effective to comply with Article 13 of the Convention, as it did not provide adequate redress. It is apparent from the above that the Court must examine whether the judicial avenue for obtaining compensation for the damage sustained by the applicant represented an effective, adequate and accessible remedy capable of satisfying the requirements of Article 13 of the Convention.

64. The Court reiterates that the applicant introduced an action in the course of the criminal proceedings against the police officer N., seeking compensation for damage resulting from the latter's unlawful conduct. The domestic courts partly allowed the action, awarding the applicant RUB 10,000 in compensation for non-pecuniary damage, and instructed him to bring a separate action for compensation in respect of the injuries suffered to his person (see paragraph 19 above). The award was never enforced as Mr N. did not have the requisite funds. Subsequently, the applicant brought an action against a number of State agencies, including the Yemelyanovskiy district police department which had employed officer N., arguing that the amount of compensation awarded was inadequate and had not in fact been paid to him. He further argued that the courts should hold the State accountable and punish it for the outrageous conduct of its agent, in order to act as a deterrent to future offences, and should thus award him sufficient compensation for the injuries suffered. On 3 April 2003 the Sverdlovskiy District Court dismissed the action, holding that the situation in which the applicant had found himself was not covered by the legal provisions abrogating the State's immunity from tort liability and establishing the conditions for suits and claims against the State for damage caused by unlawful acts or omissions of its agencies and officials. In addition, the District Court found that the applicant had already made use of his right to obtain redress by successfully introducing the tort action against the direct tortfeasor, Mr N. (see paragraph 24 above). On 16 July 2003 the Krasnodar Regional Court, having examined the applicant's appeal, confirmed the overall correctness of the District Court's decision to dismiss the action. However, the Regional Court amended the District Court's reasoning by setting aside its conclusion as to the inapplicability of the legal provisions

on the State's liability, while endorsing the finding that the applicant had already benefited from the right to claim reparation of the damage from the perpetrator of the injury (see paragraph 25 above).

65. The Court observes that Russian law undoubtedly afforded the applicant the possibility of bringing judicial proceedings to claim compensation for the damage suffered as a result of his ill-treatment. The Court reiterates that the applicant availed himself of that possibility by bringing an action against the direct tortfeasor (see paragraph 19 above) and subsequently by bringing a claim against various State agencies seeking compensation for the damage he had sustained on account of the ill-treatment (see paragraph 23 above). The domestic courts awarded him RUB 10,000 in compensation for non-pecuniary damage to be paid by Mr N. The applicant's dissatisfaction with the amount of the award does not in itself demonstrate that a tort action was an ineffective remedy for airing such complaints. In this connection the Court notes that the "effectiveness" of a "remedy" within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the "authority" referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I).

66. At the same time the Court does not lose sight of the applicant's argument pertaining to the unenforceability of the judicial award. In this connection it is worth noting that the requirements of Article 13 take the form of a guarantee and not of a mere statement of intent or a practical arrangement. That is one of the consequences of the rule of law, one of the fundamental principles of a democratic society, which is inherent in all the Articles of the Convention (see *Čonka*, cited above, § 83). The Court reiterates that the enforceability of awards is among the requirements of Article 13 (see *T.P. and K.M.,* cited above, § 109). While acknowledgment of the wrong done might bring some degree of redress and satisfaction, if the redress measures are never implemented it cannot be said that the applicant concerned has obtained redress beyond a "paper" judgment.

67. It appears that the Russian courts are not required to give even minimal consideration to the issue of the possible enforcement of the judicial award they make against a private tortfeasor. Ultimately, a successful plaintiff has no possibility of foreseeing whether he will, in fact, receive the judicial award made in his favour. However, the Court is mindful of the fact that in the sphere of enforcement of judgments of a civil character the State's positive obligation under the Convention is limited to organising a system for enforcement of judgments which is effective both in law and in practice, and ensuring their enforcement without undue delay

(see *Sanglier v. France*, no. 50342/99, § 39, 27 May 2003, and *Fuklev v. Ukraine*, no. 71186/01, § 84, 7 June 2005). Only when the authorities are obliged to act in order to enforce a judgment and they fail to do so can their inactivity engage the State's responsibility under the Convention (see *Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C).

68. The Court observes that the applicant did not argue that the Russian internal legal order was not capable of guaranteeing the execution of the judgment given in his case or that the State – as the holder of public authority – did not act diligently in order to assist the applicant in securing execution of the judgment award against Mr N. The Court notes that the judgment of 6 June 2002 awarding the applicant damages to be paid by Mr N., as upheld on appeal on 27 August 2002, was final and binding, thus complying with the requirement of enforceability laid down by Article 13 of the Convention.

69. Furthermore, continuing with the applicant's argument as to the unenforceability of the award, the Court is mindful of the choice of remedies which were open to the applicant. Quite apart from the criminal proceedings to which he was a civil party, the applicant had the right to seek damages from the State, by either lodging a tort action in parallel with the criminal investigation against Mr N., although not within the criminal proceedings themselves, or by bringing such an action after the criminal proceedings were completed (see paragraph 52 above). There was nothing to stop the applicant bringing such an action at the appropriate moment and arguing that the State should be held liable for Mr N.'s actions and should pay compensation for the injury sustained. The Court is of the opinion that, had the applicant chosen that avenue instead of introducing an action against Mr N. within the criminal case, he could have excluded the risk of obtaining an award against an insolvent defendant. However, the applicant made the legal choice of introducing the action against Mr N. and should therefore bear the legal consequences, including the defendant's insolvency and the loss of standing to sue the State.

70. In sum, the Court concludes that the facts of the present case disclose no violation of Article 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE EVENTS OF 19 DECEMEBER 2001

71. The applicant complained that on 19 December 2001 the police had subjected him to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation into the incident. The Court will examine this complaint from the standpoint of the State's obligations under Article 3, which reads as follows:

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

A. Submissions by the parties

72. The Government, disputing the applicant's version of the events of 19 December 2001, submitted that there had been no objective evidence confirming the applicant's allegations. The investigating authorities had looked into the events in question thoroughly and dismissed the applicant's complaints, finding no case to be answered. In addition, the domestic courts at two levels of jurisdiction had examined his claims and also considered them manifestly ill-founded.

73. The applicant argued that he had obtained a medical certificate showing that he had been hit at least twice in the chest by the police officer. The investigators' reluctance to conduct a thorough investigation into the events had given the police officers time to come up with an explanation for their actions pertaining to his arrest, detention for two hours in the police station and ill-treatment.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

(i) As to the scope of Article 3

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

76. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of

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

77. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-XV (extracts); *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

(ii) As to the establishment of the facts

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

79. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas*, cited above, § 29). Although the Court is not bound by the findings of the domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention,

however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, § 32).

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

(i) Alleged ill-treatment by the police

80. Having examined the parties' submissions and all the material presented by them, the Court finds it established that on 19 December 2001 the applicant was arrested and brought to Sverdlovskiy district police station. He was released two hours later. Immediately after his release the applicant reported to the local trauma unit, alleging that a police officer had beaten him up. A medical examination in the unit resulted in his being diagnosed with an injury to the left side of his chest (see paragraph 29 above). The diagnosis was made on the basis of the applicant's complaints that he experienced pain during the palpation of his chest. The doctor did not record any visible traces of injury. No further tests were performed and no treatment was administered.

81. The Court notes the inconclusive character of the applicant's injury, which was consistently called into question by the examining doctor in the course of the criminal investigation. It is also mindful of the fact that the initial diagnosis was not backed up by any subsequent medical findings, with the history of development of the injury not being recorded since the applicant did not request further medical examinations or assistance. In addition, there was no other evidence of ill-treatment, such as testimony by an independent witness.

82. It follows that the material in the case file does not provide an evidentiary basis sufficient to enable the Court to find "beyond reasonable doubt" that the applicant was subjected to the alleged ill-treatment on 19 December 2001 (see, for similar reasoning, *Gusev v. Russia* (dec.), no. 67542/01, 9 November 2006, and, most recently, *Toporkov v. Russia*, no. 66688/01, §§ 43-45, 1 October 2009). Accordingly, the Court cannot but conclude that there has been no violation of Article 3 of the Convention under its substantive limb.

(ii) Alleged inadequacy of the investigation

83. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in

principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev*, cited above, §§ 107 et seq., and *Assenov and Others*, cited above, §§ 102 et seq.).

84. Turning to the circumstances of the present case, the Court observes that on 20 December 2001, the day following the alleged ill-treatment, the applicant complained to the Sverdlovskiy district prosecutor. The matter was hence duly brought before the competent authorities at a time when they could reasonably have been expected to investigate the circumstances in question. The applicant's allegations, which were detailed and consistent throughout the domestic proceedings and before this Court, were, at least to some extent, corroborated by a medical certificate recording an injury to the left side of his chest. The Court is also mindful of the fact that at the material time the doctor found the applicant's allegations of ill-treatment plausible enough to report the injury to the Sverdlovsk regional police department (see paragraph 29 above). The applicant's claim, as submitted in December 2001, was therefore shown to be "arguable" and the domestic authorities were placed under an obligation to carry out "a thorough and effective investigation capable of leading to the identification and punishment of those responsible" (see, for similar reasoning, *Egmez v. Cyprus*, no. 30873/96, § 66, ECHR 2000-XII; *Ahmet Özkan and Others v. Turkey*, no. 21689/93, §§ 358 and 359, 6 April 2004; and, most recently, *Generalov v. Russia*, no. 24325/03, § 139, 9 July 2009).

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

86. The Court reiterates that the applicant was entirely reliant on the prosecutor to gather the evidence necessary to corroborate his complaint.

The prosecutor had the legal power to interview the police officers, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for the purpose of establishing the truth of the applicant's account. His role was critical not only to the pursuit of criminal proceedings against the possible perpetrators of the offences but also to the pursuit by the applicant of other remedies to redress the harm he had suffered (see paragraph 50 above).

87. The Court will therefore first assess the promptness of the prosecutor's investigation, viewed as a gauge of the authorities' determination to identify and, if need be, prosecute those responsible for the applicant's ill-treatment (see *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V). In the present case the applicant brought his allegations of ill-treatment to the attention of the authorities by making a complaint to the Sverdlovskiy district prosecutor (see paragraph 33 above). The prosecutor did not launch an investigation after being notified of the alleged beatings. Instead he remitted the applicant's complaint to the Sverdlovskiy district police department, a State authority whose employees were implicated in the events which were to be looked into, with an order to conduct an official police inquiry (see paragraph 34 above). While the Court acknowledges the necessity of internal inquiries by the police with a view to possible disciplinary sanctions in cases of alleged police abuse, it finds it striking that in the present case the initial investigative steps, which usually prove to be crucial for the establishment of the truth in cases of police brutality, were conducted by the police force itself (see, for similar reasoning, *Vladimir Fedorov v. Russia*, no. 19223/04, § 69, 30 July 2009). In this connection the Court reiterates its finding made on a number of occasions that the investigation should be carried out by competent, qualified and impartial experts who are independent of the suspected perpetrators and the agency they serve (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-..., and *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III). Furthermore, although the thoroughness of the investigation into the applicant's ill-treatment complaints will be examined below, the Court would already stress at this juncture that it is not convinced that, despite relying on the police officers' statements in the decision of 18 February 2002, the assistant prosecutor had heard evidence from them in person. It appears that he merely recounted the officers' statements made during the internal inquiry. The Court, however, is mindful of the important role which investigative interviews play in obtaining accurate and reliable information from suspects, witnesses and victims and, in the end, the discovery of the truth about the matter under investigation. Observing the suspects', witnesses' and victims' demeanour during questioning and assessing the probative value of their testimony forms a substantial part of the investigative process.

88. Furthermore, the Court is mindful of the fact that at no point during the investigation were attempts made to conduct a medical expert examination of the applicant. The Court reiterates in this connection that proper medical examinations are an essential safeguard against ill-treatment. The forensic doctor must enjoy formal and *de facto* independence, have been provided with specialised training and been allocated a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000-X). The Court observes that an expeditious expert medical examination of the applicant was particularly crucial in the circumstances of the present case in the absence of conclusive medical evidence of the physical violence alleged by the applicant. In addition, having regard to the psychological effects which physical violence usually produces, the Court considers that evidence of psychological symptoms or trauma could also have been collected and assessed. A combination of physical and psychological evidence could, accordingly, have been used to corroborate or disprove the applicant's allegations. In this connection the Court notes with concern that the lack of objective evidence – such as medical expert examinations could have provided – was subsequently relied on as a ground for refusing to institute criminal proceedings against the police officers.

89. With regard to the thoroughness of the investigation, the Court further notes a number of significant omissions capable of undermining its reliability and effectiveness. Firstly, the Court observes that there was a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authorities. Although excerpts from the applicant's testimony were included in the decision not to institute criminal proceedings, the prosecution authorities did not consider that testimony to be credible, apparently because it reflected a personal opinion and constituted an accusatory tactic by the applicant. However, the investigator did regard the police officers' testimonies as credible, despite the fact that their statements could have constituted defence tactics and have been aimed at damaging the applicant's credibility. In the Court's view, the prosecution investigation applied different standards when assessing the testimonies, as that given by the applicant was deemed to be subjective but not those given by the police officers. The credibility of the latter testimonies should also have been questioned, as the prosecution investigation was supposed to establish whether the officers were liable on the basis of disciplinary or criminal charges (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

90. Secondly, the Court finds it striking that despite the direct order from a higher-ranking prosecutor (see paragraph 43 above), the investigator did not identify any witnesses who were not police or medical personnel. While the investigating authorities may not have been provided with the names of individuals who might have seen the applicant at the police station or might

have witnessed his alleged beating, they were expected to take steps on their own initiative to identify possible eyewitnesses. Furthermore, the Court considers it odd that it took the investigator almost a year to question the former police trainee, Ms I. (see paragraph 41 above). By the time of the first interview in September 2002 Ms I. was already a serving police officer within a system which requires loyalty and submission to certain constraints. The Court considers that the change in Ms I.'s status could have influenced the content of the statements she made.

91. In any event, the Court is under the impression that the primary focus of the investigation into the applicant's complaints was not the instance of alleged ill-treatment. Instead the authorities concentrated on finding an explanation for the applicant's arrest and detention in the police station and on disproving his allegations of forgery of the records. The Court would stress once again the odd nature of the prosecution authorities' actions when in the first days of the investigation they commissioned an expert examination of the signatures on the arrest report but omitted to request a medical examination of the applicant (see paragraph 36 above). An interview with the head of the trauma unit is another example of the authorities' unorthodox investigative technique (see paragraph 41 above). The Court finds it striking that the deputy prosecutor devoted that interview to verifying the allegations of the applicant's drunkenness rather than to soliciting a medical opinion as to the nature and cause of the applicant's injury.

92. The Court therefore finds that the investigating authorities' failure to look for corroborating evidence and their deferential attitude to the police officers must be considered to be a particularly serious shortcoming in the investigation (see *Aydın v. Turkey*, 25 September 1997, § 106, *Reports* 1997-VI).

93. Finally, as regards the judicial proceedings pertaining to the applicant's appeals against the prosecution decisions, the Court finds it striking that neither the district nor the regional courts manifested any interest in identifying and personally questioning witnesses of the applicant's alleged beating or hearing evidence from the officers involved in the incidents (see *Zelilof v. Greece*, no. 17060/03, § 62, 24 May 2007, and *Osman v. Bulgaria*, no. 43233/98, § 75, 16 February 2006). For the Court, this unexplained shortcoming in the proceedings deprived the applicant of an opportunity to challenge effectively the alleged perpetrators' version of the events (see *Kmetty v. Hungary*, no. 57967/00, § 42, 16 December 2003). Furthermore, the Court is mindful of the fact that while both the district and regional courts supported the deputy prosecutor's decision of 20 September 2002 to close the investigation, finding it to be well-founded and correct, the very same decision was quashed by a higher-ranking prosecutor two months later on the ground that the investigation was incomplete and the decision had been premature (see paragraphs 42 and 43 above).

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

95. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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."

97. On 9 September 2005 the Court invited the applicant to submit his claims for just satisfaction. The applicant did not submit any such claims within the required time-limits.

98. In such circumstances the Court would usually make no award. In the present case, however, the Court finds it possible to award the applicant 9,000 euros (EUR) in respect of non-pecuniary damage (compare *Mayzit v. Russia*, no. 63378/00, §§ 87-88, 20 January 2005; *Igor Ivanov v. Russia*, no. 34000/02, §§ 48-50, 7 June 2007; *Chember v. Russia*, no. 7188/03, § 77, 3 July 2008; *Nadrosov v. Russia*, no. 9297/02, § 55, 31 July 2008; *Rusu v. Austria*, no. 34082/02, § 62, 2 October 2008; and, most recently, *Kats and Others v. Ukraine*, no. 29971/04, § 149, 18 December 2008), plus any tax that may be chargeable.

99. 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

1. *Declares* unanimously the complaint concerning the absence of an effective remedy for the applicant's complaint about his ill-treatment on 24 April 2000, the alleged ill-treatment of the applicant on 19 December 2001 and the ineffectiveness of the investigation into this alleged incident of ill-treatment admissible and the remainder of the application inadmissible;

2. *Holds* by five votes to two that there has been no violation of Article 13 of the Convention;

3. *Holds* unanimously that there has been no violation of Article 3 of the Convention under its substantive limb;

4. *Holds* unanimously that there has been a violation of Article 3 of the Convention under its procedural limb;

5. *Holds* by five votes to two
   (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 9,000 (nine thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 18 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach	Christos Rozakis
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Judges Spielmann and Malinverni is annexed to this judgment.

C.L.R.
A.M.W.

JOINT PARTLY DISSENTING OPINION OF JUDGES SPIELMANN AND MALINVERNI

1. We voted against points 2 and 5 of the operative part because in our view Article 13 of the Convention has been violated.

2. We would like to observe from the outset that it is for the States, through their national courts in the first place, to address violations of Convention rights at the domestic level according to the criteria adopted by the Court. This principle – the principle of subsidiarity – was recently reaffirmed at the Interlaken conference. Indeed, the Interlaken Declaration of 19 February 2010 reiterated *"the obligation of the States Parties to ensure that the rights and freedoms set forth in the Convention are fully secured at the national level",* called for *"a strengthening of the principle of subsidiarity"* and stressed that "*this principle implies a shared responsibility between the States Parties and the Court*" (point 2 of the preamble to the Declaration). Moreover, it recalled that "*it is first and foremost the responsibility of the States Parties to guarantee the application and implementation of the Convention"*, and consequently called upon the States Parties *"to commit themselves to* [inter alia] *ensuring ... that any person with an arguable claim that their rights and freedoms as set forth in the Convention have been violated has available to them an effective remedy before a national authority providing adequate redress where appropriate"* (point B. 4. (d) of the Declaration).

3. In our view, the Court should develop its interpretation of Article 13 by requiring that an effective remedy include an examination based on criteria set out by the Court and on its case-law, thereby "forcing" member States to ensure that the Convention is effectively incorporated in the domestic court's application of the law.

4. Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of the relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The Court has already noted that the scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports of Judgments and Decisions* 1996-VI, and *Menteş and Others v. Turkey*, 28 November 1997,

§ 89, *Reports* 1997-VIII). We further consider that, where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach (see *T.P. and K.M. v. the United Kingdom* [GC], no. 28945/95, § 107, ECHR 2001-V (extracts)). Furthermore, in the case of a breach of Articles 2 and 3 of the Convention, compensation for the pecuniary and non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V).

5. Turning to the circumstances of the present case we observe, and it was not in dispute between the parties, that the applicant sustained serious injuries resulting from police officer N.'s conduct. The effective investigation into the applicant's ill-treatment complaints alone could not redress the physical and psychological damage flowing from the direct and deliberate invasion of the applicant's bodily integrity and therefore represented only one part of the measures necessary to provide redress for the ill-treatment by the State agent (see *Vladimir Romanov v. Russia*, no. 41461/02, § 79, 24 July 2008). The applicant submitted that he had attempted to obtain redress for the ill-treatment suffered by bringing two tort actions. However, he argued that the remedy was not sufficiently effective to comply with Article 13 of the Convention, as it did not provide adequate redress. It is apparent from the above that the Court must examine whether the judicial avenue for obtaining compensation for the damage sustained by the applicant represented an effective, adequate and accessible remedy capable of satisfying the requirements of Article 13.

6. The applicant introduced an action in the course of the criminal proceedings against police officer N., seeking compensation for damage resulting from the latter's unlawful conduct. The domestic courts partly allowed the action, awarding the applicant RUB 10,000 (approximately EUR 340) in compensation for non-pecuniary damage, and instructed him to bring a separate action for compensation in respect of the injuries suffered to his person (see paragraph 19 of the judgment). The award was never enforced as Mr N. did not have the requisite funds. Subsequently, the applicant brought an action against a number of State agencies, including the Yemelyanovskiy district police department which had employed officer N., arguing that the amount of compensation awarded was inadequate and had not in fact been paid to him. He further argued that the courts should hold the State accountable and punish it for the outrageous conduct of its agent, in order to act as a deterrent to future offences, and should thus award him sufficient compensation for the injuries suffered. On 3 April 2003 the Sverdlovskiy District Court dismissed the action, holding that the situation in which the applicant had found himself was not covered by the legal provisions abrogating the State's immunity from tort liability and

establishing the conditions for suits and claims against the State for damage caused by unlawful acts or omissions of its agencies and officials. In addition, the District Court found that the applicant had already made use of his right to obtain redress by successfully introducing the tort action against the direct tortfeasor, Mr N. (see paragraph 24 of the judgment). On 16 July 2003 the Krasnodar Regional Court, having examined the applicant's appeal, confirmed the overall correctness of the District Court's decision to dismiss the action. However, the Regional Court amended the District Court's reasoning by setting aside its conclusion as to the inapplicability of the legal provisions concerning the State's liability, while endorsing the finding that the applicant had already benefited from the right to claim reparation of the damage from the perpetrator of the injury (see paragraph 25 of the judgment).

7. Russian law undoubtedly afforded the applicant the possibility of bringing judicial proceedings to claim compensation for the damage suffered as a result of his ill-treatment. The applicant availed himself of that possibility by lodging an action against the direct tortfeasor (see paragraph 19 of the judgment) and subsequently by bringing a claim against various State agencies seeking compensation for the damage he had sustained on account of the ill-treatment (see paragraph 23 of the judgment). It follows that in the present case it is absolutely necessary to verify whether the way in which the domestic law was interpreted and applied by the domestic courts in the process of implementation of the compensatory remedy produced consequences that are consistent with the Convention principles, as interpreted in the light of the Court's case-law (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 187-191, ECHR 2006-V).

8. We would like to reiterate the applicant's argument that he lodged the second action because he considered that the amount of compensation to be paid by Mr N. was insufficient, unreasonable and, in any event, unenforceable (see paragraph 22 of the judgment). In this connection we note that the “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant (see *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I). At the same time, the Convention must be interpreted in such a way as to guarantee rights which are practical and effective as opposed to theoretical and illusory (see, among other authorities, *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37; *Soering v. the United Kingdom*, 7 July 1989, § 87, Series A no. 161; and *Cruz Varas and Others v. Sweden*, 20 March 1991, § 99, Series A no. 201). That also applies to the right enshrined in Article 13 of the Convention. The Court has already held on a number of occasions that the notion of an effective remedy under Article 13 requires that the remedy should be capable of resulting in an award of fair and reasonable damages proportionate to the loss suffered (see *Vdovina v. Russia*, no. 13458/07, § 29, 18 June 2009; *Wasserman v. Russia (no. 2)*, no. 21071/05, § 49,

10 April 2008; and, *mutatis mutandis, Cocchiarella v. Italy* [GC], no. 64886/01, § 93, ECHR 2006-V, with further references).

9. The question whether the applicant received reparation for the damage caused is therefore one of the issues to be considered. We are mindful of the fact that the task of estimating damages to be awarded is a difficult one. It is especially difficult in a case where personal suffering, whether physical or mental, is the subject of the claim. There is no standard by which pain and suffering, physical discomfort and mental distress and anguish can be measured in terms of money. However, we cannot overlook the fact that the amount of RUB 10,000 awarded in the circumstances of the case appears to be disproportionately low, particularly if compared to what the Court generally awards in similar Russian cases (see, for example, *Barabanshchikov v. Russia*, no. 36220/02, § 70, 8 January 2009, and *Nadrosov v. Russia*, no. 9297/02, § 54, 31 July 2008).[1]

10. In this connection we reiterate that, while emphasising the importance of a reasonable amount of just satisfaction being offered by the domestic system for the remedy in question to be considered effective under the Convention, the Court has held on a number of occasions that a wider margin of appreciation is left to the domestic courts in assessing the amount of compensation to be paid in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned, even if that results in awards of amounts that are lower than those fixed by the Court in similar cases (see Cocchiarella, cited above, § 80). The Court has also accepted that, in some cases, the alleged violation of the Convention right may result in minimal non-pecuniary damage or no non-pecuniary damage at all. However, in such cases the domestic courts will have to justify their decision by giving sufficient reasons (see Scordino, cited above, §§ 203-204). One of the purposes of a reasoned decision is to demonstrate to the parties that their claims have been given due consideration (see, mutatis mutandis, Suominen v. Finland, no. 37801/97, § 37, 1 July 2003). The importance of Article 13 for preserving the subsidiary nature of the Convention system must be stressed in that individuals' complaints must be adequately addressed in the first place within the national legal system (see Čonka, cited above, § 84, and Kudła v. Poland [GC], no. 30210/96, § 155, ECHR 2000 XI).

11. Therefore, the main issue to be considered by the Court is the domestic courts' justification for the award they made in the applicant's case. In this regard we observe that the district and regional courts did not rely on any reasons justifying the amount of compensation awarded to the applicant. It is not apparent from the domestic judgments what issues the courts took into account, what domestic standards on compensation they

[1] In the majority of Russian cases (see cases cited in the paragraph) where a violation of Article 3 on account of inhuman treatment was found the Court's award was approximately EUR 10,000-15,000.

used or what method of calculation they employed for determining the amount of compensation. The Government did not provide the Court with any evidence demonstrating the nature of the test applied by the domestic courts in assessing the applicant's claims and showing that it was based on Convention principles and coincided with the Court's own approach. There was also no explanation for the domestic courts' refusal to examine the merits of the applicant's claim for compensation for health damage resulting from his ill-treatment. We are mindful of the fact that the lack of reasoning by the domestic courts may demonstrate the existence of a substantial degree of uncertainty and ambiguity as to the exact status, scope and content of the right to obtain redress for a violation of Article 3 guarantees and the manner in which this right operated in practice. In these circumstances we harbour doubts as to whether the applicant had an effective opportunity to make before the domestic courts his Convention points regarding his rights not to be subjected to ill-treatment and to obtain full reparation for it.

12. However, we are also prepared to draw even more far-reaching inferences from the domestic courts' reluctance to provide grounds for their decision. Given the complete lack of reasoning behind the disproportionately low amount of compensation awarded to the applicant by the domestic courts, we strongly believe that the courts did not give due consideration to the applicant's claims and failed to act on the principle that the wrong should be adequately and effectively remedied. We are not convinced that the domestic courts in the present case, acting out of a genuine desire to be just and eminently reasonable, attempted to assess the effect which the instance of ill-treatment had had on the applicant's well-being (see, mutatis mutandis, Dougoz v. Greece, no. 40907/98, § 46, ECHR 2001-II) and to determine the level of physical suffering, emotional distress, anxiety or other harmful effects sustained by the applicant (see Nardone v. Italy (dec.), no. 34368/02, 25 November 2004). Having regard to this finding and taking into account the fact that Article 13 gives direct expression to the States' obligation to protect human rights first and foremost within their own legal system, establishing an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights (see Al-Nashif v. Bulgaria, no. 50963/99, § 132, 20 June 2002), we are therefore bound to conclude that the Russian authorities did not comply with their obligation to secure the applicant's right guaranteed by that Convention provision.

13. We would also like to address the argument pertaining to the unenforceability of the compensation award. In particular, the applicant submitted that Russian law did not allow him to foresee what the legal consequences might be should he bring an action against Mr N., a private tortfeasor, and be unable to obtain enforcement of the award. While accepting that he had had a choice of legal avenues to pursue in his attempt to obtain compensation for the ill-treatment suffered, the applicant stressed

that there was no clear indication in Russian law as to what remedy could have provided him with a more tangible result or, if only an aggregate of remedies could have been effective in his case, what would have been the correct order in which to pursue them. In this respect the applicant's argument goes to the heart of the Convention principle that even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see Kudła, cited above, § 152, and T.P. and K.M., cited above, § 107). It must therefore be thoroughly examined.

14. We observe that, quite apart from the criminal proceedings to which the applicant was a civil party, another avenue was available to him by which to obtain compensation for the damage resulting from his ill treatment. The Russian Civil Code provided him with the right to seek compensation for damage from the State, by either bringing a tort action in parallel with the criminal investigation against Mr N., although not within the criminal proceedings themselves, or by bringing such an action after the criminal proceedings were completed (see paragraph 52 of the judgment).

15. As regards the first avenue, the Court has already had an opportunity to rule on the effectiveness of such a remedy in Russia, holding that in the absence of any finding of guilt by the domestic courts in criminal proceedings, a claim for damages, as well as any other remedy available to an applicant, has limited chances of success and can be considered as theoretical and illusory and not capable of affording redress to the applicant (see Chember v. Russia, no. 7188/03, § 71, 3 July 2008). The Government did not provide the Court with any evidence to show that in the circumstances of the present case an action against the State lodged prior to Mr N.'s conviction could have been considered effective.

16. As to the second avenue we reiterate that, as is clear from the domestic courts' interpretation of the provisions of the Russian Civil Code on State liability, by obtaining a judicial award against police officer N. the applicant lost the right to claim compensation from the State (see paragraph 25 of the judgment). Having found that this remedy was no longer open to the applicant after he had obtained the judgment award against Mr N., we do not need to proceed with the analysis any further. However, we do not lose sight of the Government's implied argument that the applicant was responsible for the legal choices he made, in so far as he could have introduced an action jointly against Mr N. and the State after the latter's conviction instead of opting to become a civil party to the criminal case.

17. In this respect we would like to emphasise two points. Firstly, we are not convinced that the provisions of the Russian Civil Code, in particular Articles 150, 151, 1069 and 1070, which the domestic courts cited in dismissing the applicant's action (see paragraph 24 of the judgment above), afforded the applicant sufficient safeguards to prevent a misunderstanding as to the procedures for making use of the available remedies and the

restrictions stemming from the simultaneous use of them. In that connection we consider that neither the wording of those provisions nor their legislative history could have given the applicant any idea what legal inferences the domestic courts would draw from his legal choice to introduce an action against Mr N. first. In other words, they gave him no reason to think that his action against Mr N. might result in his being deprived of standing to bring proceedings against the State in order to obtain a higher sum in compensation than he had been already awarded against Mr N. We note that neither the Government nor the domestic courts relied on any legal provision making clear the type of liability (subsidiary, joint and several, and so on) which the State bore for the actions of its officials in circumstances similar to those under examination. In particular, the courts did not substantiate their position that the applicant did not have the right in law to bring a civil claim against the State subject to the condition that in the new proceedings the compensation already awarded to him would be taken into account in order to determine whether he had received full and adequate redress. Therefore, we consider that the applicant could reasonably believe that it was possible to pursue an action in the domestic courts to claim compensation from the State even after he had been awarded damages to be paid by Mr N.

18. Secondly, we do not lose sight of the fact that the criminal proceedings against Mr N. were pending for more than two years and that it took the domestic courts almost another year to consider his action against the State. In view of the applicant's situation at that time, he cannot be criticised for pursuing the avenue which met his most urgent needs, that is, a civil claim within the criminal proceedings against Mr N., since he was entitled to think that if he were to introduce an action against Mr N. and be dissatisfied with the outcome he would not be deprived of his right to bring proceedings against the State.

19. To sum up, it is our submission that the combination of the factors examined above demonstrates that the applicant had neither a single remedy nor an aggregate of remedies satisfying the requirements of Article 13. Consequently, there has been a violation of that Convention provision.

20. Finally, we submit that the damages awarded under Article 41 of the Convention for non-pecuniary damage are far too low. Because we believe that there has been a violation of Article 13 of the Convention, we logically voted against point 5 of the operative part of the judgment.