CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 77617/01
by Aleksey Yevgenyevich MIKHEYEV
against Russia

The European Court of Human Rights (First Section), sitting on 7 October 2004 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 16 November 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Aleksey Yevgenyevich Mikheyev, is a Russian national who was born in 1976 and lives in Nizhniy Novgorod. He is represented before the Court by Mr Y.A. Sidorov and Ms O. A. Shepeleva, lawyers practising in the Nizhniy Novgorod, and V. Vandova, a lawyer with "Interrights", the United Kingdom.

The respondent Government are represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

1. Proceedings against the applicant

At the relevant time the applicant was a traffic police officer. On 8 September 1998, while off duty, he and his friend F met MS, a teenage girl, in Bogorodsk town. The applicant gave MS a lift to Nizhniy Novgorod in his car.

On 10 September 1998 MS's mother informed the Bogorodsk town police department of her daughter's disappearance. On the same day, at 4 p.m., the applicant was arrested. F was also arrested and brought to the Bogorodsk police department. The applicant and F were questioned by police officers in relation to the disappearance of MS. However, no charge was brought against them. Following the questioning, the police seized the applicant's identity card and other documents and put him in the detention ward.

In the evening of 10 September 1998 the applicant's superior officer came to the applicant's cell and forced him to sign a resignation report backdated 17 August 1998.

On 11 September 1998 the police searched the applicant's flat, country house, garage and his car. They found three gun cartridges in his car.

On 12 September 1998 three police officers of the Bogorodsk police department filed an "administrative offence report" with a judge of the Bogorodsk Town Court. The report stated that in the evening of 11 September 1998 the applicant and F had committed a "disturbance of public order" at the railway station. On the same date the judge sentenced the applicant and F to five days' administrative detention as of 11 September 1998.

On 16 September 1998 the police opened a criminal investigation with respect to the ammunition found by the police during the search of 11 September 1998 (criminal case no. 68205). By this date the term of the applicant's "administrative detention" had expired and the applicant had been placed in custody in the framework of the criminal case. He was transferred to the police department of the Leninskiy District of Nizhniy Novgorod dealing with this criminal case.

The applicant submits that while in custody he was subjected to ill-treatment and torture by unidentified police officers in order to extract a confession that he had raped and killed MS. After his transfer to the Leninskiy police department the ill-treatment increased. The police officers slapped him and threatened him with torture. In particular, they threatened to apply electric shocks to him or to place him in a cell with "hardcore criminals", who would kill him if they learned he was a policeman.

Meanwhile, F testified to the police that he had seen the applicant rape and kill MS.

On 19 September 1998 the applicant was questioned in the Leninskiy police department in the presence of several police and prosecution officials, including I (the police chief investigator), S (deputy chief of the local Department of Interior), M (deputy regional prosecutor) and the Bogorodsk town prosecutor.

The applicant alleges that he was subjected to torture to make him corroborate F's confession. According to the applicant, while he was sitting handcuffed on a chair, police inspectors K and O administered electric shock to his ears through metal clips connected by a wire to a box. The applicant was thus tortured several times. The applicant was also threatened with severe beatings and application of an electric current to his genitals. One of the police officers told him that the current could cause his tongue to fall back into the throat which could then only be extracted by a safety pin.

The applicant submits that, unable to withstand the torture and left unattended for a moment, he broke away and jumped out of the window of the second floor of the police station. He fell on a police motorcycle parked in the courtyard and broke his spine.

The applicant, accompanied by Inspector K, was immediately taken to Hospital no. 33 of the Novgorod Region where he was examined by Doctor M who established various injuries caused by his fall from the window, affecting in particular his vertebral column and locomotorium. Pursuant to a medical report of 26 October 1998 (this report was drawn up by the forensic experts appointed by the investigative authorities in the context of the inquiry into the applicant's falling out of the window), on 19 September 1998 the applicant had had scratches on his forehead, wounds on the top of the head and bite marks on his tongue, in addition to the injuries established by Doctor M. No burns or other traces of the use of electric current were recorded.

On the same day the applicant was transferred to Hospital no. 39. His mother arrived at hospital and asked Doctor K to include burns on the applicant's ears in his medical record. However, this was refused. She also submitted a request to Doctor S, responsible for the applicant's case, and the chief doctor of the hospital, to record the burns. She received no answer to her requests.

On 19 September 1998, the day of the applicant's fall from the window, MS returned home unharmed.

On 21 September 1998 the police released the applicant. On the same date he became a suspect in another criminal case - concerning the alleged abduction of MS. On 22 September 1998 the applicant underwent spine surgery. He remained in hospital until 3 February 1999.

On 1 March 1999 the criminal investigation case concerning the illegal possession of the gun cartridges was discontinued on the ground that at the moment of their discovery the applicant had been a police officer and, therefore, had had the right to possess the ammunition. On 1 March 2000 the case for the alleged abduction of MS was also discontinued.

At present the applicant's legs are paralysed, he is unable to work and suffers from severe dysfunction of pelvic organs and the loss of sexual functions.

2. Official investigation into the allegation of ill-treatment

On 21 September 1998 an investigator of the Leninskiy District prosecutor's office, S, instituted a criminal investigation into the applicant's falling out of the window of the police department on 19 September 1998 (case no. 68241). The investigator questioned five policemen of the Leninskiy District Police Department, who participated in the interrogation on 19 September 1998. The officers stated that they had not ill-treated the applicant or seen him being ill-treated. The investigator also questioned F who submitted that no pressure had been exerted on him to make a false statement about the applicant. F stated that he had implicated the applicant out of fear of being accused of the disappearance of MS. The investigator further questioned Doctor K of Hospital no. 39 who had examined the applicant after the accident of 19 September 1998. The doctor stated that all injuries of the applicant had been caused by his falling out of the window. In the course of the investigation certain patients of Hospital no. 39 were also questioned by the investigator. B, the applicant's ward mate, spoke of burns and abrasions on the applicant's ears which may have been caused by an electric discharge. B stated that he had worked as an electrician and that thus he knew what burns from electric current looked like. The investigator disregarded the testimony of B in that the latter “had no special medical knowledge”. The investigator came to the conclusion that the applicant's allegations of torture were unsubstantiated. On 21 December 1998 the investigator discontinued the criminal case against the police officers for lack of evidence of a crime.

On 25 January 1999 a prosecutor's office reopened the case and transferred it to the same investigator for additional investigation. On 25 February 1999 the investigator again discontinued the proceedings on the same grounds as in the decision of 21 December 1998.

On 1 December 1999 the same supervising prosecutor reopened the case and ordered certain additional investigative actions, including medical examination of the applicant and confrontation of the applicant with the police officers who had allegedly tortured him. The case was transferred to another prosecution investigator. On 24 February 2000 the investigator discontinued the case, basing his decision on the same reasoning as in the decision of 21 December 1998.

On an unspecified date the same supervising prosecutor reopened the case for the third time and transferred the file to another prosecution investigator. This time the applicant's mother was questioned. She stated that on 19 September 1998 she had arrived at the hospital and had seen that her son's ears had been injured. She asked these injuries to be recorded but the hospital doctors refused to do so. The investigator also questioned a hospital attendant and four doctors of Hospital no. 39, who denied that the applicant had had other injuries than those caused by his falling out of the window. One of the patients of Hospital no. 39 where the applicant had been placed after the accident confirmed that the applicant had told him about the torture with electricity; however, the patient stated that he had seen no traces of any injuries on the applicant's ears. F, who had visited the applicant in the hospital, submitted that the applicant had told him about the torture, but F had seen no signs of torture on him. A further witness, the senior officer of the traffic police where the applicant had served before his arrest, provided the investigator with a “psychological portrait” of the applicant, describing the applicant as a person of unstable character. On the basis of these statements the investigator concluded that the applicant had jumped out of the window because of his unstable character. On 21 July 2000 the case was discontinued.

On 10 November 2000 the case was re-opened by another supervising prosecutor. On 29 December 2000 it was again discontinued by an investigator of the prosecutor's office. Upon the applicant's appeal, on 27 March 2001 the Nizhegorodskiy District Court of the Nizhniy Novgorod quashed the decision, ordering the prosecution to carry out further investigation.

This time a prosecution investigator questioned Doctor M, who had been on duty at Hospital no. 33 where the applicant had been brought immediately after the accident of 19 September 1998. The doctor stated that he had not noticed or treated any injuries to the applicant's ears. The same evidence was reiterated by Dr K and Dr S. They both confirmed that the applicant's mother had requested them to re-examine the applicant's ears on multiple occasions, but that they did not discover any injuries. Five patients of Hospital no. 39 testified that the applicant had told them about torture

with electric current, but that they had seen no signs of any injuries on the applicant's ears. The same testimony was given by F. On 19 May 2001 the case was discontinued by the investigator on the same grounds as before.

By letter of 5 August 2002 the Nizhniy Novgorod Regional Prosecutor's Office informed the applicant that the investigation had been reopened and sent for additional investigation to the Leninskiy prosecutor's office with relevant instructions. The applicant requested the prosecution to question V, one of the patients of Hospital no. 39. On 5 September 2002 the prosecution discontinued the investigation, having established that no criminal offence has been committed, indicating, *inter alia*, that it had been impossible to find V at his place of residence. Knowing that V was a disabled person and a wheelchair user, the representatives of the applicant contacted V and learned that the execution of the request to question V had been assigned to Inspector O, one of the police officers allegedly involved in torture. Inspector O reported that on several occasions he had tried to question V, but could not find him at his address.

On 26 September 2002 V explained to the applicant's representatives that someone who introduced himself as an investigator had telephoned him once and explained the necessity to interrogate him. V agreed to give statements, but that person never called back.

On 28 October 2002, the Prosecution Office of the Nizhniy Novgorod Region annulled the decision of 5 September 2002. On 28 November 2002, the Leninskiy District Prosecution Office discontinued the investigation yet again on the same grounds. The applicant appealed against the decision to discontinue the investigation. By letter of 24 July 2003 the applicant was informed that the Prosecution Office of the Nizhniy Novgorod Region did not see any reasons to quash the decision to discontinue the investigation.

The respondent Government state that on 6 November 2003 the Regional Prosecutor re-opened the investigation and transferred the case to the Leninskiy District prosecutor's office. The applicant alleges that he and his representatives have not received formal notification about the re-opening of the investigation to date. It appears that the investigation in this respect is still pending.

3. Non-official inquiry into the events of 10 - 19 September 1998

In the summer of 1999 two activists of regional human rights NGO (Nizhniy Novgorod Committee against Torture) interviewed several persons about the events of September 1998 complained of by the applicant. Their submissions were recorded on a videotape.

According to those interviews, F stated that he had been arrested on 10 September 1998. While in custody, he was threatened and slapped several times in order to extract a confession of the murder of MS. On 17 September 1998 he was questioned by a police chief investigator I, who kicked him and threatened to place him in an “underground cell”,

where he would be beaten and tortured with electricity to the extent that his eyes would bleed.

On 18 September 1998 F and the applicant had a short confrontation. F submitted that he saw bruises on the applicant's neck. In the evening F was questioned again, now in the presence of the deputy chief prosecutor M and the Bogorodsk town prosecutor, as well as several police officers. M threatened to lock F in a cell with "boy-crazy criminals" who would rape him, or to put him in a cell together with tuberculosis-infected detainees. He also threatened that, if F survived in the cell, he would be sentenced to 25 years' imprisonment or the death row.

F confessed that he had raped and killed the girl together with the applicant. At M's request, F named the place where they allegedly had hidden the corpse. An investigative team was sent to the place, but they found nothing. On 20 September 1998, after the girl had come home, F was released.

According to B, the applicant's ward-mate in Hospital no. 39, after having been brought to the hospital, the applicant told him about the circumstances of his arrest, and, in particular, about the torture with the electricity. The applicant showed B burns on his ears, which looked like "stripped blisters". According to M, another patient of this hospital, before the applicant was brought to the hospital the police had warned the personnel that the applicant was a dangerous criminal. The patients were required to hide all sharp metallic objects. M also recollected that there had been something red on the applicant's ears, "as if somebody has pulled his ears". M remembered furthermore that the applicant's mother had asked the doctors to examine his ears, but they had replied that everything had been normal. V confirmed that, while in the hospital, he had heard from the applicant about the torture and seen the applicant's mother asking the doctor to examine his ears. V also confirmed that the applicant's ears were injured, but it did not look like blisters, as far as he could remember.

The NGO activists also interviewed L and K, witnesses of the search in the applicant's car.

In December 2000 the NGO activists questioned F anew with a view to clarifying the discrepancies between his testimonies within the official investigation and his submissions to NGO activists and the mass-media. F stated that the investigators, while questioning him within the official criminal investigation, had disregarded his statements about the deputy chief prosecutor M's involvement in the events of September 1998.

4. Other proceedings brought by the applicant with respect to the events of 10 – 19 September 1998

On an unspecified date in 1998 a prosecutor filed a request for supervisory review against the judgment of 12 September 1998 whereby the applicant had been sentenced to 5 days' administrative detention. On 2 December 1998 the President of the Nizhniy Novgorod Regional Court

quashed this judgment. The President noted that the judgment was based on the information from the police officers of the Bogorodsk police department who had alleged that they had arrested the applicant at the railway station on 11 September 1998. However, at that time the applicant had in fact been detained in custody in relation to the disappearance of MS.

On 23 March 2000 a prosecutor instituted criminal proceedings against the three policemen of the Bogorodsk police department for making false statement in respect to the alleged arrest of the applicant at the railway station (criminal case no. 310503). A prosecution investigator confirmed that the applicant had not been at the railway station on 11 September 1998, and that at this time he had been detained in custody. However, on 3 November 2000 charges against the police officers were dropped by reference to the "change of the situation", in view of the fact that one police officer had been dismissed from his job, while two others had been transferred to other positions within the Ministry of Internal Affairs.

On 19 December 2001 the applicant lodged a civil claim with the Leninskiy District Court of Nizhniy Novgorod, seeking compensation for his unlawful prosecution, dismissal from his job, search of his premises, and detention and ill-treatment by the police. The applicant's lawyer asked the court to request from the prosecutor's office the case files no. 68241, no. 310503, and no. 68341. The applicant and his representative maintained that the evidence, collected by the prosecution, was necessary to argue the substantial part of the civil suit. On 22 April 2002 the Leninskiy District Court of Nizhniy Novgorod requested the files from respective prosecution offices. On 6 July 2002 the case-file no. 68241 was delivered to the court. It was withdrawn three days later by the prosecutor's office. On 27 July 2002 this case-file was re-submitted to the court. On 1 August 2002, upon the prosecutor's request, the case-file was returned to the prosecution. On 23 October 2002 the applicant's representative asked the court to suspend the civil proceedings.

The Government state that on 25 May 2001 the case concerning the illegal detention of the applicant (no. 310503) was re-opened by the prosecution and transmitted to the Pavlovsk Town Prosecutor's Office for further investigation. On 20 October 2002 the criminal case was closed because of the expiration of the time-limits for criminal prosecution. This decision was quashed by the Town Prosecutor and the case was re-opened again. According to the respondent Government, the investigation in this respect is still pending.

B. Relevant domestic law and practice

1. Deprivation of liberty

Article 96 of the Code of Criminal Procedure of 1960, as in force at the relevant time, set out grounds for pre-trial detention and empowered public

prosecutors to authorise detention on remand of the suspects within the framework of a criminal investigation. Under Article 220-1 of the Code, complaints about the prosecutor's decision to take the suspect into custody were to be lodged by the detainee or his representative with a district court. By Article 220-2, judicial control of the lawfulness and well-foundeness of an arrest was conducted by a judge *in camera* at the place of the detention within three days of receipt of the material justifying the arrest from the prosecution.

The Code of Administrative Offences of 1984, as in force at the relevant time, established the penalties for petty offences and the procedure for imposing the offences. Pursuant to Article 158 of this Code, the disturbance of public order was punishable with administrative detention, to be imposed by the district court judge. The decision of the judge was not subject to any ordinary appeal, but could be reversed by way of supervisory review (Article 274-276 of the Code).

2. Civil law remedies against illegal acts of public officials

The Civil Code of the Russian Federation, in force as of 1 March 1996, provides for compensation for damage caused by the act or a failure to act on behalf of the State (Article 1069). Articles 151 and 1099-1101 of the Civil Code provide for compensation of non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage shall be compensated irrespectively of any award of pecuniary damages.

3. Criminal law remedies against the illegal acts of public officials

Article 117 § 2 (f) of the Criminal Code of the Russian Federation penalises an act of torture with a sentence of up to seven years' imprisonment. Article 110 of this Code penalises incitement to suicide with a sentence of up to five years' imprisonment. Under Article 286 § 3 the abuse of official power with serious consequences is punishable with a sentence of up to three years' imprisonment. Article 139 § 3 penalises an illegal intrusion into the home with up to three years' imprisonment.

4. Official investigation of crimes

According to Articles 108 and 125 of the Code of Criminal Procedure of 1960 (in force until 2002) a criminal investigation could be initiated by a prosecution investigator upon the request of a private person or on the investigative authorities' own motion. Article 53 of this Code stated that a person who had suffered damage as a result of a crime was granted the status of a victim and can join criminal proceedings as a civil party. During the investigation the victim could submit evidence and bring motions, and once the investigation is complete the victim had full access to the case file.

According to Articles 210 and 211 of the Code, a prosecutor was responsible for general supervision of the investigation. In particular, the

prosecutor could order to carry out a specific investigative action, or to transfer the case from one investigator to another, or to re-open the proceedings.

Pursuant to Article 209 of the Code, an investigator who carried out the investigation could discontinue the case for lack of evidence of a crime. Such a decision was subject to appeal to the superior prosecutors or the court. The court may order the re-opening of a criminal investigation if it deems that the investigation was incomplete.

Article 210 of the Code provides that the case can be re-opened by the prosecutor "if there are grounds" to do so. The investigation can not be re-opened only if the prescription period for this type of crimes has expired.

5. Civil claims within the criminal proceedings

A victim of a crime can join civil proceedings as a civil party by bringing a civil law action against the alleged perpetrators to the same court which examines the criminal charge against them (Article 29 of the Code of Criminal Procedure). If the defendants are convicted, the court which declared them guilty of a criminal offence may take a decision concerning civil claims of the victim. However, in certain circumstances the criminal court may refer the civil complaint to a civil court.

A victim of unlawful acts of State officials may lodge a separate civil action with the civil court. Chapter 24-1 of the Code of Civil Procedure established that a person can apply to a court for redress for unlawful actions of a state body or an official. Within the same procedure the courts may also rule on an award of damages, including non-pecuniary damages, if they conclude that a violation has occurred.

Finally, pursuant to the Decree of the Supreme Council of the Soviet Union of 18 May 1981, a person is entitled to compensation for pecuniary damage inflicted by his criminal prosecution and/or detention on remand if this person later was acquitted or the criminal investigation against him was discontinued.

COMPLAINTS

1. Under Articles 3 and 13 of the Convention the applicant complains about (a) ill-treatment by the police and (b) lack of an effective investigation in this respect.

2. The applicant further complains under Article 5 1 (c) of the Convention about his arrest on 10 September 1998 and the subsequent detention until 21 September 1998. He alleges that the detention was arbitrary and unlawful.

3. The applicant finally complains under Article 8 of the Convention that on 11 September 1998 the police carried out an illegal search of his home, garage, country house, and his car.

THE LAW

1. The applicant first complains about ill-treatment by the police and the lack of effective investigation in this respect. He relies on Article 3 of the Convention in conjunction with Article 13 thereof, which read as follows:

"Article 3.

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

Article 13.

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."

In their observations the Government do not dispute that the applicant attempted to commit suicide while in the police custody, but refrains from making any final conclusion as to the circumstances thereof and the well-foundeness of the allegations of ill-treatment until the investigation is over. The Government submit that "it would be considered premature to give answers to the questions posed by the Court prior to delivering the final judgment in the present case". The Government makes no submissions on the merits of the case.

The applicant contests the Government's preliminary objection. He maintains that when he first seized the Court the criminal investigation had been discontinued and then reopened at least seven times. At present no new evidence may be obtained and all further attempts to investigate the case are futile. Therefore, since the formal remedies proved to be ineffective, he was not obliged to exhaust them.

As regards the merits of the case, the applicant maintains that he was ill-treated and tortured by the police in breach of Article 3 of the Convention. Before his arrest he was in normal physical and mental condition and did not show any sings of psychological disorder or problems which may have led him to attempt suicide. However, after few days in detention the applicant agreed to confess in murder and rape of a minor girl, a very serious crime which had not been in fact committed (as it turned out later) and was driven to attempt suicide.

Moreover, the applicant further complains that the State has breached its positive obligation under Article 3 of the Convention taken in conjunction

with Article 13 thereof to investigate his case. The circumstances of the applicant's falling out of the window amounted, at the very least, to an arguable claim in respect of the alleged ill-treatment. It was for the respondent State to carry out an effective and thorough investigation into his allegations. However, little has been done to investigate this case and measures that have been taken were inadequate and ineffective.

The Court first recalls that if an individual raises an arguable claim that he has been seriously ill-treated by the police, a criminal law complaint may be regarded as an adequate remedy within the meaning of Article 35 § 1 of the Convention (see *Assenov and others v. Bulgaria*, no. 24760/94, 27 June 1996, DR 86-B, p. 71). The Court finds that the circumstances of the applicant's fall from the window make out at least an "arguable claim" of ill-treatment (see, by analogy, *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, § 34), and that in the present case the applicant made use of the possibility to seek the institution of criminal proceedings against the police officers by putting his complaint in the hands of the authorities which were competent to pursue the matter. In their observations the Government do not indicate any other remedy than the one used by the applicant.

However, it appears that the inquiries into the events of the present case are still being conducted and no final decision has yet been taken at the domestic level. In this respect the Court recalls that an applicant does not need to exercise a remedy which, although theoretically of a nature to constitute remedies, do not in reality offer any chance of redressing the alleged breach (see *Gündem v. Turkey*, 22275/93, Commission decision of 9 January 1995). If the remedy chosen was adequate in theory, but, in course of time, proved to be ineffective, the applicant is no more obliged to exhaust it (see *Tepe v. Turkey*, 27244/95, Commission decision of 25 November 1996). The Court underlines in this respect that by the date of the applicant's application the criminal investigation had been discontinued and then reopened several times; almost five years have gone by with no apparent result. Given the crucial importance of the time aspect in such situations (see *Cagirga v. Turkey*, no. 21895/93, Commission decision of 19 October 1994) and in view of the delays involved in the present case, the Court cannot, at this stage, accept the Government's objection that the complaint under Article 3 of the Convention is premature. In the Court's opinion, the question whether the investigation conducted by the Russian authorities can be considered an effective remedy, must be further examined together with the merits of the complaint under Article 3 of the Convention. Thus, the Court finds necessary to join the Government's objection to the merits of the case.

The Court considers, in the light of the parties' submissions, that the case raises complex issues of law and fact under the Convention, the determination of which should depend on examination of the merits of the application. Consequently, the Court concludes that this part of the

application cannot be declared manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring them inadmissible has been established.

2. The applicant complains about his detention by the police between 10 and 21 September 1998. He invokes Article 5 § 1 (c) of the Convention, which, insofar as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so"

The Court notes that the applicant's detention was ordered on different grounds under domestic law. Starting from the evening of 10 September 1998 the applicant was de facto detained on suspicion of having committed a crime. The period between 11 and 16 September was covered by a court order, sentencing the applicant to five days' detention for a petty offence. The applicant's detention from 16 from 21 September 1998 was authorised by a prosecutor on suspicion of him having possessed ammunition in breach of law.

The Court observes that the Russian law provides, in principle, three avenues for victims of allegedly illegal detention, such as (a) an application for release, (b) institution of criminal proceedings (in cases where illegal detention falls under the provisions of the Criminal Code), and (c) a civil claim for damages.

As regards the first avenue, the Court notes that the applicant failed to request his release through judicial review as provided by Russian law (see the "Relevant Domestic Law" above). It may be open to doubt whether the applicant in the circumstances of the present case would have been required to make use of this remedy. However, even assuming that this remedy was not an effective one, the Court recalls that his detention ended in September 1998, whereas the application in this respect was introduced in 2001, that is more than six months after his release.

As to the second avenue, the Court considers that in the circumstances of this case a criminal investigation, which in fact took place, was not an effective remedy for the purposes of the applicant's complaint under Article 5 of the Convention.

As to the third avenue, the Court recalls that in certain circumstances a claim for pecuniary compensation for unlawful detention may be regarded as an effective remedy for the purposes of Article 5 of the Convention. In the present case the Court notes that, even assuming that civil proceedings were an effective remedy, these proceedings are still pending, and the complaint is accordingly premature.

It follows that this part of the application must be declared inadmissible pursuant to Article 35 § 4 of the Convention.

3. The applicant next complains about the searches in his houses, garage, and his car, invoking Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Court notes that the civil proceedings arising from the applicant's claim for compensation for allegedly unlawful searches are still pending. Thus, having regards to the above findings, this part of the application must also be declared inadmissible pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to join to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the alleged ill-treatment and the lack of effective investigation into it;

Declares admissible, without prejudging the merits, the applicant's complaints about the alleged ill-treatment by the police and the alleged lack of an effective investigation in this respect;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President