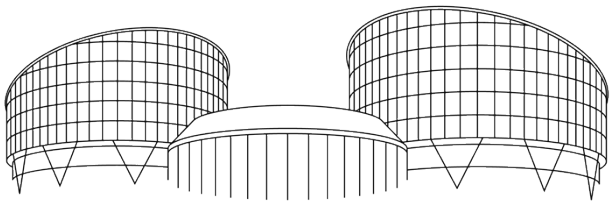

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF OCHELKOV v. RUSSIA

(Application no. 17828/05)

JUDGMENT

STRASBOURG

11 April 2013

FINAL

11/07/2013

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

In the case of Ochelkov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 19 March 2013,

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

PROCEDURE

1. The case originated in an application (no. 17828/05) 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 Dmitriy Nikolayevich Ochelkov ("the applicant").

2. On 6 May 2005 the Court received an application form in the applicant's name. The form was signed by Ms O. Shepeleva, a lawyer from the interregional non-governmental organisation "Committee against Torture", based in Nizhniy Novgorod. No duly signed power of attorney was attached. On 22 September 2005 the applicant sent a handwritten letter to the Court containing a shorter version of his complaints set out in the application form. In 2008, in response to the Court's request to confirm her right to represent the applicant in the proceedings before it, Ms O. Shepeleva provided the Court with a duly signed power of attorney. The applicant also entrusted Ms O. Sadovskaya, Mr I. Kalyapin and Mr A.Ryzhov, lawyers from the same NGO, with the power to represent his interests before the Court.

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

4. The applicant alleged, in particular, that he had been tortured by police officers on two occasions after his arrest and that the Russian authorities had failed to carry out an effective and prompt inquiry into his allegations of ill-treatment.

5. On 12 February 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

6. The applicant was born in 1979 and lived, before his arrest, in the town of Zavolzhye in the Nizhniy Novgorod Region. He is serving a prison sentence of thirteen years having been convicted of several counts of aggravated robbery and theft committed within an organised criminal group.

A. Events of 16 and 17 January 2002

1. Alleged ill-treatment

7. It appears from the parties' submissions that at approximately 9 p.m. on 16 January 2002, police officers from the interregional crime detection division of the Nizhniy Novgorod Main Department of Interior Affairs arrested the applicant, together with several other individuals, including Mr T., on suspicion of car hijacking and took them to police station no. 1 in Zavolzhye. Several hours later an officer on duty, Mr M., drew up an administrative offence record which, in its relevant part, read as follows:

> "At 1 a.m. on 17 January 2002 [the applicant], was inebriated in a street... in Zavolzhye; [his appearance] was an insult to human dignity and social morals.
>
> He committed an administrative offence under Article 162 § 1 of the RSFSR Code of Administrative Offences ...
>
> [The applicant], in the presence of witnesses, refused to give any explanations and to sign the administrative offence record ...
>
> It has been decided to levy a fine of 10 Russian roubles [on the applicant]."

8. After the police officers from the crime detection division had left the police station, the officer on duty called police officer Mr S. who was to interrogate the applicant about the car hijacking.

(a) The applicant's version of events

9. According to the applicant, during the interrogation the police officer, Mr S., and the officer on duty, Mr M., urged him to confess to the hijacking. When the applicant refused to sign a confession statement, the police officers handcuffed him, tied his legs with a rope in a crisscross manner, threw the rope over his head and tied it to his arms. The applicant was

forced to remain in a very painful position for more than an hour. According to him, the police called that form of torture "an envelope". A number of times the police officers untied and re-tied the applicant, causing him severe pain. When his resistance had worn down, the applicant asked the officers to untie him, promising to write a confession statement. The officers waited for an additional fifteen minutes before untying the applicant. Unable to move, he had to sit on the floor for another hour, trying to regain his strength. He was too weak to write, so the police officer wrote the confession statement and told the applicant to sign it. Once he had complied, he was placed in a cell for administrative detainees.

10. In the morning of 17 January 2002 the applicant was taken to the office of the police investigator, Ms Sa., for questioning. The applicant complained to her that he had been forced to confess to a hijacking which he had not committed. In response, Ms Sa. ordered an officer on duty to take the applicant back to the cell.

11. The applicant was taken to another room where both officers, Mr S. and Mr M., were present. They tied up the applicant in the same manner as on the previous night and began beating him. They hit him several times in the head with a chair leg and kicked him a number of times in various parts of his body. During the beatings a police investigator, Mr Ma., entered the room. He placed a metal beer bottle top in the applicant's mouth and ordered him to swallow it. When the applicant refused, Mr Ma. punched him in the face. Officers S. and M. asked Mr Ma. not to leave marks on the applicant's face and Mr Ma. left the room. The beatings continued for another hour or so. Unable to bear them any longer, the applicant lost consciousness and was taken to a cell for administrative detainees. The police officers poured cold water on the applicant to "revive" him.

12. When the applicant regained consciousness, he was taken back to the office of the police investigator, Ms Sa. Under Ms Sa.'s influence and being afraid of further beatings, the applicant confirmed his confession statement given in the early hours of 17 January 2002.

13. In the meantime, the applicant's relatives were trying to establish his whereabouts. In the morning of 17 January 2002 his wife, who had noticed his car near police station no. 1, enquired about him at the station, but the officers on duty refused to give her any information. On the same day the applicant's father called the station and talked to the police investigator, Ms Sa., who, at first, refused to answer any questions and then, following a number of phone calls, told the father that the applicant had attempted to escape from the police, had run into a store, bought a bottle of alcohol and drunk it. Police officers had brought the applicant to the station because he had behaved inappropriately. Ms Sa. insisted that the applicant would remain at the station until he had sobered up and could answer her questions.

14. The applicant's parents arrived at the police station and at approximately 5 p.m. the applicant was released. When he approached his father in a corridor of the police station, he was only wearing trousers and an overcoat and was holding the rest of his clothes, which were wet, in his hands. On the way home, the applicant lost consciousness in the car and his parents took him to hospital no. 1 in Zavolzhye.

15. As the Government pointed out, at approximately 6.15 p.m. the applicant was examined in the hospital and diagnosed with a closed cranio-cerebral injury, concussion and multiple injuries to the head, including on its capillary surface and the left side of the parietal area, back, arms and chest. He was admitted to the surgery department of the hospital where he underwent treatment until 29 January 2002.

16. The applicant submitted that his confession statement had served as a ground for instituting criminal proceedings on the charge of car hijacking. However, shortly afterwards, the criminal proceedings against him were discontinued as there was no other evidence linking him to the criminal offence in question.

(b) The Government's version of events

17. The Government, citing the statements which the applicant had made at various stages of the inquiry into his complaints of ill-treatment by the police, stated that there was no evidence that the injuries on the applicant's body recorded in the hospital on 17 January 2002 had been caused by the police officers. They stressed that on a number of occasions the applicant had changed his statements. In their view, it was possible that he had sustained those injuries as a result of his own careless actions or in a fight which had occurred before his arrest.

2. Investigation of the ill-treatment complaints

18. On 18 January 2002 the applicant's parents lodged a complaint with the Gorodets town prosecutor's office, describing in detail the events on 16 and 17 January 2002 and asking them to institute criminal proceedings against the police officers.

19. Ten days later a senior assistant of the Gorodets town prosecutor refused to institute criminal proceedings, finding no prima facie case of ill-treatment. The senior assistant's decision read as follows:

> "On 18 January 2002 the parents, Mr and Ms Ochelkovy, complained to the Gorodets town prosecutor's office that their son ... had been beaten up. They stated that police officers of the Zavolzhye town police department had arrested [the applicant] in the early hours of 17 January 2002. Their son had not been released until after 5 p.m. on 17 January 2002, His clothes had been wet; he had been unable to move unassisted. [The applicant] had lost consciousness and his parents had brought him to the admissions department of hospital no. 1 in Zavolzhye, where [the applicant] had been examined by a doctor on duty and admitted to the surgery department.

[The police investigator] Ms Sa. explained that on 17 January 2002 police officers of the interregional crime detection division of the Nizhniy Novgorod Main Department of Interior Affairs had arrested [the applicant] while he had been trying to sell a stolen car... During an interrogation [she] had informed him [of his rights] under Article 51 of the Russian Constitution and he had agreed to give a statement in the case; [he] had described the circumstances surrounding the theft of the car. Ms Sa. had not applied any pressure on the applicant; he had refused legal assistance. After the interrogation [the applicant] had been allowed to go home; his father had waited for him in the corridor. [The applicant] had not been arrested in compliance with Article 122 of the RSFSR Code of Criminal Procedure; he had been released at 2 p.m. [The applicant] had not made any complaint about the actions of the police officers. He had not had any visible injuries; she had only seen that there had been marks on [the applicant's] hands from handcuffs.

Mr S., a police officer of the crime detection unit of the Zavolzhye town police department stated that at midnight on 16 January 2002, an officer on duty, Mr K., had summoned him to work because several persons who had tried to sell a stolen car had been arrested. Mr S. had interrogated [the applicant] in his office in the police station. [The applicant] had described the circumstances surrounding the theft of the car; during the interrogation [the applicant] had been touching his chest. When asked what had happened to him, [the applicant] had explained that before his arrest he had had a fight with unknown persons near the entrance to his house. [The applicant] had no visible injuries. Another police officer, Mr M., had entered the office a number of times. [The applicant] had not told Mr S. whether another [police officer] had questioned him before Mr S.

According to the police officer of the crime detection unit of the Zavolzhye town police department, Mr M., at approximately 10 p.m. on 16 January 2002, police officers from the interregional crime detection division of the Nizhniy Novgorod Main Department of Interior Affairs, who had arrested three residents of Zavolzhye, including [the applicant], had arrived at police station no. 1. Mr M. had offered them his office and had left. After the police officers of the interregional crime detection division of the Nizhniy Novgorod Main Department of Interior Affairs had left, Mr S. had been summoned from his home because the car hijacking had been committed on territory which he supervised. [Mr S.] had questioned [the applicant] alone. Mr M. had entered the office a number of times, but the atmosphere had been calm... [The applicant], while in Mr S.'s office, said that before his arrest he had been beaten up and, apparently, he had a broken rib, but he did not mention whether he had contacted a hospital or the police in respect of that [incident].

According to an extract from the registration log of urgent medical assistance of the admissions unit of hospital no. 1 in Zavolzhye, when [the applicant] requested [medical assistance] at 6.15 p.m. on 17 January 2002, he had injuries... to the head, the wrists, the back [and] the chest [and he had] painful pink bruises in the lumbar region.

According to a statement by Dr Y., who had examined [the applicant] in the admissions unit, [the applicant] had no fresh injuries or bruises.

According to a statement by a medical assistant of the admissions unit, Ms K., [the applicant] had undressed in her presence and she had not seen any injuries on his body, face or hands. After [the applicant] had been examined by doctors, he had been admitted to the surgery department.

> The arguments laid down in the complaint of [the applicant's] parents are refuted by the materials of the investigation.
>
> On the basis of the above-mentioned elements, ... [the senior assistant] has decided to:
>
> 1. Dismiss the request of [the applicant's father] for the institution of criminal proceedings concerning the beating of his son by police officers of the Zavolzhye town police department ..."

20. The applicant appealed against the decision to a higher-ranking prosecutor.

21. On 5 February 2002, on an order of the Gorodets town prosecutor, a forensic medical expert examined the applicant and issued a report confirming that the latter had the following injuries: concussion, bruises on his scalp, wrists, back, chest and on the lumbar region, and abrasions on the left side of the parietal region of the head. The expert concluded that the injuries had been caused by a blunt, firm object, possibly on 16 January 2002, and had resulted in insignificant damage to the applicant's health.

22. When he was interrogated by the town prosecutor on 31 January 2002, the applicant had provided a detailed description of the alleged ill-treatment in the police station. The description was similar to that provided in the application to the Court.

23. On 15 April 2002 the Gorodets town prosecutor quashed the decision of 28 January 2002, instituted criminal proceedings against the police officers and initiated an additional inquiry.

24. According to the Government, on 27 June 2002 the applicant asked the prosecutor's office to end an inquiry into his complaints about ill-treatment following the arrest, stating that he had no hard feelings against the police officers.

25. On the following day a senior investigator of the Gorodets town prosecutor's office discontinued the criminal proceedings, finding no case to be answered. The decision was based on statements by the police officers, Mr M. and Mr S., and the police investigator, Ms Sa., identical to those which served as the basis for the decision of 28 January 2002, and the restatement of the conclusion of the medical expert in the report of 5 February 2002. The senior investigator also relied on a record of the applicant's questioning on 8 June 2002 in which the latter had denied the beatings and had stated that he had hit his head several times against a bookshelf when he had stood up from his chair at the police station. The applicant had also explained that when he had gone to the lavatory in the police station, a water tap had broken off and he had got doused with cold water. According to that interrogation record, the applicant had decided to complain about the alleged beatings in order to discredit the police officers investigating the criminal case against him.

26. The senior investigator's decision was not served on the applicant. Five months later, the applicant's lawyer learned about it during a phone call to the Gorodets town prosecutor's office. On 14 December 2002, following the lawyer's complaint to the Nizhniy Novgorod regional prosecutor's office, the applicant received a copy of the decision of 28 June 2002.

27. On 14 January 2003 a deputy prosecutor of Gorodets town quashed the decision of 28 June 2002 and ordered an additional investigation into the applicant's ill-treatment complaints.

28. An expert opinion issued following another forensic medical examination performed on 26 January 2003 again listed the numerous injuries to the applicant's head and body, and stated that those injuries had probably been sustained within twenty-four hours prior to the applicant's admission to hospital on 17 January 2002.

29. On 14 February 2003 the senior investigator of the Gorodets town prosecutor's office again adjourned the criminal proceedings, holding that there was no criminal conduct in the police officers' actions. The decision was similar in wording to the one issued by the senior investigator on 28 January 2002, save for two paragraphs. In the first paragraph the investigator cited statements by the three police officers from the interregional crime detection division of the Nizhniy Novgorod Main Department of Interior Affairs, who had arrested the applicant. The police officers stated that they had handcuffed the applicant, but had not applied any force. They also noted that the applicant had been in a state of drug intoxication and that he had had bruises under his nose and on his lips. The second paragraph read as follows:

> "It appears from materials of criminal case no. 67083, which was instituted in respect of a car hijacking..., the police officers of [the interregional crime detection division of the Nizhniy Novgorod Main Department of Interior Affairs] had lawful grounds for arresting [the applicant and another person]. Moreover, as they had operative information pertaining to [the applicant's and another person's] characters ... the police officers ... lawfully handcuffed [the applicant and another person], without overstepping the boundaries of the measures necessary to arrest persons who have committed a criminal offence. According to [the applicant's] statement, which he gave as a witness, and the statement by a witness, [the police officer], Mr S., [the applicant] sustained the concussion, injuries to the scalp and the left side of the parietal region of the head as a result of his own carelessness, and the police officers have nothing to do with these injuries. It was impossible [to establish] the circumstances in which [the applicant] had sustained the injuries to his back, chest and the back of his head. The witnesses, [the police officers] Mr M. and Mr S., stated that during the interrogation [the applicant] had been touching his chest, explaining that he had been beaten up by unknown persons in the entrance lobby of his home. [The applicant] did not give any explanations as to that fact during the interrogation. Given that those injuries did not damage his health and [the applicant] did not request that criminal proceedings be instituted against the unknown persons, there are no grounds for institution of criminal proceedings. It appears from the above-mentioned events

that the fact that [the applicant] had been beaten up on the night of his arrest... was not confirmed during the pre-trial investigation."

30. The applicant was informed about the decision of 14 February 2003 by a letter of 10 April 2003 enclosing a copy of that decision. The applicant's lawyer appealed against the decision to a higher-ranking prosecutor.

31. On 9 October 2003 a deputy prosecutor of Gorodets town quashed the decision of 14 February 2003 and re-opened the criminal proceedings against the police officers.

32. On 25 December 2003 an investigator of the Gorodets town prosecutor's office issued a decision to adjourn the criminal proceedings. The decision was identical to the one issued on 14 February 2002, save for two paragraphs, in which the investigator restated the results of an additional medical examination of the applicant performed on 24 February 2003 and cited the report of the applicant's questioning on 18 December 2003. It appears from the investigator's decision that during the questioning on 18 December 2003 the applicant refuted his previous statement given to the police officers on 8 June 2002 and insisted that he had been beaten up at the police station after his arrest. The applicant explained that prior to his being interviewed on 8 June 2002 the police investigator, Ms Sa., had threatened him with criminal prosecution and had forced him to lie that he had hit his head against a bookshelf. The expert report again listed the injuries recorded in the previous medical examinations.

33. On 15 January 2004 that decision was quashed by a higher-ranking prosecutor. However, ten days later an investigator of the Gorodets town prosecutor's office, by a decision identical to the one issued on 25 December 2003, closed the criminal case.

34. On 21 June 2004, following a complaint submitted by the applicant's lawyer, the Gorodets District Court found that the decision of 15 January 2004 had been unlawful because the investigator had not interrogated the applicant, his father and mother in compliance with the Russian Code of Criminal Procedure. Nor had he questioned the person with whom the applicant had been arrested, who could have specified whether the applicant had sustained the injuries prior to his arrest. The District Court also noted that the investigator had not carried out other investigative measures necessary for the establishment of the truth in the case (for example, an additional expert examination of the applicant, in view of the fact that the previous ones were contradictory). The court quashed the investigator's decision and ordered the re-opening of the criminal proceedings.

35. On 8 August 2004, in a decision identical to those issued on 25 December 2003 and 15 January 2004, a senior investigator closed the investigation, finding that the officers' conduct had not been illegal. That decision was annulled on 14 September 2004 and a new round of criminal proceedings commenced.

36. The decision of 14 September 2004 was supported by the ruling of the Gorodets District Court, which on 23 September 2004 examined the complaint lodged by the applicant's lawyer and held that the decision of 8 August 2004 had been unlawful because the senior investigator had failed to comply with the District Court's orders laid down in the decision of 21 June 2004. The District Court reiterated its findings of 21 June 2004 and also noted that the prosecuting authorities had not interrogated a Mr So., who could have been "an eyewitness in the case". It further pointed out that the investigating authorities had not resolved the discrepancies between the police officers' statements pertaining to the applicant's injuries prior to the arrest and the medical expert reports, which had not recorded those injuries. The District Court stressed that the officers had given conflicting statements, changing their description of the events as the criminal case had progressed.

37. On 7 and 30 November 2004 the criminal proceedings against the police officers were discontinued, with the finding that there was no case of ill-treatment. Both decisions were quashed by higher-ranking prosecutors on 17 November and 15 December 2004, respectively, and the criminal proceedings were re-opened. The decision of 30 November 2004 mentioned an experiment during which the investigators attempted to verify whether the applicant could have sustained the head trauma by hitting his head against a bookshelf. It appears that such a possibility was not excluded if the applicant had stayed in a very specific position and had hit his head a number of times.

38. On 15 January 2005 the senior investigator of the Gorodets town prosecutor's office closed the criminal case, finding that the injuries to the applicant's head had resulted from his own careless actions (namely, hitting his head several times against a bookshelf) and that the remaining injuries had been caused by unknown individuals before the applicant's arrest. The decision was based on statements by the police officers, who had denied any involvement in the alleged beatings, the results of the medical examinations and the applicant's statements which the investigator considered to be contradictory and manifestly ill-founded.

39. According to the applicant, the decision of 15 January 2005 was annulled on 17 March 2005. However, in April 2005 the investigation was again closed. Despite numerous requests from the applicant, copies of those decisions were not served on him. Without providing the Court with a copy of the decision, the Government submitted that the final decision in the course of the inquiry into the applicant's ill-treatment complaints had been issued by a senior investigator of the Gorodets town prosecutor's office on 19 July 2006. The senior investigator had not found any evidence in support of the applicant's allegations.

40. On 28 February 2007, without reopening the inquiry into the incident on 16 and 17 January 2002, a commission comprising three high-

ranking prosecutors from the Nizhniy Novgorod regional prosecutor's office examined the materials of the inquiry. Having read the statements that the applicant had given during various stages of the inquiry, the statements by the police officers and investigators implicated in the events and the results of the medical expert examinations, the commission confirmed that the decision to close the inquiry had been reasonable. In addition, the commission cited statements by the applicant's co-defendant, Mr T., who had allegedly told the investigators that the applicant had acknowledged an attempt to frame the police officers by complaining of ill-treatment. According to Mr T., the applicant had told him that he had hit his head against a bookshelf a number of times during the interrogation, and had broken a tap in a lavatory in the police station and had poured water on his clothes. The commission concluded that the applicant's head injury had resulted from his own careless actions and that his statements about the beatings should be treated with caution as they had been merely revenge for his arrest and the subsequent institution of criminal proceedings against him. The commission also noted that it had been impossible to establish the cause of the bruises on his back and chest. They also relied on statements by the police officers, who had allegedly observed the applicant touching his chest during the interrogation after his arrest and who had reiterated the applicant's explanations that he had been beaten up by unknown persons in the entrance lobby of his home.

B. Events of 14 and 15 February 2003

1. Alleged ill-treatment

41. At approximately 4 p.m. on 14 February 2003, police officers of the Balakhninskiy District traffic police stopped the applicant's car and searched it. They discovered a television set, a claw hammer and two balaclava masks. Suspecting that the television set could have been stolen, the officers decided to arrest the applicant and his two passengers, Mr T. and Ms F. According to the Government, the applicant refused to proceed to the police station and verbally insulted the officers. Following an altercation with the applicant during which he had used force, had physically resisted the officers' order to get into a police car and had hurled himself against the car, officers Zel. and Ko. forced him into the car and took him to the Balakhninskiy District police station.

42. A senior inspector of the Balakhninskiy District traffic police drew up an administrative offence report. The report issued on 14 February 2003 stated that the applicant had committed a disorderly act: he had used offensive language, had cursed passers-by, had not responded to reprimands and had acted provocatively. The applicant signed the report, noting that he

did not agree with it. Two police officers, acting as witnesses, also signed the report.

43. According to the applicant, in the police station he was placed in office no. 24 where five police officers were present. The officers handcuffed him to a metal safe and began hitting and kicking him. The officers urged the applicant to confess to the theft of the television set. The beatings continued for half an hour.

44. On the same day, the chief of the Balakhny town police department examined the administrative offence report and decided to levy a fine of RUB 1,000 Russian roubles on the applicant. The examination record states that the applicant was transferred to the temporary detention unit of the police station at 5 p.m.

45. The applicant submitted that at 8 a.m. on 15 February 2003, he had again been taken to office no. 24 in the police station. A police officer ordered him to sit on a metal chair near a safe and handcuffed him to the safe. Another police officer placed a gas mask over the applicant's head. A number of times the officer squeezed the inlet pipe of the gas mask, completely cutting off the air supply so that the applicant could not breathe. According to the applicant, that method of torture continued for approximately fifteen minutes. Almost suffocating, the applicant tore off the handcuffs. The officers put him on the floor and placed another pair of handcuffs, bearing the sign "Kostya", on him. While one police officer sat on the applicant's back, another held his legs and a third officer again started squeezing the pipe of the gas mask. Then they connected wires to the applicant's fingers. The applicant heard the sound of someone turning a phone handle and felt an electric shock. The officers applied electric shocks to him and at the same time continued to cut off the air supply in his gas mask. A number of times during the torture, the applicant lost consciousness. He also suffered involuntary defecation. When the police officers had grew tired, they placed him back on the chair and again handcuffed him to the safe. He spent the rest of the day in that position and was taken back to his cell in the evening.

46. On 17 February 2003 a police investigator of the Balakhny town police department drew up a record stating that the applicant had been arrested at 6.30 p.m. on the same day on suspicion of having stolen the television set on 13 February 2003.

47. On the following day the applicant had a meeting with a lawyer, who asked for the applicant to be medically examined. In response to the request, on the same day a police investigator issued a letter of referral addressed to the Balakhninskiy District Division of the Bureau of Forensic Medical Experts. According to the applicant, on 22 February 2003 a medical expert examined him and a month later issued a report, the relevant part of which read as follows:

"According to the letter of referral, [the applicant] was allegedly beaten up by police officers in an attempt to extract a confession from him.

OBJECTIVELY: on the external surface of the lower right forearm there is a bruise which has an irregular oval form, measures 0.9 cm in width and 4 cm in length and is covered by a brownish crust... There is a similar injury measuring 4 cm in width and 5 cm in length on the inside of the same forearm; [there are] three [injuries] measuring 0.5 cm in width and 1 cm in length on the inside of the left forearm; [there is a bruise] measuring 3 cm in width and 4 cm in length on the right cheekbone; [there is an injury] measuring 4 cm in width and 6 cm in length on the right shoulder [and there is a bruise] measuring 3 cm in width and 6 cm in length on the left shoulder. In the lumbar region there is a bruise which has an irregular oval form, measures 4 cm in width and 5 cm in length and is light blue in colour. There is a similar bruise, measuring 3 cm in width and 4 cm in length in the middle of the lower spine. There is another similar bruise measuring 0.5 cm in width and 1 cm in length on the chin.

CONCLUSIONS:

[The applicant's] injuries on the chin, right and left forearms, right and left shoulders, right cheekbone, bruises on the chest [and] the right side of the lower spine were caused by a firm blunt object. Those injuries did not cause health damage. The injuries were sustained 4-7 days before the examination."

The report indicated that the examination was performed on the basis of the police investigator's decision of 18 February 2003. It also stated that the examination commenced and ended on the same day, on 22 March 2003. The expert signed the report on 22 March 2003.

2. Investigation into the events

48. On 18 February 2003 the applicant's lawyer lodged a complaint with the Balakhny town prosecutor, seeking the institution of criminal proceedings against the police officers.

49. On 28 February 2003 an assistant to the Balakhny town prosecutor refused to institute criminal proceedings, noting that the applicant had written a note withdrawing his complaint against the police officers and explaining that he had received the injuries before his arrest.

50. According to the applicant, he wrote that note while he was still at the hands of the alleged perpetrators of the offence against him, that is, while he was being held in the temporary detention unit at the police station. He insisted that the police officers had forced him to write the note and that the assistant prosecutor had never talked to him in person.

51. On 15 May 2003, following a complaint lodged by the applicant's lawyer with the Nizhniy Novgorod regional prosecutor, the Balakhny town prosecutor quashed the decision of 28 February 2003 and initiated an additional inquiry into the applicant's ill-treatment complaints.

52. Ten days later, the Balakhny town prosecutor closed the inquiry, finding that there was no case to be answered. Without indicating the evidence on which his findings were based, the prosecutor noted that the

fact that the police officers had used physical force against the applicant had not been confirmed.

53. On 25 August 2003 the Balakhny town prosecutor annulled his previous decision, finding that the inquiry had been incomplete.

54. On 15 September 2003 and 29 January 2004 a deputy prosecutor of Balakhny town refused to institute criminal proceedings against the police officers, holding that there was no prima facie case of ill-treatment. Both decisions were quashed by the town prosecutor on 23 January and 25 May 2004, respectively.

55. On 29 March 2004 a deputy prosecutor of Balakhny town issued a decision dismissing the applicant's ill-treatment complaints. The relevant part of the decision read as follows:

> "In the course of the investigation it was established that from 14 to 17 February 2003 [the applicant] was detained in the temporary detention unit of the ... police station on the basis of an administrative offence record ... which had been drawn up by the senior inspector of the Balakhninskiy district traffic police, Mr Zel., under Article 20.1 of the Russian Code of Administrative Offences, [that is] "a minor disorderly act". On 14 February 2003 [the applicant] was fined RUB 1,000 in accordance with the decision of the deputy chief of the Balakhny town police department, Mr P. On 17 February 2003 a police investigator of the Balakny town police department, Ms D., arrested [the applicant] as a suspect in compliance with Article 91 of the Russian Code of Criminal Procedure.
>
> The deputy chief of the Balakhny town police department, Mr P., in relation to the fact of [the applicant's] arrest and his placement in the temporary detention unit ..., explained that ... he had fined [the applicant] for a minor disorderly act on 17 February 2003 and not on 14 February 2003 as it was indicated in the record of the administrative offence. The date of 14 February 2003 was indicated incorrectly. On 17 February 2003 the materials in the case of the administrative offence [committed by the applicant] were not sent to a court because it was no longer necessary. He was arrested on the same day by the investigator, Ms D., by virtue of Article 91 of the Russian Code of Criminal Procedure.
>
> Thus, there is no criminal conduct... in the actions of the deputy chief of the Balakhny town police department, Mr P.
>
> Earlier, in the course of the inquiry into [the applicant's] complaint, [the applicant] was questioned [and he] explained that at approximately 3 p.m. on 14 February 2003, he had been arrested by the police officers of the Balakhninskiy District traffic police on suspicion [that he had] stolen a television set. [He] was taken to an office on the second floor of the ... police station where five police officers were present. [The applicant] stated that during an interrogation the police officers had applied physical force to him: [they] had handcuffed him to a safe, [they] had punched him in various parts of his body, [they] had put a gas mask on him and had cut off [the air supply in] the inlet pipe. Subsequently, he was taken to the temporary detention unit of the Balakhny town police station. At approximately 8 a.m. on 15 February 2003, he was taken to the same office, where the same police officers continued a discussion with him, during which they used physical force against him.

In the course of the check of [the applicant's] statement, a police officer of the crime detection unit of the Balakhny town police department, Mr L., was also questioned; [he] explained that on 14 February 2003 [the traffic police] had arrested [the applicant] on suspicion of theft. Subsequently he was taken from the duty unit of the ... police station to office no. 27 ... where Mr L. talked to him. Mr L. stated that during the talk [the applicant] had acted provocatively, had used offensive language towards the police officers and had suddenly thrown himself on [Mr L.]. Mr L. thought that [the applicant] wanted to take possession of his service gun. In this connection, Mr L., in compliance with section 14 of the Federal Police Act, had handcuffed [the applicant] to the safe to restrict his actions. Mr L. stated that during the talk with [the applicant] he had noticed abrasions on his chin. Mr L. could not explain the origin of those injuries. He had not talked to [the applicant] on 15 and 16 February 2003 because he had taken days off. Moreover, Mr L. noted that police officers of the crime detection unit of the Balakhny town police department, Mr Sh., Mr Le., Mr G., Mr Zo., and Mr K., had been in the office during the questioning of [the applicant]; [they] had not taken part [in the talk], [they] had performed their work and had not used physical and moral pressure against [the applicant].

Police officer ... Mr Sh. stated that on 14 February 2003 Mr L. had talked to [the applicant] in office no. 27 of the police station. He did not take part in the talk [and] carried on with his work. However, during the talk with Mr L. he heard [the applicant] use offensive language against the police officers a number of times. Mr Sh. explained that at the moment when [the applicant] had attacked Mr L., he had paid attention to him and had noticed abrasions on his face. When Mr L. handcuffed [the applicant] to the safe, he had continued with his work. He did not talk to [the applicant] on 15 and 16 February 2003 because he took those days off.

In the course of the additional inquiry, police officers..., Mr G., Mr Zo. and Mr K. were questioned; [they] explained that on 14 February 2003 they had been in office no. 27 of the police station, to which [the applicant] had been brought for a talk. However, they were unable to recollect who had talked to him owing to the remoteness of the events. [They] also could not recollect whether [the applicant] had had any injuries on his face or other parts of his body.

Moreover, police officers... Mr G. and Mr Zo. explained that on 15 and 16 February 2003 they had not talked to [the applicant], because they had had days off. Police officer Mr K. explained that on 15 February 2003 he had been on the reserve list, and on 16 February 2003 he had had a day off. However, he had not talked to [the applicant] on 15 and 16 February 2003.

It was impossible to question police officer... Mr Le. in the course of the additional investigation because since 10 December 2003 he has been serving in the Ministry of Interior Affairs of the Chechen Republic.

According to the report of [the applicant's] forensic medical examination [issued] on 23 March 2003, [the applicant] had the following injuries: abrasions on the chin, right and left shoulders, right and left forearms, right cheek, bruises on the chest and the right side of the lower spine. The injuries were caused 4-7 days before the examination. Thus, according to the report of the forensic medical examination [the applicant] could have sustained the injuries on 11, 12, 13 or 14 February 2003.

In the course of the examination of [the applicant's] complaint, the police officers of the Balakhninskiy District traffic police..., an inspector..., Mr Ko., and the senior inspector, Mr Zel., were questioned.

During the questioning Mr Ko. stated that on 14 February 2003 he, together with the senior inspector of the traffic police, Mr Zel., had been supervising the traffic. They had received an order from an officer on duty... to stop a white car.... At approximately 3 p.m..... near a railway crossing they stopped a similar car [intending] to check the documents. There were four persons in the car; [the applicant], one of the persons in the car, started using offensive language towards the traffic police officers; [he] resisted being placed in a police patrol car. It was apparent that [the applicant] did not want to get into the patrol car, resting his hands against the car door and roof. That is why Mr Ko. grabbed [the applicant] by one hand and Mr Zel. by the other and they twisted [his hands] behind his back. However, [the applicant] continued his resistance, turning from side to side in his struggle to break loose. At the same time he was bumping against various parts of the car (a door, the car body) with his shoulders and other parts of his body. Then Mr Ko. and Mr Zel. pushed [the applicant] into the patrol car. Mr Zel. gave a similar statement in respect of those events. Moreover, Mr Ko. and Mr Zel. explained that [the applicant] had had abrasions on the chin. Subsequently, the arrestees were taken for further inquiry to the Balakhny town police station, where Mr Zel. drew up an administrative offence record in respect of [the applicant] under Article 20.1 of the Russian Code of Administrative Offences.

In the course of the additional investigation an expert of the Balakhny Division of the Forensic Medical Expert Bureau, Mr Zh., was questioned as to whether the injuries on the [applicant's] arms, chest and lower spine could have been caused when he had been placed in and taken out of the car while [he] had been bumping against protruding parts of the car door and body. In response to that question, Mr Zh. stated that those injuries had been caused by a blunt firm object and they could have been caused when [he] had bumped against protruding parts of the car door and body when [he] had been placed in and taken out of the car.

Thus, the orders of the Balakhny town prosecutor, Mr G., were complied with fully.

However, [the applicant's] allegations that the police officers of the Balakhny town police department used physical force against him are not corroborated by any material evidence."

56. The applicant's lawyer appealed against the decision to the Balakhny Town Court, complaining that it was unlawful and manifestly ill-founded.

57. On 10 February 2005 the Balakhny Town Court accepted the complaint, quashed the decision and ordered an additional investigation into the applicant's allegations of ill-treatment. In particular, the Town Court noted that there were eyewitnesses of the applicant's arrest who could have testified as to whether the applicant had resisted arrest, had used offensive language, and so on. The Town Court also found that there were a number of discrepancies in the materials submitted by the prosecution. It ordered the relevant authorities to resolve them.

58. On 3 March 2005 the deputy prosecutor of Balakhny town again dismissed the request for the institution of criminal proceedings against the police officers. The deputy prosecutor copied the complete text of the

decision of 29 March 2004, and added two more paragraphs in which he noted that a record of the crime scene examination and extracts from registration logs had been enclosed in the case file.

59. That decision was annulled by a higher-ranking prosecutor. However, on 20 April 2005 the deputy prosecutor of Balakhny town issued another decision refusing to institute criminal proceedings. That decision was identical to those issued on 29 March 2004 and 3 March 2005, save for one paragraph in which the deputy prosecutor drew attention to the statements by Mr T. and Ms F., two eyewitnesses of the applicant's arrest on 14 February 2003. Both witnesses testified that the applicant had had no visible injuries prior to his arrest and that he had not complained about the state of his health. He had not resisted the arrest or his placement in the patrol car, and the police officers had not used force during the arrest.

60. According to the applicant, the decision of 20 April 2005 was not served on him and he learned about it in August 2005 during a phone call to the Balkhny town prosecutor's office. In October 2005 he lodged a complaint with the Nizhniy Novgorod regional prosecutor's office about the ineffectiveness of the investigation. By a letter of 26 December 2005 he was informed that on 6 December 2005 a deputy prosecutor of Nizhniy Novgorod Region had instituted criminal proceedings against the police officers.

61. On 1 February 2006 an investigator interviewed the applicant in the correctional colony where he was serving his sentence at the time (see paragraph 6 above) about the circumstances surrounding his arrest on 14 February 2003 and his complaints of ill-treatment by the police. The applicant refuted his previous statements, insisting that he had fallen down the stairs in the detention unit of the police station. He stressed that the police officers had not used force against him and that he had no intention of pursuing the complaint against them.

62. Five months later, on 5 May 2006 an investigator of the Balakhny town prosecutor's office closed the criminal proceedings against the police officers, finding no criminal conduct in their actions. Neither the applicant nor his lawyer was notified of the decision. The lawyer learned about the decision in December 2006. He immediately lodged a motion with the Balakhny town prosecutor's office, asking for permission to study the case file. The request was dismissed. The lawyer repeated his request without success and appealed against the refusal to the Balakhny Town Court, providing the court with copies of the prosecutor's refusals and the power of attorney issued by the applicant and confirmed by the Priokskiy District Bar Association on 15 March 2007.

63. On 21 November 2007 the Town Court confirmed that the refusal had been lawful as the lawyer had not presented any document authorising him to act on the applicant's behalf. That decision was quashed on appeal

on 22 January 2008 by the Nizhniy Novgorod Regional Court and a re-examination of the matter was ordered.

64. On 15 April 2008 the Town Court ruled that the refusal to provide the applicant's lawyer with access to the case file had been unlawful.

65. On the basis of the Town Court's decision, the applicant's lawyer was given access to the file and was able to make copies of documents, including the decision of 5 May 2006. The investigator, having exclusively relied on statements by the police officers who had come into contact with the applicant between 14 and 17 February 2003, had found that there was no evidence of ill-treatment and that the applicant had sustained the injuries in resisting arrest.

66. Responding to an appeal lodged by the applicant's lawyer against the decision of 5 May 2006, the Balakhna Town Court upheld that decision, finding it to be lawful and reasonable. The Town Court noted that the investigators had collected evidence in support of their version that the applicant had sustained the injuries in his attempt to resist arrest. It also drew attention to the applicant's statements made in February 2006 when he had provided another cause for his injuries.

C. Events of March, April and June 2003

67. On 25 February 2003 the applicant was transferred to detention facility no. IZ-1/52 in Nizhniy Novgorod. On 18, 21 and 25 March and 1 and 2 April 2003 he was taken from facility no. IZ-1/52 to a temporary detention ward in the Kanavinskiy District of Nizhniy Novgorod, where police officers interrogated him. The applicant alleged that the officers had used force against him following his refusals to answer their questions. On 3 April 2003 the applicant complained to the Nizhniy Novgorod regional prosecutor of ill-treatment in March and April 2003. On 24 May 2003 the Balakhny town prosecutor refused to carry out an inquiry into the applicant's complaints, reasoning that the Balakhny town prosecutor's office had no competence to examine it.

68. On 14 June 2003 three police officers took the applicant from his cell in detention facility no. IZ-1/52 to an investigation ward. They allegedly ordered the applicant to confess to a robbery, threatening that they would dress him in a police uniform and place him in a cell with "hardcore criminals". The officers also repeatedly threw the applicant's hat in a dustbin and then forced him to take the hat out of the dustbin and put it on his head.

THE LAW

I. PRELIMINARY CONSIDERATIONS: THE ISSUE OF THE APPLICANT'S INTENTION TO LODGE THE APPLICATION

69. The Court must first address the issue of the applicant's intention to lodge the application. It reiterates that the original application was lodged with the Court on 6 May 2005 on the applicant's behalf by Ms O. Shepeleva, whose authority to represent him was not duly confirmed at the time. However, three months after the Court had received the application form, the applicant sent a handwritten letter reiterating the complaints on the application form. In 2008 the Court received the powers of attorney by which the applicant had authorised four lawyers from the interregional non-governmental organisation "Committee against Torture", including Ms Shepeleva, to represent him in the proceedings before the Court (see paragraph 2 above).

70. The Government submitted that the application should be struck out of the list of cases pursuant to Article 37 § 1 (c) of the Convention, as there was no evidence that the applicant had had any intention to complain to the Court. According to the Government, when approached by the head of the internal security service of the correctional colony where the applicant was detained at the time on the issue of a friendly settlement, the applicant allegedly stressed that he had not complained to the Court and that his parents had lodged the application in his stead. At the same time, the applicant had refused to ask the Court to discontinue the examination of his case.

71. The applicant argued that he had enclosed a power of attorney with his application in 2005 and had later sent another set of duly signed powers of attorney in 2008. He further stressed that his refusal to withdraw the application on request from the colony official was the strongest evidence of his intention to pursue the proceedings before the Court.

72. The Court notes that despite the applicant's argument to the contrary, the application form lodged on 6 May 2005 by Ms Shepeleva did not contain any evidence that at that time she had the authority to act on the applicant's behalf. At the same time, it finds no reason to doubt the applicant's intention to introduce the application. In particular, the Court bears in mind the applicant's handwritten letter of 22 September 2005, in which he listed his grievances, including the allegations of ill-treatment by the police and the authorities' failure to properly investigate the events in question. In response to an inquiry by the Court in 2008, the applicant again confirmed his intention to pursue the application, having authorised Ms Shepeleva and three other lawyers to represent his interests. The Court

is also mindful of the applicant's explicit refusal to withdraw the application when allegedly asked to do so by the colony official.

73. To sum up, the Court is convinced that the applicant willingly and conscientiously introduced an application under Article 34 of the Convention. In these circumstances, the conditions for striking the case from the list of pending cases, as defined in Article 37 § 1 of the Convention, are not met and it must accordingly continue to examine the application.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE EVENTS OF 16 AND 17 JANUARY 2002

74. The applicant complained that following his arrest on 16 January 2002 he had been subjected to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation of that incident. The Court will examine this complaint from the standpoint of the State's substantive and procedural obligations flowing from Article 3, which reads as follows:

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

A. Submissions by the parties

75. The Government argued that the complaint was manifestly ill-founded. The police officers had not subjected the applicant to inhuman or degrading treatment, and had only applied handcuffs to restrain him. The Government put forward the following explanation as to the cause of the applicant's injuries. They argued that the applicant's head injury had resulted from his own negligence when he had hit his head against a bookshelf under which he had been sitting during his interrogation in the police station. As to the remaining injuries discovered on the applicant's body after his release from the police station, the Government insisted that he had sustained them in a fight with unknown individuals. The Government also drew the Court's attention to the inconsistencies in the applicant's statements made to the Russian authorities at various stages of the inquiry into his allegations of ill-treatment. Relying on statements by the applicant's co-defendant, Mr T., and the fact that the applicant had been facing criminal charges of car hijacking at the time when he had made accusations against the police officers, the Government argued that the applicant's ill-treatment complaint was merely revenge on his part against the police officers and an attempt to slander them. Lastly, the Government stressed that the applicant's allegations of ill-treatment had been thoroughly

examined by the prosecution authorities and domestic courts, which had found them to be unsubstantiated.

76. The applicant disputed every assertion made by the Government as to the cause of his injuries. In particular, he argued that his injuries had been inflicted by the police in an attempt to extract a confession from him. He again provided a detailed description of the "torture" techniques allegedly used by the officers. He insisted that the Government had not presented any evidence in support of their claims, whereas he relied on statements by the two arresting officers, who had seen no injuries on him at the time of his arrest, statements by Dr Y., who had examined him on admission to the hospital on 17 January 2002 and had confirmed that the injuries had been caused no more than twenty-four hours prior to the examination, and statements by his relatives, who had seen him in good health on the eve of his arrest. The applicant provided the Court with a copy of the record of an interview with Dr Y. and noted that Dr Y. had insisted that he had seen fresh injuries on the applicant on his admission to hospital. The applicant then drew the Court's attention to the decision of 28 January 2002 in which the investigator had distorted Dr Y.'s testimony (see paragraph 19 above).

77. The applicant further stressed that the assertion that he had hit his head a number of times against a bookshelf was implausible and incomprehensible for any reasonable person. He observed that the investigators had checked whether he could have hit his head against the shelf when getting up from the chair, and discovered that he was not tall enough to have done so. The applicant also pointed out that when the police officers were first questioned, they had not stated that he had hit his head against the shelf and had insisted that he had sustained the injuries in a fight with unknown persons prior to his arrest. He insisted that he had never mentioned a fight and that that version of events had been put forward by the police officers to explain the remaining injuries discovered on his body. He also explained that he had only once changed his statements, on 8 June 2002, when he had been scared for his life following a talk with the police investigator.

78. The applicant continued by denouncing the quality of the inquiry into his ill-treatment complaints. He listed numerous flaws which, in his opinion, were clear signs of the ineffective and belated nature of the investigation. In particular, he stated that the investigators had never taken steps to verify the version concerning a fight with unknown persons, nor interrogated the applicant's parents, the persons with whom he had been arrested, or those who had seen him prior to the arrest. The applicant noted that the investigators had disregarded the latter obligation, despite the District Court's instructions to that effect. They had also failed to perform an additional expert examination to settle the discrepancies in the previous expert opinions. He further stressed that a number of the investigative steps had been carried out by police officers from the same police station where

he had been tortured. The applicant drew the Court's attention to the fact that the investigators had fully trusted statements made by the police officers, but had considered his or his relatives' complaints to be prejudicial. Lastly, he stressed that the investigation had been delayed: decisions to close and reopen it had been taken so many times that he had not been given unrestricted access to the proceedings, and the authorities had failed to inform him or his lawyer in good time about the decisions taken.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

80. 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*, judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1855, § 79). 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*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3288, § 93).

81. 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).

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

83. 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*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). 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 at 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).

84. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Although the Court is not bound by the findings of 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) Establishment of the facts

85. In the present case it was not disputed by the parties, and the Court finds it established, that late in the evening of 16 January 2002 the applicant was arrested and taken to the police station in Zavolzhye. In the evening of the following day he was released from the station and went to the hospital,

where he was diagnosed with a closed cranio-cerebral injury, concussion, and multiple injuries to the head, back, arms and chest. The applicant remained in hospital until 29 January 2002, and underwent inpatient treatment in the surgery department in respect of his injuries (see paragraphs 7 and 15 above).

86. In the first place, the Court observes that the Government put forward two versions of events which could have led to the applicant sustaining at least some of his injuries.

87. In particular, relying on the statements made by the applicant on 8 June 2002 during the inquiry into his ill-treatment complaints, the Government argued that he had hit his head against a bookshelf when standing up from a chair during the interrogation on 17 January 2002 (see paragraph 75 above). However, the Court is not convinced by that explanation. It firstly notes that that version of events appeared for the first time in the statements made by the applicant five months after the inquiry into the alleged ill-treatment had been initiated. The police officers whom the applicant had accused of ill-treatment had never mentioned having seen the applicant hit his head. It also does not escape the Court's attention that that explanation for the applicant's head injury was put forward by him only after his meeting with the police investigator, Ms Sa., from the same police station where the ill-treatment had allegedly taken place. The Court notes that the applicant amended his statements as to the true cause of his injuries following a meeting with the official implicated in the events in question. The Court cannot rule out the possibility that the applicant felt intimidated by the persons he had accused of having ill-treated him (see *Colibaba v. Moldova*, no. 29089/06, § 49, 23 October 2007, and *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 100, ECHR 2004-IV (extracts)). This conclusion becomes even more salient if the Court reiterates the Government's argument that merely several days after that interview on 8 June 2002, the applicant attempted to withdraw his ill-treatment complaint and asked the investigators to close the inquiry (see paragraph 24 above). The Court must also have regard to the fact that the applicant, in his complaints to the prosecution authorities and later to the courts, was unequivocal in his account that he had been ill-treated by police officers while in custody. The applicant consistently denied the accuracy of the statement which he had made to the investigator on 8 June 2002.

88. Furthermore, the Court considers that the Government's explanation sits ill with the nature of the applicant's head traumas as recorded in the hospital report on 17 January 2002 and the expert opinions. While the Court does not exclude the possibility of accidents occurring in detention, it does not lose sight of the fact that in addition to a closed cranio-cerebral injury and concussion, the doctors recorded a number of bruises on various parts of the applicant's head. The Court notes that this description corresponds to physical sequelae resulting from multiple impacts, rather than a single

impact, against a firm surface or blunt object. This finding is also supported by the experts' reluctance to conclude that the injuries could have resulted from the applicant having hit his head against a shelf.

89. In addition, the Court is mindful of the applicant's argument, which was not disputed by the Government and which is confirmed in the decisions of the Russian investigating authorities, that the authorities had examined the possibility of the applicant having sustained the head injuries as a result of his own careless actions. In particular, they reconstructed the events in the police station by way of an experiment. According to the applicant, the experiment showed that his height made it impossible for him to have hit the shelf when standing up from a chair. In this respect, the Court notes that it asked the Government to provide the complete investigation file pertaining to the events of 16 and 17 January 2002 but that the Government, without any explanation, selectively submitted materials from the file. The record of the above-mentioned investigation experiment was not among them. Noting the lack of any explanation for the failure to comply with its request, the Court is prepared to draw inferences from the Government's conduct. It also notes that it appears from the decision of 30 November 2004 that the possibility of the applicant having sustained a head injury by hitting his head against the shelf was, if not entirely excluded, extremely limited, given that the applicant would have had to remain in a very specific position and would have had to stand up and hit his head against the shelf a number of times. Furthermore, although unconvinced by the Government's argument, the Court still considers it necessary to note that they gave no explanation as to why, in the circumstances as described by them, a doctor was not immediately called to provide the applicant with medical assistance and to document his head injuries, which were rather serious.

90. As to the applicant's remaining injuries, the Court observes that the Government, relying on statements by the police officers, insisted that the applicant had participated in a fight prior to his arrest. In this connection, the Court accepts the applicant's argument that the police officers' statements are of little value as they were not supported by any evidence. While the effectiveness of the investigation into the applicant's complaints of ill-treatment will be examined below, the Court would stress at this juncture that the investigators never verified whether the applicant participated in a fight. Furthermore, the medical experts who examined the applicant in the course of the investigation concluded that the injuries had been caused no more than twenty-four hours before he was examined in the hospital. Given that the applicant had been arrested at around 9 p.m. on 16 January 2002 and was examined in the hospital after 6 p.m. the following day, the Government's assertion that the applicant sustained the injuries in a fight with unknown individuals appears unreliable.

91. In addition, the Court does not lose sight of the circumstances surrounding the applicant's arrest and detention. It reiterates the Government's argument that the applicant was arrested on suspicion of having hijacked a car. At the same time, the official record listed entirely different grounds for his deprivation of liberty: the applicant had allegedly been drunk in a public place and his appearance had been considered an insult to human dignity and social morals. He was accordingly charged with an administrative offence and fined RUB 10. There is no dispute between the parties that the applicant was kept in the station for more than fifteen hours after that administrative offence record had been drawn up, and was questioned at length in the absence of a lawyer and during the night about his involvement in the theft of a car. It is also undisputed that the applicant was released after he had confessed to that criminal offence. While the Court is not called upon in the present case to assess the lawfulness of the applicant's detention or to deal with the deficiencies of the criminal proceedings against him, it is prepared to conclude that the circumstances of the applicant's detention make all the more plausible his assertion that the police officers used force to acquire a confession from him.

92. The Court further observes that the applicant provided a detailed description of the ill-treatment to which he had allegedly been subjected and indicated its place, time and duration. It notes the consistency of the applicant's allegations of ill-treatment by police officers while in custody, and the fact that he maintained his allegations whenever he was able to make statements freely before the investigating authorities or the domestic courts. At the same time, the Court notes that it was open to the Government to refute the applicant's allegations by providing their own plausible version of events and submitting evidence to corroborate their version. Indeed, the Government did not provide any plausible explanation as to how the applicant had acquired the injuries.

93. In those circumstances, bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody, and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court considers that it can draw inferences from the Government's conduct and finds it established to the standard of proof required in the Convention proceedings that the injuries sustained by the applicant were the result of the treatment of which he complained and for which the Government bore responsibility (see *Selmouni v. France* [GC], no. 25803/94, § 88, ECHR 1999-V; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004; *Mikheyev v. Russia*, no. 77617/01, §§ 104-105, 26 January 2006; and *Dedovskiy and Others v. Russia*, no. 7178/03, §§ 78-79, 15 May 2008). The Court will therefore proceed to an examination of the severity of the treatment to which the applicant was subjected, on the basis of his submissions and the existing elements in the file.

(ii) Assessment of the severity of ill-treatment

94. In determining whether a particular form of ill-treatment may be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. The Court has already noted in previous cases that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. In addition to the severity of the treatment, there is a purposive element which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see *Salman v. Turkey* [GC], no. 21986/93, § 114, ECHR 2000-VII). According to the Court's consistent approach, treatment is considered "inhuman" if it is premeditated, applied for hours at a stretch and causes either actual bodily injury or intense physical or mental suffering. It is deemed to be "degrading" if it is such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92). The question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI).

95. The Court reiterates that it has found it established that the applicant was beaten up by police officers and that as a result of those beatings he sustained injuries. The Court does not discern any circumstance which might have necessitated the use of violence against the applicant. It has not been established that the applicant resisted arrest, attempted to escape or did not comply with lawful orders from the police officers. Furthermore, there is no indication that at any point during his arrest or subsequent detention at the police station he threatened the police officers, for example by openly carrying a weapon or by attacking them (see, by contrast, *Necdet Bulut v. Turkey*, no. 77092/01, § 25, 20 November 2007, and *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 62, 20 June 2002). It thus appears that the use of force was retaliatory in nature and aimed at debasing the applicant and forcing him into submission. In addition, the treatment to which the applicant was subjected must have caused him mental and physical suffering, even though it did not apparently result in any long-term damage to his health.

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

(c) Alleged inadequacy of the investigation

97. 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 and forensic evidence. 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, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Mikheyev*, cited above, § 107 et seq., *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 102 et seq., and *Tyagunova v. Russia*, no. 19433/07, § 65, 31 July 2012, with further references).

98. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 for the ill-treatment of the applicant (see paragraph 96 above). The applicant's complaint in this regard is therefore "arguable". The authorities thus had an obligation to carry out an effective investigation into the circumstances in which the applicant sustained his injuries (see *Krastanov v. Bulgaria*, no. 50222/99, § 58, 30 September 2004).

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

100. The Court reiterates that the applicant was entirely reliant on the investigators to assemble the evidence necessary to corroborate his complaint. The investigators had the legal powers to interview the police officers, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for establishing the truth of the applicant's account. Their role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offences but also to the pursuit by the applicant of other remedies to redress the harm he had suffered (see, among many other authorities, *Barabanshchikov v. Russia*, no. 36220/02, § 57, 8 January 2009).

101. The Court will therefore first assess the promptness of the investigation, viewed as a gauge of the authorities' determination to 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's parents complained of ill-treatment to the Gorodets town prosecutor on 18 January 2002. The prosecutor's office launched its inquiry immediately after being notified of the alleged beatings, and issued the first decision refusing to institute criminal proceedings against the police officers merely ten days after the complaint had been made.

102. Having noted a number of serious discrepancies undermining the reliability and effectiveness of the inquiry, the Court will concentrate on assessing its thoroughness. Firstly, the Court has already observed that the first decision refusing to open a criminal investigation into the events was issued within days of the applicant's parents bringing their complaint. That decision was based on statements by the police officers and two staff members of the hospital where the applicant had been admitted on 17 January 2002 and the medical report listing his injuries. The Court finds it unexplainable that, despite the medical report attesting to very serious injuries on the applicant's body and the fact that the investigator had been informed that the applicant had been admitted to hospital for inpatient treatment, the investigator closed the inquiry without attempting to find an explanation for the cause of those injuries. However, the Court is even more concerned by the way in which the investigator recounted statements by the hospital personnel who, despite the fact that the applicant had been admitted for inpatient treatment for his injuries, either allegedly had not seen any injuries on the applicant's body or had not seen any fresh injuries (see paragraph 19 above). The Court is troubled by the investigator's approach to the restatement of witness testimony, particularly in the light of the applicant's submissions from which it appears that the statements of at least one hospital staff member had not been reflected correctly in the investigator's decision (see paragraphs 19 and 76 above).

103. The Court further observes that it was not until 5 February 2002 that a thorough medical assessment was carried out with respect to the quantity and nature of the applicant's injuries. The Court reiterates 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). When a doctor writes a report after the medical examination of a person who alleges that he has been tortured, it is important that the doctor states the degree of consistency with the allegation of torture. A conclusion indicating the degree of support to the allegation of torture should be based on a discussion of possible differential diagnoses (non-torture-related injuries – including self-inflicted injuries – and diseases). The Court is not convinced that that was done in the present case. In his report of 5 February 2002 the expert made no reference to the degree of support to the applicant's allegations of ill-treatment, limiting his conclusions to very general and vague observations, such as the blunt surface and firm structure of the object with which the applicant had been hit. Taking into account the defects of the initial expert report, the Court finds it regrettable that the additional expert examination was not performed until January 2003, that is, a year after the applicant's ill-treatment had taken place. The Court believes that the delay in requesting an additional expert opinion led, among other things, to the experts' inability to come to firm conclusions as to the cause of the applicant's injuries.

104. Secondly, the Court observes that the investigating authorities took a selective and somewhat inconsistent approach to the assessment of evidence. It is apparent from the decision submitted to the Court that the investigators based their conclusions mainly on the testimonies given by the police officers involved in the incident. Although excerpts from the applicant's testimony were included in the decisions to close the inquiry, the investigators 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 investigators did accept as such the credibility of the police officers' testimonies, despite the fact, which was also noted by the District Court (see paragraph 36 above), that their statements were contradictory, could have constituted defence tactics and were aimed at damaging the applicant's credibility. In the Court's view, the prosecution inquiry applied different standards when assessing the testimonies: that given by the applicant was deemed to be subjective whereas those given by the police officers were not. The credibility of the latter testimonies should also have been questioned, as the prosecution investigation had sought 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). The Court further considers it extraordinary that the investigators never inquired into why the applicant had been prompted to amend his statements on 8 June 2002, and subsequently even to withdraw his ill-treatment complaint. Nor did they

attempt to settle the abundant discrepancies in the police officers' statements, starting from their description of the injuries on the applicant's body and ending with their versions of how those injuries could have been sustained (see paragraphs 19 and 29 above).

105. The Court further observes that the majority of the investigators' decisions did not rely on any statements from witnesses who were not police officers. It was not until several years after the events in question that they questioned Mr T., the applicant's co-defendant, to whom he had allegedly confessed to having slandered the police officers by way of his ill-treatment complaint. The Court, however, does not find those statements to be reliable given the remoteness of the events in question from the date when Mr T. made them. The Court is also mindful of the vulnerable position in which Mr T. found himself when testifying to the investigators, given that he was serving a long prison term.

106. On the issue of possible witnesses to the applicant's ill-treatment, the Court reiterates that while the investigating authorities may not have been provided with the names of individuals who could have seen the applicant at the police station or might have witnessed his alleged beatings, they were expected to take steps on their own initiative to identify possible eyewitnesses. The Court is concerned about the investigators' eagerness to accept, without verifying its veracity, any explanation for the applicant's injuries as long as it did not implicate the police officers. It once again finds it striking that, having concluded that the applicant had sustained the injuries in a fight and having noted the absence of complaints by the applicant against any third parties, the investigator closed the inquiry without any evidence in support of the conclusion that the fight had in fact taken place. 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*, judgment of 25 September 1997, *Reports* 1997-VI, § 106). The Court's conclusion to that effect is supported by the District Court's finding that the investigators had failed to comply with its orders to look for additional evidence which could have shed light on the facts of the case (see paragraphs 34 and 36 above).

107. Lastly, the Court finds that the applicant's right to participate effectively in the investigation was not secured. It transpires from the investigators' decisions that the applicant was only assigned the procedural status of a witness, thus stripping him of more far-reaching rights which he could have exercised in the capacity of a victim (see paragraph 29 above) (see *Aleksandr Sokolov v. Russia*, no. 20364/05, § 59, 4 November 2010). The applicant's relatives, as was correctly pointed out by the District Court, were also left out of the proceedings as a result of the investigators delaying their questioning. The Court also notes the investigators' failure on a number of occasions to serve the applicant with their decisions promptly

(see paragraphs 26, 30 and 39 above). The authorities must therefore bear the responsibility for the serious delays in the proceedings resulting from their failure to act diligently.

108. Having regard to the above failings of the Russian authorities, the Court finds that the investigation carried out into the applicant's allegations of ill-treatment on 16 and 17 January 2002 was not thorough, prompt, adequate or effective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE EVENTS ON 14 AND 15 FEBRUARY 2003

109. The applicant complained of another instance of ill-treatment by the police following his arrest on 14 February 2003 and the authorities' failure to respond promptly and effectively to his ill-treatment complaint. He relied on Article 3 of the Convention, cited above.

A. Submissions by the parties

110. Having described the circumstances of the applicant's arrest on 14 February 2003, the Government insisted that the force used against him had been necessary and had not exceeded the limit. Although as a result of the force used, the applicant had sustained a number of bruises and abrasions, the force had not been excessive and had not caused any damage to his health. The Government also cited statements by the applicant made in February 2006, when he had explained that his injures had been caused by falling down the stairs in the detention unit of the police station on 14 February 2003. The Government drew the Court's attention to the fact that during that interview the applicant had denied that the police officers had used force and had confessed to an attempt to slander them. They further stressed that the investigation performed in response to the applicant's complaint had been thorough. The investigators had collected statements by the police officers and the applicant, and had sought medical evidence, including expert examinations. The fact of the unlawfulness of the applicant's detention in the police station on the basis of an administrative offence report had been acknowledged by the domestic authorities and the responsible police officers had been held disciplinarily liable. In those circumstances, the Government invited the Court to dismiss the applicant's complaint as manifestly ill-founded.

111. The applicant insisted on his version of the events described to the Court in the application form and subsequent letters. He stressed that he had been tortured by the police officers, that he had never used force against them or resisted their orders, and that the change in his statements in February 2006 was merely his fearful response to an interview in the

conditions of the correctional colony. The applicant argued that the evidence put forward by the Russian authorities in support of their explanation of his injuries had been contradictory and unconvincing. He pointed to the fact that certain police officers had not mentioned his having resisted arrest and that the authorities had not recorded any injuries when he was placed in the police station detention unit. The applicant also claimed that two of the police officers who had taken part in his beating had later been charged with the torture of another detainee, and one of them had been convicted of the offence. However, he acknowledged that the evidence in support of his version was also weak, given that he had been in detention, had been unable to collect evidence himself and had been entirely dependant on the Russian investigating authorities. At that point, he listed numerous defects in the proceedings pertaining to his ill-treatment complaints. His complaints were similar to those which he expressed in respect of the inquiry into the events of 16 and 17 January 2002.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) Alleged ill-treatment

113. Having examined the parties' submissions and all the material presented by them, the Court finds it established that on 14 February 2003 the applicant was arrested and brought to the police station where he was detained at least until 17 February 2003, when criminal charges were brought against him. Following the medical examination of the applicant, on 22 March 2003 the medical expert issued a report having recorded several bruises on the applicant's forearms, shoulders, chest and back, and two bruises on his chin and cheek (see paragraph 47 above).

114. The Court notes that the Government, relying on the findings of the domestic investigating authorities, argued that the applicant's injuries had been caused during his arrest, when he had resisted the lawful orders of the police officers, had refused to get into a police car and had hurled himself against the car while the officers had tried to restrain him. The applicant provided a lengthy description of the events of 14 and 15 February 2003, insisting that he had been beaten, suffocated and tortured with electricity by

the police officers. The Court also reiterates that during the interview with the investigator in February 2006 the applicant allegedly cited a fall down the staircase as a possible cause of his injuries. However, given that neither of the parties insisted on that version of events, the Court does not consider it necessary to examine it.

115. The Court once again reiterates that 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 sustained during such detention (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). Having regard to the evidence before it, the Court is not convinced that the applicant sustained the injuries listed in the expert report of 22 March 2003 in the circumstances as described by the Government. It notes serious flaws undermining the Government's version of events. The Court cannot overlook the fact that the applicant was in the police custody for three days on the basis of an administrative offence report, without any criminal charges being brought against him. During these three days he was not allowed to see a lawyer and his family members were not notified of his detention. The peculiar circumstances of the applicant's detention, as well as the acknowledgment on the part of the Government that the grounds for the detention during those three days were deficient, provide a strong support to the applicant's allegations that he was detained for the purpose of extracting confession from him through the use of force. Reiterating its consistent approach that cases of unacknowledged or arbitrary detention, such as in the applicant's case, render detainees particularly vulnerable, the Court is prepared to lay on a State a stricter burden of proof to present evidence to refute suspicions of serious human rights violations during the detention, in particular allegations of inhuman treatment. It does not consider that the Government have met such evidentiary burden in the present case.

116. Firstly, the Court is mindful of a delay in subjecting the applicant to a medical assessment or examination after the arrest, particularly so if, as the Government argued, the applicant had been injured while resisting the arrest. It was not until 18 February 2003, four days after the arrest and only when the applicant was finally allowed to see his lawyer, that a medical examination was authorised (see paragraph 45 above). The authorities' reluctance to examine the applicant as soon as he was brought to the police station serves as an additional argument in support of his version of events. It also appears that another delay occurred between authorisation of the medical examination and the examination itself (see paragraph 47 above). In this respect, the Court is concerned with a quality of the expert report prepared by the medical expert on 22 March 2003 to characterise the applicant's injuries. The Court notes the irreparable defects of the report making it impossible to establish, with a sufficient degree of certainty, the

date of the applicant's medical examination and, as follows, to confirm or disprove his allegations of having been ill-treated for two days in the police station.

117. The Court further notes that none of the eyewitnesses present during the applicant's arrest testified to his having resisted the police officers. In fact, the police officers' version ran counter to the description of the events provided by the two witnesses, Mr T. and Ms F. (see paragraph 59 above). While the Court does not lose sight of the relations the two witnesses had with the applicant (see paragraph 41 above), the detailed character of their testimony, as well as the fact that they maintained their testimony throughout the investigation, allow overcoming a certain doubt as to the veracity of their statements. The applicant's consistent testimony as to the nature and origin of his injuries is yet another ground for the Court to dismiss the Government's version of events as implausible. The only episode when the applicant changed his statements and attempted to withdraw the complaint in February 2006 does not alter this conclusion. The Court is not ready to interpret the applicant's behaviour in any other way but as an act of frustration by the authorities' superficial and delayed response to his ill-treatment complaints.

118. Finally, despite the defective nature of the expert report drawn up on 22 March 2003, the Court takes into account that neither party argued that the expert had omitted to list any injuries or had incorrectly recorded their localisation. In this respect, it observes that while the nature of the injuries calls into question the applicant's description of some of the "torture" techniques allegedly used by the police officers, their localisation, in particular the fact that they were discovered on his back, shoulders and forearms, provides support to the applicant's statements that he was placed on the floor with his hands handcuffed behind his back, that a police officer sat on his back and other police officers hit and kicked him.

119. In such circumstances, the Court considers that the material before it constitute sufficient evidence to support the applicant's allegation and to find beyond reasonable doubt that he was ill-treated by the police officers in the station on 14 and 15 February 2003. The Court does not discern any necessity which might have prompted the use of force against the applicant. The violence to which the officers deliberately resorted was intended to arouse in the applicant feelings of fear and humiliation and to break his physical or moral resistance. In addition, judging by the quantity and nature of the applicant's injuries, the treatment he was subjected to blows must have caused him intense mental and physical suffering.

120. Accordingly, the Court finds that there has therefore been a violation of Article 3 of the Convention, in that on 14 and 15 February 2003 the Russian authorities subjected the applicant to inhuman treatment in breach of that provision.

(b) Alleged inadequacy of the investigation

121. The Court considers that the medical evidence, the applicant's complaint of ill-treatment, and the fact that he had previously complained of an assault by police officers together raise a reasonable suspicion that he could have been again a victim of police brutality. The applicant's complaint in this regard is therefore "arguable". The authorities thus had an obligation to carry out an effective investigation into the circumstances in which the applicant sustained his injuries (see *Krastanov v. Bulgaria*, no. 50222/99, § 58, 30 September 2004).

122. The Court notes that the investigation into the events of 14 and 15 February 2003 was riddled with the same defects as those which the Court identified in the investigation into the applicant's allegations of police brutality on 16 and 17 January 2002 (see paragraphs 101-108 above). Having opened an inquiry almost immediately after the applicant's complaint on 18 February 2003, the investigating authorities had a spree of closing and opening the inquiry in the course of more than three years, taking a final decision only on 5 May 2006. The proceedings were discontinued and resumed four times because the investigation had been found to be incomplete and inadequate. The Court reiterates that repeated remittals of a case for further investigation may disclose a serious deficiency in the domestic prosecution system (see *Filatov v. Russia*, no. 22485/05, § 50, 8 November 2011; *Gladyshev v. Russia*, no. 2807/04, § 62, 30 July 2009; and *Alibekov v. Russia*, no. 8413/02, § 61, 14 May 2009). The investigators eagerly closed the proceedings following the applicant's refusal to support his ill-treatment complaint, without questioning the applicant's personal motives or determining whether his decision had been taken voluntarily (see paragraphs 49 and 50 above). Such deficiencies and the slack attitude on the part of the authorities caused, in the Court's view, a loss of precious time and complicated the investigation of the applicant's allegations (see, for similar reasoning, *Ablyazov v. Russia*, no. 22867/05, § 58, 30 October 2012).

123. For years the investigators based their decisions exclusively on the statements of the police officers, failing to question the credibility of their testimony, to sort out the discrepancies in their statements and to look for any other independent source of information which could have supported or disproved their version of the events. Even when statements had finally been obtained from the two witnesses – the applicant's passengers – the investigators demonstrated a different attitude towards assessing their accuracy and reliability from the one they took in assessing the police officers' statements. However, the Court again reiterates that the probative value of witness testimony should never be automatically raised or impeached on account of the witness's affiliation to State bodies or their relation with a suspect or a victim. Furthermore, the Court finds it unexplainable that the investigators did not question the remaining

passengers in the applicant's car or attempt to find any other eyewitness to the events in question.

124. The Court is also dissatisfied with the quality of the medical expert evidence collected in the proceedings. It does not escape the Court's attention that although the investigators ordered a medical examination of the applicant in February 2003 and later interviewed the expert who had issued that report, they never asked the expert to identify the cause of the applicant's injuries. While they inquired whether the applicant could have sustained the injuries as a result of being forced into the police car, the investigators did not ask the expert whether similar injuries could have been sustained in the circumstances described by the applicant. The Court therefore cannot but conclude that the investigators' efforts were focused rather on the dismissal, in hasty and perfunctory fashion, of the applicant's complaint than on a thorough verification of the substance of his allegations.

125. Nor can the Court overlook the applicant's limited involvement in the investigation and the investigators' attempts to exclude him and his lawyer from the proceedings, either by delaying the service of the decisions on them or unlawfully refusing them access to the case file (see paragraphs 60, 62 and 63 above). It cannot therefore be said that the applicant's right to participate effectively in the investigation was secured (compare *Denis Vasilyev v. Russia*, no. 32704/04, § 126, 17 December 2009).

126. The Court is thus of the view that the investigator's inertia and reluctance to look for corroborating evidence precluded the creation of an accurate, reliable and precise record of the events of 14 and 15 February 2003.

127. In the light of the shortcomings identified above, the Court concludes that the authorities failed to comply with the requirements of promptness, thoroughness and effectiveness (see *Kişmir v. Turkey*, no. 27306/95, § 117, 31 May 2005; *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, ECHR 2007-IX; and *Vladimir Fedorov*, cited above, § 70). Accordingly, it holds that there has been a violation of Article 3 of the Convention under its procedural limb.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

128. Lastly, the applicant complained that he had been subjected to ill-treatment by police officers on many other occasions and that the authorities had once again failed to take effective steps to investigate the matter (see paragraphs 67 and 68 above). In this respect, the Court reiterates that in the Russian legal system the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities. An appeal to a court of general jurisdiction against a prosecutor's decision not to

investigate complaints of ill-treatment constitutes therefore an effective domestic remedy which must be exhausted (see *Belevitskiy v. Russia*, no. 72967/01, § 61, 1 March 2007). The Court notes that the applicant did not appeal to a court against the prosecutor's decision of 24 May 2003 refusing to open an inquiry into the events which had allegedly taken place in March and April 2003, and there is no evidence that he complained to the authorities in respect of the events of June 2003.

129. In the light of the above considerations, the Court finds that the applicant's complaints concerning these instances of alleged ill-treatment must be rejected for non-exhaustion of domestic remedies, pursuant to Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

130. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

131. The applicant claimed 1,275 euros (EUR) in respect of pecuniary damage, comprising the cost of various procedures for his medical and psychological rehabilitation following the ill-treatment. He also claimed EUR 100,000 in respect of non-pecuniary damage.

132. The Government noted that the applicant had not provided any evidence in support of his claim for pecuniary damages. They also observed that the requested compensation for non-pecuniary damage was excessive.

133. The Court observes that the applicant did not submit any evidence in support of his claim for compensation for pecuniary damage; it therefore rejects this claim. On the other hand, the Court reiterates that the applicant cannot be required to furnish any proof of the non-pecuniary damage he sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court further observes that it has found a combination of particularly grievous violations in the present case. It accepts that the applicant suffered humiliation and distress on account of the ill-treatment inflicted on him by police officers. In addition, he did not benefit from an adequate and effective investigation of his complaints of ill-treatment. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Nevertheless, the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 20,000 in

respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

134. The applicant also claimed EUR 5,100 for the costs and expenses incurred before the domestic courts and before the Court. In particular, he asked the Court to award him EUR 2,000 in legal fees, EUR 2,000 for translator's services, EUR 1,000 for preparation of the documents and EUR 100 in postal expenses.

135. The Government submitted that the applicant's claim for costs and expenses was not supported by any evidence.

136. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes the applicant's failure to submit any documents in support of his claims. However, regard being had to the documents in its possession, the Court finds it established that the applicant was represented by a team of lawyers who assisted him in the domestic proceedings, submitted detailed and thorough observations to the Court and collected and lodged evidence in support of their arguments. They also translated the materials into English. At the same time, the Court considers that a reduction should be applied to the amount claimed in respect of legal fees on account of the fact that some of the applicant's complaints were declared inadmissible. Bearing this in mind, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's ill-treatment on two occasions, in January 2002 and February 2003, by police officers and the authorities' failure to investigate the events in question admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the treatment to which the applicant was subjected by police officers on 16 and 17 January 2002;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the events of 14 and 15 February 2003;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the applicant's ill-treatment complaints pertaining to the two incidents on 16 and 17 January 2002 and on 14 and 15 February 2003;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage;

(ii) EUR 3,000 (three thousand euros) in respect of costs and expenses incurred before the Court;

(iii) any tax that may be chargeable to the applicant on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;

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

Done in English, and notified in writing on 11 April 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President