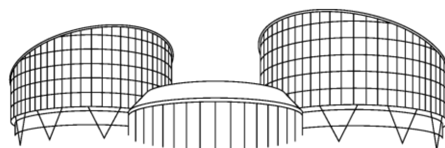

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# CASE OF VELIKANOV v. RUSSIA

*(Application no. 4124/08)*

JUDGMENT

STRASBOURG

30 January 2014

**FINAL**

30/04/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 7 January 2014,

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

# PROCEDURE

1. The case originated in an application (no. 4124/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Vadim Vladimirovich Velikanov (“the applicant”), on 29 November 2007.

2. The applicant, who had been granted legal aid, was represented by Mr T.A. Misakyan, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, the he had been subjected to ill-treatment by police officers and that no effective investigation had been conducted in this regard.

4. On 6 December 2010 the application was communicated to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in Shchelkovo, the Moscow Region. He is currently serving a prison sentence in the Saratov Region.

### A. Alleged ill-treatment of the applicant

6. On 31 March 2003 the applicant was arrested on suspicion of murder and was placed in a temporary detention facility of the Shchelkovo Office of the Interior of the Moscow Region (“the Shchelkovo IVS”). According to the applicant, police officers under the command of police officer N. took him to special cells for questioning, where they tried to extract a confession from him or else make him sign blank sheets of paper. As he refused, they handcuffed him to a chair and beat him on his back and sides. Eventually he did sign a confession.

7. On 21 April 2003 the applicant was transferred to remand prison no. 50/8 in Sergiyev Posad, the Moscow Region (“SIZO-50/8”). Following a medical examination, the remand prison authorities refused to admit the applicant. In a report of the same date they indicated that he had a number of injuries, including a contusion of the spine and a contusion of the left side of the chest with a suspected fracture of the ribs, and that he needed further examination by medical experts.

8. On the same date the applicant was taken back to the Shchelkovo IVS and then transported to the Shchelkovo town hospital, where he underwent a medical examination, including an X-ray examination. The physician and neuropathologist who examined the applicant noted their findings in the above-mentioned report of SIZO-50/8. They are barely legible, but appear to confirm that the applicant had contusions of the spine and of the chest.

9. On the reverse side of the referral for the X-ray examination dated 21 April 2003 there is a hand-written finding by a radiologist dated 23 April 2003. It is likewise barely legible, but appears to confirm the contusion of the spine and the absence of a fracture.

10. On 25 April 2003 the applicant was admitted to SIZO-50/8.

11. On 24 March 2011 the head of SIZO-50/8 issued two certificates addressed to the Court. According to one certificate, between 25 April 2003 and 20 January 2004 – while the applicant was held in SIZO-50/8 – he had not made any complaints concerning his detention. According to the other certificate, admission of the applicant to SIZO-50/8 had been refused on 21 April 2003 as it appeared necessary to conduct an additional medical examination in order to confirm the diagnosis. No entry to that effect was made in the remand prison register since, in accordance with the applicable regulations, the register contained only information about individuals actually held in the remand prison, whereas the applicant was not admitted.

### B. Investigation into the applicant’s allegations of ill-treatment

12. On 16 August 2007 the applicant complained that he had been beaten by the police. He referred, in particular, to the report of 21 April 2003 confirming his injuries.

### *1. First refusal to institute criminal proceedings*

13. On 24 August 2007 the Shchelkovo prosecutor's office refused to institute a criminal investigation into the applicant's complaint. The relevant decision stated briefly that there was no information in the Shchelkovo IVS indicating that the applicant had ever requested medical assistance during his detention pending trial. It went on to note that, according to a certificate from the Shchelkovo town hospital, which the applicant had attended, he had been diagnosed with influenza and spontaneous rupture of tendons. The decision further stated that during his detention pending trial, none of the injuries indicated in the applicant's complaint had been found on his person, and concluded that the applicant's allegations of ill-treatment were unfounded and unsupported by any evidence. The decision remained silent about the report of 21 April 2003 to which the applicant referred in his complaint.

14. On 5 September 2007 a supervising prosecutor set aside the above decision.

### *2. Second refusal to institute criminal proceedings*

15. In a decision of 29 September 2007 the investigating authorities again refused to institute criminal proceedings in connection with the applicant's complaint. The decision was similar to that of 24 August 2007 and stated, in particular, that there was no information in the Shchelkovo IVS indicating that the applicant had requested medical assistance, or that any injuries had been inflicted on him during his detention pending trial. According to the decision, it was impossible to obtain an extract from the register of detainees of the Shchelkovo IVS since all the documents had been lost by its former head. The decision also referred to a certificate from the Shchelkovo town hospital attesting that the applicant had been diagnosed with influenza and spontaneous rupture of tendons, and stated that this latter injury had not been related to the injuries alleged by the applicant. The decision also indicated that the applicant had not undergone any medical forensic examination in the course of the criminal proceedings against him. It then concluded that the applicant's allegations of ill-treatment were unfounded and unsupported by any evidence. The decision did not mention the applicant's reference to the report of 21 April 2003.

16. On 10 January 2008 the applicant lodged a complaint with the Shchelkovo Town Court under Article 125 of the Russian Code of Criminal Procedure concerning the decision of 29 September 2007, arguing that the inquiry into his allegations of ill-treatment by the police had been incomplete and, in particular, the investigating authorities had ignored the report of 21 April 2003. In a letter of 18 January 2008 the Shchelkovo Town Court returned the applicant's complaint to him, indicating that a number of shortcomings should be remedied. The applicant did not appeal.

17. On 7 February 2008 the supervising prosecutor quashed the decision of 29 September 2007 as premature, stating that the inquiry had been incomplete. The prosecutor ordered the investigating authorities to identify and interview the police officers and the senior investigator who had participated in the criminal proceedings against the applicant, to obtain copies of documents from SIZO-50/8 concerning the applicant's medical examination there, to obtain relevant documents from his personal file and to perform other necessary actions.

18. By a decision of 14 February 2008 the Shchelkovo Town Court dismissed the applicant's complaint concerning the decision of 29 September 2007, stating that this latter decision had by that time already been set aside by a supervising prosecutor and an additional inquiry into the applicant's allegations of ill-treatment had been ordered. It is unclear whether the applicant appealed against the Shchelkovo Town Court's decision to a higher court.

*3. Third refusal to institute criminal proceedings*

19. On 11 February 2008 the investigating authorities again refused to institute criminal proceedings in connection with the applicant's allegations of ill-treatment. Their decision stated that, upon receipt of the documentation seeking a further inquiry, requests for information had been sent to the head of SIZO-50/8 and the head of the Shchelkovo Office of the Interior, and that the investigator in charge of the criminal case against the applicant had been interviewed. The decision then stated that "at present there [was] no objective evidence that officers of the Shchelkovo Office of the Interior [had] applied violence to the applicant".

20. On 2 March 2008 the supervising prosecutor quashed the decision of 11 February 2008, stating that the inquiry into the applicant's allegations of beating by the police had been incomplete, that the necessary measures had not been taken and, in particular, copies of documents from SIZO-50/8 concerning the applicant's medical examination at that centre and relevant documents from his personal file had not been obtained.

*4. Fourth refusal to institute criminal proceedings*

21. In a decision of 5 March 2008, similar to that of 11 February 2008, the investigating authorities again refused to institute criminal proceedings in respect of the applicant's allegations of ill-treatment by the police, stating that, "as of this date, no replies to requests for information sent earlier [had] been received", and that "therefore there [was] no objective evidence that officers of the Shchelkovo Office of the Interior [had] inflicted violence on the applicant".

22. On 24 June 2008 the supervising prosecutor quashed the decision.

23. On the same date the Shchelkovo Town Court dismissed a complaint by the applicant concerning the decision of 5 March 2008, stating that this latter decision had already been quashed and a further inquiry had been ordered. The applicant did not appeal against the first-instance decision.

*5. Fifth refusal to institute criminal proceedings*

24. On 4 July 2008 the investigating authorities again refused to institute criminal proceedings in connection with the applicant's complaint that he had been beaten by the police. The relevant decision noted that the applicant, when interviewed with regard to his allegations, had submitted that during the period of his detention in the Shchelkovo IVS he had been ill-treated on several occasions by police officers, who had chained him to a chair or a table and had beaten him on his back and in the ribs, and that upon his delivery to SIZO-50/8 a report had been drawn up confirming his injuries. He had also stated that he had undergone an X-ray examination in the Shchelkovo town hospital on 24 April 2003 and that the results of that examination had been recorded in X-ray image no. 1478. The applicant had submitted that he did not know the police officers who had beaten him, and that he only knew a certain N., an officer of the Shchelkovo Office of the Interior, who had not himself applied force to the applicant, but had brought with him two individuals in civilian clothes, the latter forcing the applicant to confess to the alleged offence. The decision went on to say that in the applicant's personal file there was no information indicating whether he had undergone any medical examinations in the period between 31 March and 31 May 2003.

25. The decision further referred to a reply from SIZO-50/8, according to which the remand prison had no information concerning the applicant's examination by a medical official on 21 April 2003. It also pointed out that a reply from the Shchelkovo town hospital had provided no information indicating that the applicant had ever undergone an X-ray examination in that hospital, nor was there any X-ray image such as that referred to by the applicant in the hospital's archive. The decision further stated that the officer N., referred to by the applicant, and investigators B. and S., who had conducted the investigation into the applicant's criminal case, when interviewed in the context of the present inquiry had denied using physical force or psychological pressure in respect of the applicant or seeing anyone else doing so. The decision also noted that the applicant had not complained about the alleged ill-treatment until four years after the events in question. It then stated that the investigating authorities considered that the applicant had alleged such ill-treatment by the police in an attempt "to mislead the investigating authorities, who were spending their time and resources investigating offences that [had] in reality [not been] committed, and to accuse public officials of serious offences, thereby affecting a number of individuals who were obliged to devote time to giving oral evidence to the

investigating authorities”. The decision therefore concluded that there was no evidence of the offence alleged by the applicant.

26. On 13 April 2009 the supervising prosecutor set aside the decision of 4 July 2008, stating that the inquiry had been incomplete.

27. On 30 April 2009 the Shchelkovo Town Court dismissed a complaint by the applicant concerning the decision of 4 July 2008, referring to the fact that this latter decision had already been quashed by the supervising prosecutor. The applicant did not appeal against the first-instance decision.

*6. Sixth refusal to institute criminal proceedings*

28. On 16 April 2009 the investigating authorities again refused to institute criminal proceedings in relation to the applicant’s complaint that he had been ill-treated by the police. The relevant decision was identical to that of 4 July 2008. The only comment added was that it appeared impossible to question investigator B. and officer N., as they had not responded to telephone calls.

29. On 1 December 2010 the Shchelkovo Town Court dismissed a complaint by the applicant concerning the decision of 16 April 2009. Although the court noted that the applicant referred to the medical report of 21 April 2003, it did not address it any further but instead stated that the investigation conducted into his allegations had been complete. The court referred, in particular, to certain explanations obtained from the investigators who had been in charge of the applicant’s case.

30. A request by the applicant to restore the time-limit for appealing against the decision of 1 December 2010 was granted by the Shchelkovo Town Court on 19 January 2011.

31. On 22 March 2011 the Moscow Regional Court quashed the decision of the Shchelkovo Town Court of 1 December 2010 on appeal on the following grounds. Firstly, although the applicant had challenged the judge – because it was the same judge who had convicted him – this had not been examined by the first-instance court. Secondly, the first-instance court had not examined the report of 21 April 2003 and, thirdly, it had referred to certain explanations by investigator B. and officer N. that could not be found in the case file.

32. On 23 May 2011 the Shchelkovo Town Court again dismissed the applicant’s complaint concerning the decision of 16 April 2009. The court stated, in particular, that whereas the applicant had provided a copy of the report of 21 April 2003, it appeared impossible to verify its authenticity since there was no information about the medical examination in question in his file. It further noted that neither during the preliminary investigation nor at the trial had the applicant made any allegations of ill-treatment. It is not clear whether the applicant appealed.

#### 7. *Seventh refusal to institute criminal proceedings*

33. Meanwhile the applicant resubmitted his complaint of ill-treatment, which was dismissed by the investigating authorities on 4 October 2010 on the grounds that an investigation into the applicant's allegations had already been conducted and they had been proved unsubstantiated.

### C. The applicant's criminal conviction and ensuing events

34. On 28 August 2003 the Shchelkovo Town Court convicted the applicant of murder and sentenced him to eleven years' imprisonment.

35. On 12 February 2004 the Moscow Regional Court upheld the first-instance judgment on appeal.

36. At some point, one of the witnesses stated that he had made false statements incriminating the applicant in the course of the criminal proceedings against the latter. Thereafter the applicant attempted – unsuccessfully – to have criminal proceedings brought against that witness. In the period between 2006 and 2009 the domestic courts dismissed complaints by the applicant concerning the investigating authorities' decisions to dispense with criminal proceedings in that regard.

## II. RELEVANT DOMESTIC LAW

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

38. In its Resolution of 10 February 2009 the Plenary Supreme Court of Russia stated that it was incumbent on judges – before processing an Article 125 complaint – to establish whether the preliminary investigation had been completed in the main case (point 9). If the main case has already been sent for trial or the investigation completed, the complaint should not be examined unless it has been brought either by a person who is not a party to the main case or – if such a complaint is not amenable to judicial review under Article 125 – at the pre-trial stage of the proceedings. In all other situations the complaint under Article 125 should be left unexamined and the complainant should be informed that he or she can raise the matter before the trial or appeal courts in the main case.

39. Similarly, according to the Constitutional Court's construction, a complaint under Article 125 cannot be brought or pursued after the criminal

case to which the complaint is connected has been submitted for trial. However, where it is established that a party to the proceedings (including a judge or a witness) has committed a criminal offence, thus seriously compromising the fairness of the proceedings, the Code exceptionally allows for separate investigation of the relevant circumstances, leading to a reopening of the case (see Decision no. 1412-O-O of 17 November 2009; see also Ruling no. 20-П of 2 July 1998 and Ruling no. 5-П of 23 March 1999).

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police and that there had been no effective investigation into the matter. Article 3 of the Convention reads as follows:

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

41. The Government confirmed that on 21 April 2003 the applicant's admission to SIZO-50/8 had been denied on the grounds that he needed further medical examination, as a result of which he had been diagnosed with a contusion of the spine. They enclosed a certificate issued by the head of SIZO-50/8 to that effect (see paragraph 11 above). The Government also stated, however, that through the whole of the preliminary investigation and the trial the applicant had made no allegations of ill-treatment, and that his subsequent complaints in this regard had been duly examined by the competent investigating authorities. The Government pointed out that the applicant had not only complained about the alleged ill-treatment until three years after the event, which had made the investigation more difficult. They also noted that the applicant had been provided with adequate medical assistance throughout the term of his detention.

42. The applicant maintained his complaint. He argued that the injuries had been inflicted on him while he was under the State's control, and that the State had failed to refute his account of the events. Furthermore, the domestic authorities had failed to conduct an effective investigation into his allegations of ill-treatment. The applicant pointed out that the report of 21 April 2003 issued by SIZO-50/8 had not even been mentioned in any of the numerous refusals to institute criminal proceedings against the police officers, let alone evaluated. Furthermore, investigative actions such as identification of the police officers who had allegedly ill-treated the applicant, or a face-to-face confrontation with them, had never been carried

out. In the applicant's view, the authorities had made no diligent attempts to establish the veracity of his statements.

## A. Admissibility

43. The Court reiterates that under Article 35 § 1 of the Convention it may deal with a matter only after all domestic remedies have been exhausted and within a period of six months from the date on which the final decision was taken. It further points out that applicants are required to exhaust only those remedies which are effective. Where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the six-month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 4 June 2001).

44. Turning to the facts of the present case, the Court observes that while the applicant's complaint relates to events that occurred in April 2003, he did not bring a complaint before the domestic authorities in relation to these events until August 2007. No explanation has been given to the Court for this delay. As it has previously pointed out with regard to cases which concerned forced disappearances, with the passage of time witnesses may become untraceable, their memories fade, evidence deteriorates or ceases to exist, and the prospects of any investigation being undertaken will increasingly diminish (see *Varnava and Others v. Turkey* [GC] (nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 161, ECHR 2009). The same holds true for the case at hand. However, the Court notes that although the local domestic prosecuting authorities initially refused to institute a criminal investigation into the applicant's complaint, the refusal was overruled five times by the supervising prosecutor, who considered the inquiry to have been incomplete and gave instructions on the investigative measures to be taken. Furthermore, in their observations the Government referred to a certificate issued on 24 March 2011, which in the Court's view constitutes an important piece of evidence in the applicant's case (see paragraphs 11 and 41 above). Accordingly, it cannot be said that the domestic authorities considered any investigative efforts to be manifestly futile in view of the significant time that had elapsed. Therefore, despite the delay with which the applicant sought to institute criminal proceedings in connection with his allegations of ill-treatment, in the specific circumstances of the present case the Court finds that the ensuing investigation must be taken into account for the purposes of Article 35 § 1 of the Convention (see, by contrast, *Finozhenok v. Russia* (dec.), no. 3025/06, 31 May 2011).

45. Taking into account the fact that the application was lodged with the Court on 29 November 2007, whereas the domestic proceedings remained pending after that date as a result of repeated reversals of the decision not to institute criminal proceedings, the Court also finds that the applicant has complied with the six-month time-limit enshrined in Article 35 § 1 of the Convention.

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

## B. Merits

### *1. The alleged ill-treatment of the applicant*

#### (a) General principles

47. The Court has observed on many occasions that Article 3 of the Convention enshrines one of the fundamental values of democratic societies and as such prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see, for example, *Aksoy v. Turkey*, 18 December 1996, § 62, *Reports of Judgments and Decisions* 1996-VI, and *Aydın v. Turkey*, 25 September 1997, § 81, *Reports* 1997-VI). The Court further notes, as it has held on many occasions, that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into custody in good health but is found to have injuries at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see *Ribitsch v. Austria,* 4 December 1995, § 34, Series A no. 336; see also, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons 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 *Ribitsch*, cited above, § 34, and *Salman*, cited above, § 100).

**(b) Application to the present case**

48. The Court observes that the applicant was arrested on 31 March 2003 and placed in the Shchelkovo IVS. On 21 April 2003 he was to be transferred to SIZO-50/8, but the remand prison's authorities refused to admit him as he had injuries. They drew up a report to this effect and recommended an additional medical examination, which was conducted shortly afterwards. According to the results of this examination by a physician and a neuropathologist, the applicant had contusions of the spine and of the chest. In 2007 the applicant complained that he had been ill-treated by the police in the period between 31 March and 21 April 2003. However, the institution of criminal proceedings was refused a number of times.

49. The Court notes that the injuries sustained by the applicant are corroborated by the report of 21 April 2003 drawn up by the SIZO-50/8 authorities, whereas his account of events relating to the refusal to admit him to SIZO-50/8 and the subsequent medical examination is confirmed by the head of SIZO-50/8 (see paragraph 11 above) and the Government. Therefore, the Court finds it established that on 21 April 2003 the applicant was diagnosed with contusions of the spine and chest.

50. It further notes that in the decisions that were issued between 2007 and 2010 refusing to institute a criminal investigation into the applicant's allegations, the investigating authorities relied mainly on the fact that the applicant had not made such allegations during his trial and that the police officers questioned in this regard had denied the use of force. However, none of the decisions attached any weight to the report of 21 April 2003 although the applicant expressly relied on it. It appears to have been simply ignored by the investigating authorities.

51. Accordingly, whereas it was established that the applicant had sustained injuries while in custody, the authorities failed to provide any plausible explanation as to how those injuries had been inflicted. Having regard to the general principles cited above, the Court finds that in the case at hand the State did not discharge the burden of proof as regards the injuries caused to the applicant while in detention.

52. The Court further finds that in the instant case the existence of physical pain or suffering is borne out by the medical report and the applicant's statements. Taking into account the nature of the injuries, it concludes that the applicant was subjected to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

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

## 2. *Effectiveness of the investigation*

### (a) General principles

54. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation as to result, but as to means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

55. Thus, the investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports* 1998-VIII). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman*, cited above, § 106; *Tanrıkulu v. Turkey* [GC], no. 23763/94, §§ 104 et seq., ECHR 1999-IV; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of those responsible will risk falling foul of this standard.

56. Furthermore, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation was at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV). Consideration has been given to the commencement of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV), and the length of time taken during the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

**(b) Application to the present case**

57. The Court observes that on 16 August 2007 the applicant complained that he had been ill-treated while in custody between 31 March and 21 April 2003. As the Court has noted in paragraph 44 above, no explanation has been provided as to why it took the applicant four years to bring his complaint to the attention of the domestic authorities. In these circumstances the Court cannot hold the authorities responsible for the absence of any investigative measures between April 2003 and August 2007.

58. As the Court likewise pointed out in paragraph 44 above, with the passage of time the prospects of any investigation being undertaken increasingly diminish. However, in the case at hand a supervising prosecutor repeatedly set aside the decision of the investigating authorities to refuse to institute criminal proceedings and instructed them to take additional investigative measures. It follows that the domestic authorities did not consider the investigation manifestly futile on account of the time that had elapsed. The Court therefore has to examine whether the investigation conducted complied with the requirements set out in paragraphs 54-56 above.

59. The Court notes that five subsequent refusals to institute a criminal investigation into the applicant's allegations were issued by the investigating authorities on 24 August and 29 September 2007, 11 February, 5 March and 4 July 2008, but were set aside by a supervising prosecutor because the inquiry that had been conducted was deemed incomplete. In fact, none of these decisions by the investigating authorities attached any weight to the report of 21 April 2003 stating the applicant's injuries. Even though the applicant relied on the report, it remained ignored by the investigating authorities. The latter confined themselves to noting that the applicant had made no allegations of ill-treatment during the preliminary investigation and trial and relied on the police and investigating officers' statements that they had not ill-treated him.

60. The same holds true for the sixth refusal to institute a criminal investigation, on 16 April 2009. Whereas it had been upheld by a first-instance court, it was subsequently quashed on appeal on the grounds, *inter alia*, that the first instance court had failed to assess the report of 21 April 2003 relied upon by the applicant. Following a fresh examination, on 23 May 2010 the Shchelkovo Town Court again upheld the decision of 16 April 2009, stating that the applicant had produced only a copy of the report, and that because the original was not present in his personal file it was impossible to establish the authenticity of that copy.

61. The seventh refusal to institute a criminal investigation was delivered on 4 October 2010 on the grounds that the applicant's complaint was substantially the same, and an investigation into his allegations had already been conducted.

62. The domestic authorities therefore never actually examined the report of 21 April 2003 detailing the applicant's injuries and in fact expressly ignored it. Such unexplained but consistent ignoring of the main item of evidence constitutes a fundamental flaw of the investigation.

63. Furthermore, no real efforts were made to establish the circumstances in which the applicant's injuries were sustained. No steps were taken to identify the police officers allegedly responsible for the ill-treatment, nor was any face-to-face confrontation held with the applicant. The statements of several police officers who had dealt with the applicant's case to the effect that they had not ill-treated him were all too readily accepted by the investigating authorities. They relied on these statements throughout the investigation, without seriously considering any alternatives (see *Mosendz v. Ukraine,* no. 52013/08, § 98, 17 January 2013). The Court also notes that the Government enclosed with their observations a certificate issued by the head of SIZO-50/8 which confirmed the applicant's account of the refusal to admit him to the remand prison on 21 April 2003 due to the need for an additional medical examination (see paragraph 11 above). However, no explanation has been provided to the Court as to why the domestic authorities failed to obtain such information and then assess it in the course of investigating the applicant's allegations.

64. Moreover, the Court notes that, although the decisions by the investigating authorities refusing to institute a criminal investigation were repeatedly set aside by the supervising prosecutor – on the grounds that the inquiry that was conducted had been incomplete – over the course of three years the investigating authorities merely reproduced their earlier findings with no evidence of any effort to conduct a thorough inquiry. Such conduct undermines the plausibility of the findings of the domestic authorities and gives rise to grounds for serious misgivings regarding their good faith and the genuineness of their efforts to establish the truth.

65. The Court thus finds that the State has failed in its obligation to conduct an effective investigation into the applicant's allegations of ill-treatment.

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

## II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

67. The applicant complained under Article 13 of the Convention that he had had no effective remedies in respect of his complaint under Article 3 of the Convention. Article 13 reads as follows:

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

68. The Government argued that the applicant had had effective remedies in respect of his complaints under Article 3 as he had availed himself of the possibility of an appeal to a court against the investigating authorities' decisions.

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

70. Having regard to the finding relating to Article 3 (see paragraphs 54-66 above), the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 13 (see, among other authorities, *Tarariyeva v. Russia*, no. 4353/03, § 103, ECHR 2006-XV).

## III. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

71. The applicant further complained under Article 6 §§ 1 and 3 (c) and (d) of the Convention of various irregularities in the proceedings concerning his requests to have criminal proceedings instituted against the witness who had given allegedly false oral evidence incriminating him. He also alleged that in its letter of 18 January 2008 the Shchelkovo Town Court had denied him access to a court. The applicant also relied on Article 13, alleging a lack of effective remedies in respect of his complaint under Article 6 of the Convention.

72. The Court reiterates, firstly, that the Convention does not guarantee a right to bring criminal proceedings against third persons (see *Schmid v. Austria*, no. 13783/88, Commission decision of 14 December 1989). Secondly, it points out that the applicant did not appeal against the Shchelkovo Town Court's decision of 18 January 2008, thereby failing to comply with the requirement to exhaust domestic remedies laid down in Article 35 § 1 of the Convention.

73. Therefore, this part of the application is inadmissible and must be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

## IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

74. Lastly, the applicant complained under Article 14 of the Convention, alleging that the domestic courts had not treated his complaints properly because he was a convicted offender.

75. The Court observes that the applicant did not present any evidence of differential treatment in the present case. The complaint is therefore manifestly ill-founded.

76. Accordingly, this part of the application is inadmissible and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage caused by the physical and mental suffering as a result of the ill-treatment to which he was subjected and the feelings of helplessness and uncertainty caused by the failure to have his allegations properly investigated.

79. The Government argued that, should the Court find a breach of any of the applicant's rights guaranteed by the Convention, the finding of a violation would constitute adequate just satisfaction.

80. The Court reiterates its findings that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention, and that the domestic authorities failed to investigate his allegations in that regard in an efficient manner as required by the above provision. This must have caused the applicant suffering, distress, frustration and feelings of injustice, which warrant an award in respect of non-pecuniary damage. Making an assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

### B. Costs and expenses

81. The applicant did not make a claim for costs and expenses. Accordingly, the Court makes no award under this head.

### C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 3 and 13 of the Convention concerning the applicant's ill-treatment and the subsequent investigation 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 applicant's ill-treatment;

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

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), to be converted into Russian roubles at the rate applicable at the date of settlement, in respect of non-pecuniary damage;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 30 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| Søren Nielsen | Isabelle Berro-Lefèvre |
| --- | --- |
| Registrar | President |