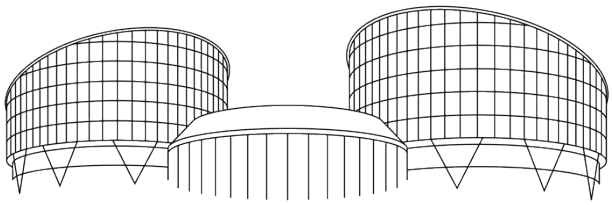

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KOPYLOV v. RUSSIA

(Application no. 3933/04)

JUDGMENT

STRASBOURG

29 July 2010

FINAL

21/02/2011

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

In the case of Kopylov v. Russia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 3933/04) 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 Oleg Viktorovich Kopylov ("the applicant"), on 25 December 2003.

2. The applicant, who had been granted legal aid, was represented by Ms E. Krutikova and Mr M. Rachkovskiy, lawyers with the International Protection Centre, an NGO based in Moscow. The Russian Government ("the Government") were initially represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged, in particular, that he had been ill-treated by police officers and escorts and that the investigation into his allegations of ill-treatment had been inadequate and ineffective.

4. On 5 October 2006 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the alleged ill-treatment and ineffective investigation to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1967 and lives in Lipetsk.

A. Ill-treatment by the police from January to April 2001

1. The applicant's arrest on suspicion of murder and his ill-treatment by the police

7. On 22 January 2001 at about noon the applicant was arrested and escorted to the Interior Department of the Lipetsk Region. It appears from a report by the arresting police officer that the applicant had been arrested on 22 January 2001 on suspicion of drug trafficking. However, no drug-related charges were ever brought against him. According to the applicant, he was told that he was suspected of murdering a policeman. He denied any involvement.

8. In the evening of the same day the applicant was transferred to Dolgorukovskoe police station, of the Lipetsk Region, where he was beaten up by Mr Gerasimov (the head of the police station) and Mr Abakumov (the head of the Investigations department). According to the applicant, they slapped and kicked him in the head, trunk and solar plexus. They forced him to kneel down in front of a picture of the murdered policeman and to apologise for killing him. They undressed him and threatened to rape him. Mr Gerasimov smacked his hands over the applicant's ears. He lost consciousness and was handed over to the police officers Mr Kondratov and Mr Trubitsyn, who continued the beatings. They tied his hands behind his back with a rope and hung him down, then put a gas-mask on him and blocked the air vent.

9. At about midnight the applicant was placed in a punishment cell at the police station.

10. On 23 January 2001 the applicant was formally detained and questioned. He denied his guilt and signed an undertaking not to leave the town. However, instead of being released, he was again placed in a cell at Dolgorukovskoe police station. It is apparent from the register of detainees at the police station that the applicant was held there from 23 to 26 January 2001.

11. According to the applicant, during his detention at Dolgorukovskoe police station he was repeatedly beaten up by Mr Lukin (the head of the public safety department), Mr Abakumov, Mr Gerasimov and Mr Butsan (a deputy head of the police station). He was also punched by the police

officers Mr Kondratov, Mr Trubitsyn, Mr Alyabyev, Mr Panteleyev and Mr Savvin. They slapped and kicked him in the head, back, stomach, kidneys and liver, hit his eyes with their fingers, smacked their hands over his ears and spat at him. They threatened to rape and kill him. They put a gas-mask on him and blocked the vent, and forced him to inhale cigarette smoke.

12. On 26 January 2001 the applicant was formally remanded in custody on suspicion of murder. He was then transferred to Volovskoe police station of the Lipetsk Region, where he remained until 28 January 2001. He was questioned by Mr Shubin, who threatened to beat him up if he did not confess to the murder.

13. On 28 January 2001 the applicant was taken back to Dolgorukovskoe police station. He stated that every day from 28 to 31 January 2001 he had been severely beaten up by the same policemen as before. Mr Alyabyev, Mr Lukin and Mr Kavyrshin administered electric shocks to various parts of his body through wires connected to a dynamo and insisted that he should refuse legal assistance and confess. The applicant lost consciousness several times. An investigator from the prosecutor's office of the Lipetsk Region, Mr Andreyev, witnessed the ill-treatment.

14. On 29 January 2001 the applicant had a talk with Mr Ibiyev, an investigator from the prosecutor's office of the Lipetsk Region in charge of the inquiry into the policeman's murder. Mr Ibiyev allegedly urged him to confess and threatened that beatings would continue until the confession was made.

15. On 30 January 2001 the applicant confessed to the murder and his confession was videotaped. Before the videotaping, the police officer Ms Karavayeva put make-up on his face to conceal the bruises.

16. On 31 January 2001 the applicant was charged with murdering the policeman. He repeated his confession to the investigator Mr Ibiyev. Before being questioned he made a handwritten statement that he did not require legal assistance.

17. On 2 February 2001 the applicant was transferred to detention facility no. YuU-323/T-2 in the town of Yelets in the Lipetsk Region ("the Yelets detention facility"). On that day he had a meeting with counsel retained by his mother. Counsel saw bruises and abrasions on his face and body.

18. From 9 to 17 February and from 29 March to 7 April, the applicant was held at Dolgorukovskoe police station. According to the applicant, he was repeatedly beaten up by the same policemen as before. They tied him up, wrapped him up in a mattress, put him on the floor and jumped on him. They hit his feet with rubber truncheons, punched and kicked him, and smacked their hands over his ears. They pointed a gun at him and threatened to rape him. They put a gas-mask on him and blocked the vent. They also tortured him with electricity.

19. On 16 May 2001 the murder charge against the applicant was dropped because he had retracted his confession and there was no other evidence against him.

20. On 15 January 2002 the Lipetsk Regional Court convicted another person for the policeman's murder.

2. Relevant medical documents

21. It appears from certificates issued by a deputy head of the Yelets detention facility and by a doctor of the same facility that the applicant arrived there on 5 February 2001. There were bruises around his eyes and crusted abrasions on his wrists. The applicant complained of a headache. He was examined by a neurologist, who found no traces of craniocerebral injury. However, he was given treatment for "a prior craniocerebral injury", allegedly received in 1984.

22. On 6 February 2001 the applicant was examined by a medical expert, Mr Yermakov. It was recorded in his report that the applicant had bruises around his eyes, a bruise on his trunk, a bruise on his left hip, and crusted abrasions on his wrists. Mr Yermakov found that those injures had been inflicted more than two weeks before. However, he subsequently stated to the investigator that his assessment had been mistaken and that the injuries had in fact been received *less* than two weeks before the examination.

23. On 21 February 2001 the applicant was diagnosed with otitis (an inflammation of the internal or external ear, usually caused by bacteria or trauma).

24. On 28 February 2001 the applicant was X-rayed. No traces of post-traumatic bone deformation were detected.

25. On 21 March 2001 the applicant was examined by a panel of psychiatrists who concluded that he was mentally sane.

26. The applicant repeatedly complained about aching feet. On 20 April, 20 June and 16 July 2001 a surgeon examined his feet and found no post-traumatic pathology. However, on 13 and 18 June 2006 doctors detected podoedema (swelling of the feet and ankles) and depigmentation of his feet.

27. In June 2001 the applicant was diagnosed with chronic post-traumatic arachnoiditis (pain disorder, caused by the inflammation of one of the membranes of the spinal cord).

28. In June and July 2001 he repeatedly complained about headaches, nausea, dizziness, general weakness and recurring loss of consciousness. A neurologist found that he was suffering from the after-effects of repeated craniocerebral injuries and brain concussion.

29. On 28 August 2001 he was diagnosed with cerebral oedema (an excess accumulation of water in the brain as a result of, among other things, head injury) and post-traumatic deformation of two left ribs.

30. On 1 November 2001 he was examined by a psychiatrist who diagnosed post-traumatic asthenoneurotic syndrome (tics).

31. On 12 February 2002 the applicant was diagnosed with obliterating endoarthritis (inflammation of and damage to bone joints caused by strains or injuries) and neuropathy of the feet (a disease affecting the nervous system caused by infection, repeated trauma or acute trauma).

32. On 18 March 2002 medical experts of the Lipetsk Regional Department of the Ministry of Health returned the following findings on the basis of the applicant's medical records:

- the injuries described in the medical report of 6 February 2001 had been caused 8 to 12 days before the examination of the bruises, and 3 to 7 days before the examination of the abrasions. The injuries could have been inflicted under the circumstances described by the applicant;

- it is not possible to establish with certainty whether the applicant had sustained a craniocerebral injury on 24 January 2001.

33. On 7 May 2002 the applicant was diagnosed with left-side hearing impairment.

34. On 31 May 2002 a panel of psychiatrists of the Lipetsk Regional psychiatric hospital examined the applicant and concluded that prior to the arrest he had been in good health. In the course of the investigation and detention he had developed a post-traumatic stress disorder which took a chronic form. The organic personality change and paranoid personality disorder could have been caused by ill-treatment inflicted on him between 22 January and 1 July 2001.

35. On 29 October 2002 the applicant was examined by a panel of psychiatrists of the Serbskiy State Scientific Institute of Social and Forensic Psychiatry in Moscow. The psychiatrists confirmed the findings of the examination of 31 May 2002 and stated that the applicant's psychiatric disorder had been the result of a brain trauma in April 2001. They recommended that the applicant undergo psychiatric treatment.

36. On the same day the applicant was examined by a surgeon who diagnosed him with post-traumatic arthritis of both feet. A neurologist concluded that he was suffering from the after-effects of repeated craniocerebral injuries and from post-traumatic encephalopathy (a brain disease).

37. It is recorded in a certificate of 22 November 2003 that the applicant was suffering from left-side deafness and right-side hearing impairment.

38. In 2004 the applicant was granted disability status and a pension.

39. According to a certificate of 2 July 2007 by Dr M., the psychiatrist treating the applicant, the applicant still suffers from psychiatric disorders. He visits a psychiatrist twice a month and receives psychoactive drugs in large doses. However, despite the intensive treatment, his psychiatric condition is continuing to deteriorate.

40. On 26 February 2008 a panel of psychiatrists from the Serbskiy State Scientific Institute of Social and Forensic Psychiatry in Moscow found that since 2001 the applicant had been suffering from a post-traumatic paranoid personality disorder. That disorder was so severe and lengthy that it could be defined as chronic. They concluded that he needed in-patient psychiatric treatment.

3. Investigation into the alleged ill-treatment

41. Starting from the beginning of February and until April 2001 the applicant and his counsel filed many complaints about the ill-treatment with the town and regional prosecutors and with the Prosecutor General of the Russian Federation. The applicant described in detail the treatment to which he had been subjected, named the police officers of Dolgorukovskoe police station implicated in the ill-treatment and asked to be examined by a medical expert with a view to noting his injuries. He asked the prosecutor's office to initiate criminal proceedings against the police officers.

42. On 5 June 2001 the applicant's complaints were sent by the prosecutor's office of the Lipetsk Region to the investigator Mr Ibiyev who was asked to carry out a preliminary inquiry. However, the applicant's complaints were subsequently referred to the prosecutor's office of Yelets.

43. The prosecutor's office of Yelets questioned three of the police officers named by the applicant. They testified that the applicant had not been subjected to any ill-treatment. On 6 July 2001 the prosecutor's office of Yelets refused to initiate criminal proceedings against the police officers. That decision was set aside by the prosecutor's office of the Lipetsk Region and an additional inquiry was conducted. In particular, the periods of the applicant's time in Dolgorukovskoe police station were established, several police officers and the investigator Mr Ibiyev were questioned and a medical examination of the applicant was performed.

44. On 14 September 2001 the prosecutor's office of Yelets again refused to initiate criminal proceedings.

45. On 11 October 2001 the prosecutor's office of the Lipetsk Region reversed the decision of 14 September 2001, finding that the inquiry had been incomplete. In particular, the prosecutor's office of Yelets had not established whether the applicant had been in good health before the arrest and whether the arrest had been lawful. It had overlooked the evidence which supported the applicant's allegations of ill-treatment, namely his confession to the murder, later retracted, and the medical report stating his injuries.

46. On the same day the prosecutor's office of the Lipetsk Region opened criminal proceedings against the police officers of Dolgorukovskoe police station. The applicant was granted victim status.

47. On 3 November 2001 two police officers were questioned about the circumstances of the applicant's arrest. It appears that no further action was taken until January 2002.

48. On 23 January 2002 the investigator commissioned a medical examination of the applicant. The examination was performed by experts of the Lipetsk Regional Department of the Ministry of Health on the basis of the applicant's medical documents. It was completed on 18 March 2002. The experts established that the applicant's injuries could have been inflicted under the circumstances described by him.

49. In reply to the applicant's complaints about delays in the investigation, on 12 April 2002 the office of the Prosecutor General ordered that the investigation be sped up.

50. In May 2002 the applicant's cellmates from Dolgorukovskoe police station were questioned. They testified that the applicant had been extremely frightened, complained about ill-treatment, and fainted several times. They had seen marks of beatings on his body.

51. On 4 June 2002 the applicant was questioned about the circumstances of his arrest and ill-treatment.

52. On 11 August 2002 the prosecutor's office of the Lipetsk Region discontinued the criminal proceedings against the police officers of Dolgorukovskoe police station. On 18 October 2002 the office of the Prosecutor General annulled that decision and ordered that the criminal proceedings be resumed.

53. On 24 December 2002 a police officer from the Dolgorukovskoe police station who had escorted the applicant to the questionings in January 2001 stated that he had seen bruises around his eyes.

54. On 9 January 2003 the investigator Mr Ibiyev was questioned. He denied any involvement in the ill-treatment.

55. On 28 April 2003 counsel for the applicant testified that he had represented the applicant since January 2001, that he had not been allowed to visit him until February 2001, and that he had seen marks of beatings on his face and body.

56. On 16 May 2003 the police officers of Dolgorukovskoe police station, Mr Abakumov, Mr Kondratov, Mr Trubitsyn and Mr Lukin, were charged with abuse of office associated with the use of violence and weapons and entailing serious consequences, an offence under Article 286 § 3 (a, b, c) of the Criminal Code.

57. On 16 July 2003 the applicant was questioned for the second time about the ill-treatment.

58. On 28 August 2003 the applicant was informed that the investigation was complete. He was invited to study the case file.

59. The applicant complained to the prosecutor's office of the Lipetsk Region that the scope of the investigation had been insufficient. In particular, the prosecutor's office had not brought charges against the police

officers Mr Butsan, Mr Gerasimov and Mr Savvin, who had ill-treated him, and the investigators Mr Andreyev and Mr Ibiyev, who had forged evidence and forced him to confess to the murder.

60. On 28 November 2003 the prosecutor's office of the Lipetsk Region rejected the applicant's complaints, finding that there had not been sufficient evidence for prosecuting Mr Butsan, Mr Gerasimov, and Mr Savvin, and that disciplinary proceedings against Mr Andreyev and Mr Ibiyev had in the meantime become time-barred.

61. On an unspecified date the investigation was resumed and additional enquiries were conducted.

62. On 11 March 2004 an identification parade was held. The applicant identified Ms Karavayeva, who had put make-up on his face before the videotaping of his confession in January 2001.

63. On 18 March 2004 the applicant was taken to Dolgorukovskoe police station where he pointed out the cells in which he had been detained, and the rooms in which he had been beaten.

64. On 25 March and 26 April 2004 further identification parades were held. The applicant recognised Mr Alyabyev and Mr Savvin as the officers who had beaten him and tortured him with electricity.

65. On 7 and 13 April 2004 further interviews with the applicant were held.

66. On 29 and 30 April and 5 May 2004 Mr Kondratov, Mr Abakumov, Mr Panteleyev, Mr Alyabyev, Mr Kovyrshin, Mr Butsan, Mr Lukin, Mr Trubitsyn, Mr Savvin and Mr Gerasimov were charged with abuse of office associated with the use of violence and weapons and entailing serious consequences, an offence under Article 286 § 3 (a, b, c) of the Criminal Code.

67. On 31 May 2004 the applicant was informed that the investigation had been completed and was invited to study the case file. However, on an unspecified date the investigation was resumed.

68. On 15 September 2004 a deputy Prosecutor General of the Russian Federation ordered that the investigation be continued until 10 January 2005.

69. The applicant challenged before a court the refusal by the prosecutor's office of the Lipetsk Region to bring charges against the investigators from that prosecutor's office, Mr Andreyev and Mr Ibiyev, who had unlawfully arrested him, forged evidence against him and forced him to confess, and against the medical expert Mr Yermakov, who had examined him on 6 February 2001 and had falsely stated that his injuries had been inflicted prior to the arrest.

70. On 9 November 2004 the Lipetsk Regional Court rejected the applicant's complaints in the final instance. It held that an internal inquiry had been conducted and that no grounds for prosecuting Mr Andreyev, Mr Ibiyev or Mr Yermakov had been established.

71. On 18 February 2005 the criminal case against the police officers of Dolgorukovskoe police station was committed for trial before the Yelets Town Court of the Lipetsk Region.

72. The trial started on 28 March 2005. The defendants pleaded not guilty and refused to testify.

73. The trial court heard the applicant and numerous witnesses and examined medical evidence.

74. On 28 December 2007 the Yelets Town Court convicted the defendants as charged. It found it to be established that between 22 January and 7 April 2001 the defendants had repeatedly ill-treated the applicant by punching and kicking him and hitting his heels with truncheons, by subjecting him to electric shocks, by putting a gas-mask on him and closing the air vent or forcing him to inhale cigarette smoke through the vent, by tying his hands behind his back and suspending him in the air by means of a rope, by jumping on his chest and stomach, by pointing their guns at him and threatening to shoot him, by strangling him, by threatening to rape him, by spitting at him and by forcing him to undress and kneel in front of a photograph of the policeman of whose murder he had been suspected and apologise for killing him. The use of force had been aimed at driving the applicant into submission and making him confess to criminal offences. As a result of the ill-treatment the applicant had received the following injuries: numerous bruises and abrasions, a rib fracture, a deformation of the left shoulder-blade and feet trauma ultimately resulting in polyarthritis with degenerative-dystrophic changes and functional impairment in both feet. Moreover, the applicant had developed a chronic post-traumatic psychiatric disorder as a consequence of the ill-treatment. The court sentenced the defendants to imprisonment ranging from four years to five years and eight months with a subsequent three-year prohibition on serving in law-enforcement agencies. On the same day the defendants were taken into custody.

75. On 2 June 2008 the Lipetsk Regional Court upheld the conviction on appeal but decided to commute the sentences. It noted that some of the defendants had been awarded medals for excellent police service and that all of them had positive references from their superiors. The court therefore considered that it was possible to give them sentences below the statutory minimum. It sentenced six defendants to imprisonment ranging from two years and six months to three years and three months. The remaining four defendants were sentenced to imprisonment ranging from one year and six months to two years and six months, but their sentences were suspended and they were placed on probation for two years. Those four defendants were immediately released.

4. Civil action for damages

76. In 2005 the applicant and his mother sued the Ministry of Finance, the Interior Ministry, and the police officers of Dolgorukovskoe police station for compensation in respect of pecuniary and non-pecuniary damage caused by the applicant's ill-treatment. They claimed 15,000,000 Russian roubles (RUB) in respect of non-pecuniary damage and RUB 207,559 in respect of pecuniary damage. The claim for pecuniary damage included the costs of the applicant's medical treatment and of the food brought to the detention facility by his mother, as well as travel and postal expenses and legal fees.

77. On 6 October 2008 the Sovetskiy District Court of Lipetsk allowed the claim in part. The court noted that the fact of the applicant's ill-treatment by the police officers of Dolgorukovskoe police station had been established by the final judgment in the criminal proceedings against those officers. In particular, it had been established that between 22 January and 7 April 2001 the applicant had been repeatedly subjected to severe beatings and electric shocks, gas-mask torture, hanging in the air by means of a rope attached to the wrists, and threats of rape and murder, and had been spat at and forced to apologise on his knees for killing a policeman. As a result of the ill-treatment he had suffered considerable pain and humiliation, had received serious injuries, in particular rib fracture and deformation of his feet, and had developed a chronic psychiatric disorder. His health had been seriously undermined and he had become disabled. He had moreover been forced to confess to a crime which he had not committed. The court found that the applicant had been subjected to ill-treatment contrary to Article 3 of the Convention and awarded him compensation in respect of non-pecuniary damage in the amount of RUB 450,000 (about 12,500 euros (EUR)) against the Ministry of Finance. It found that the applicant's mother had also suffered distress and frustration as a result of her son's ill-treatment and awarded her RUB 35,000 against the Ministry of Finance. It further awarded the applicant's mother RUB 573.88 (about EUR 16) in respect of medical expenses. It however rejected the remainder of the claim for pecuniary damage as it had not been supported by documents.

78. On 17 November 2008 the Lipetsk Regional Court examined the case on appeal. It found that the amount awarded to the applicant in compensation had been adequate, given the very serious injuries he had sustained as a result of the ill-treatment, and in particular, brain oedema, post-traumatic displacement of two ribs, post-traumatic hearing impairment, deformation of both feet and shoulder-blade deformation, as well as post-traumatic encephalopathy (general brain dysfunction) and psychiatric disorder. It also upheld the award of the medical expenses. It however quashed the award in respect of non-pecuniary damage to the applicant's mother, finding that she had not personally suffered any ill-treatment.

B. Ill-treatment by escorts on 27 June 2002

1. Criminal proceedings against the applicant on a charge of robbery and the use of force by escorts in the courthouse

79. On 28 March 2001 the applicant was charged with robbery. On 26 September 2001 additional charges of several counts of robbery, theft and unlawful possession of firearms were brought against him.

80. On 12 April 2002 the Lipetsk Regional Court ordered the applicant's in-patient psychiatric examination. On 31 May 2002 a panel of psychiatrists of the Lipetsk Regional psychiatric hospital found that the applicant was suffering from post-traumatic stress disorder. In view of his medical condition, his participation in the court hearings was considered inadvisable. The applicant needed in-patient psychiatric treatment.

81. On 27 June 2002 the applicant and four co-defendants were escorted to the Lipetsk Regional Court for a hearing. After the defendants refused to go into the courtroom, the presiding judge ordered that they be brought in by force. The defendants were informed of the judge's order and agreed to proceed to the courtroom. They were handcuffed and started to mount the stairs.

82. It appears from the reports of the escorts that on the stairs one of the defendants, Mr P., suddenly ran in the direction of the toilets, while the other defendants attacked the escorts. The escorts beat the defendants with rubber truncheons and managed to suppress the attack and to bring the defendants into the courtroom.

83. According to the applicant's mother, she and the relatives of the other defendants were waiting in the hall for the beginning of the hearing. She saw the escorts hitting the applicant and his co-defendants with truncheons while they were mounting the stairs. The applicant fell on the handrail and one of the escorts slapped and kicked him many times. The applicant fainted. He was dragged by the escorts across the floor into the cage inside the courtroom. She called an ambulance.

84. The ambulance doctors examined the applicant and concluded that he had had an epileptic fit. He was taken to Lipetsk hospital no. 4 for treatment.

85. It can be seen from a certificate issued on the same day by the head of Lipetsk hospital no. 4 that the diagnosis of an epileptic fit was confirmed by the hospital doctors, who also detected hyperemia (a medical condition in which blood congests in part of the body) of the applicant's neck.

86. The applicant was handcuffed to a hospital bed in the corridor. On the next day he was transferred back to the detention facility, the doctors' objections notwithstanding.

87. On 17 January 2003 the Lipetsk Regional Court ordered the applicant's confinement to a psychiatric hospital. On 31 January 2003 he was transferred to the Lipetsk Regional psychiatric hospital.

88. On 28 April 2003 the Lipetsk Regional Court found the applicant guilty of several counts of aggravated theft and robbery, decided not to sentence him because of his mental incapacity and ordered his compulsory psychiatric treatment.

89. On 26 November 2003 the Supreme Court of the Russian Federation upheld the judgment on appeal.

90. On 25 March 2004 the Gryazi Town Court of the Lipetsk Region ordered that in-patient psychiatric treatment be replaced by out-patient psychiatric supervision. On 29 March 2004 the applicant was released from hospital.

2. Investigation into the alleged ill-treatment

91. On 1 July 2002 the applicant's mother asked the prosecutor's office of the Sovetskiy District of Lipetsk to initiate criminal proceedings against the escorts who had beaten the applicant and his co-defendants in the courthouse on 27 June 2002.

92. The prosecutor's office conducted an inquiry. Eight escorts, the applicant's mother, one of the applicant's co-defendants and several eyewitnesses were heard. The presiding judge refused to testify.

93. The applicant's co-defendant Mr Sh. testified that the defendants had refused to go into the courtroom because the applicant and another defendant were unwell and the escorts had refused to call a doctor. They had moreover asked to see their relatives. Once the relatives had been let into the courthouse the defendants had agreed to proceed to the courtroom. As they mounted the stairs they had seen that some of their relatives were absent, so they turned around with the intention of descending back into the basement. At that moment the escorts had started to hit them with rubber truncheons and had driven them into the courtroom.

94. The defendants' relatives all testified that the escorts had hit the applicant and his co-defendants, handcuffed in twos, while they were mounting the stairs.

95. The escorts submitted that after the defendants' refusal to go into the courtroom, the judge had ordered that they be brought in by force. The defendants had been handcuffed and ordered to proceed to the courtroom. On the stairs they had suddenly turned round and attacked the escorts. The escorts had used rubber truncheons against them. The defendants had been forced into the courtroom where the applicant had had an epileptic fit. An ambulance had been called and he had been taken to hospital.

96. On 15 July 2002 the prosecutor's office of the Sovetskiy District of Lipetsk refused to open criminal proceedings against the escorts. In his decision the prosecutor referred to the witness statements collected during

the inquiry and found that the applicant and his co-defendants had not complied with the legitimate order of the escorts. He concluded that the force had been used by the escorts in compliance with the Police and Custody Acts. In any event, the applicant and his co-defendants had not received any injuries.

97. The applicant challenged the decision before a court. In particular, he submitted that, contrary to the prosecutor's assertions, he had sustained injuries and had been taken to hospital. He also argued that the inquiry had been incomplete, as many eyewitnesses had not been questioned.

98. On 22 September 2004 the Sovetskiy District Court of Lipetsk held that the prosecutor's decision had been lawful. It found that the inquiry had been adequate as it had allowed the prosecutor to collect the necessary evidence and to make a reasoned decision.

99. On 19 October 2004 the Lipetsk Regional Court upheld the decision on appeal.

II. RELEVANT DOMESTIC LAW

A. Criminal-law remedies against ill-treatment

1. Applicable criminal offences

100. Abuse of office associated with the use of violence and weapons and entailing serious consequences carries a punishment of three to ten years' imprisonment and a prohibition on occupying certain positions for up to three years (Article 286 § 3 (a,b,c) of the Criminal Code).

2. Investigation of criminal offences

101. Until 1 July 2002 the investigation of criminal offences was governed by the RSFSR Code of Criminal Procedure of 27 October 1960 (the "old CCrP"). It established that a criminal investigation could be initiated by an investigator on a complaint by an individual or on the investigative authorities' own initiative, where there were reasons to believe that a crime had been committed (Articles 108 and 125). A prosecutor was responsible for overall supervision of the investigation and could order specific investigative actions, transfer the case from one investigator to another or order an additional investigation (Articles 210 and 211). If there were no grounds for initiating or continuing a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect which had to be served on the interested party. The decision was amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction (Articles 113 and 209).

102. The Code of Criminal Procedure of the Russian Federation in force since 1 July 2002 (Law no. 174-FZ of 18 December 2001, the "CCrP"), establishes that a criminal investigation may be initiated by an investigator or prosecutor upon the complaint of an individual (Articles 140 and 146). Within three days of receiving such complaint, the investigator or prosecutor must carry out a preliminary inquiry and take one of the following decisions: (1) to open criminal proceedings if there are reasons to believe that a crime has been committed; (2) to refuse to open criminal proceedings if the inquiry reveals that there are no grounds to initiate a criminal investigation; or (3) to refer the complaint to the competent investigative authority. The complainant must be notified of any decision taken. The refusal to open criminal proceedings is amenable to appeal to a higher-ranking prosecutor or a court of general jurisdiction (Articles 144, 145 and 148). A prosecutor is responsible for overall supervision of the investigation (Article 37). He can order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. Article 125 of the CCrP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

B. Civil law remedies against illegal acts by public officials

103. Article 1064 § 1 of the Civil Code of the Russian Federation provides that damage caused to the person or property of a citizen must be fully compensated for by the tortfeasor. Pursuant to Article 1069, a State agency or a State official is liable towards a citizen for damage caused by their unlawful actions or failure to act. Such damage is to be compensated for at the expense of the federal or regional treasury. Articles 151 and 1099-1101 of the Civil Code provide for compensation for non-pecuniary damage. Article 1099 states, in particular, that non-pecuniary damage must be compensated for irrespective of any award for pecuniary damage.

C. Use of force and special measures in detention facilities

1. The Police Act

104. The Police Act (no. 1026-1 of 18 April 1991) provides that Police officers are only entitled to use physical force, special means and firearms in the cases and within the procedure established by the Police Act; staff members of police facilities designated for temporary detention of suspects and accused persons may only use such force and special means in cases

and within the procedure established by the Custody Act. A police officer must warn of his intention to use physical force, special equipment or a weapon and give the person concerned sufficient time to comply with his order, except in cases where the delay in using physical force, special equipment or a weapon creates an immediate danger for the life and health of citizens and police officers, is likely to cause other serious consequences or where the warning is impossible or impracticable in the circumstances. Police officers must endeavour to minimise the damage caused by the use of physical force, special equipment or a weapon, to the extent possible depending on the nature and seriousness of the offence, the dangerousness of the person who has committed it and the degree of resistance offered. Police officers must also ensure that individuals who have been injured as a result of the use of physical force, special equipment or a weapon receive medical assistance (section 12).

105. Police officers may use physical force, including martial arts, to stop a criminal or administrative offence being committed, arrest persons who have committed a criminal or administrative offence or overcome resistance to a lawful order, if non-violent methods are insufficient to ensure discharge of the police duties (section 13)

106. Sections 14 and 15 of the Police Act lay down an exhaustive list of cases when special means, including rubber truncheons, handcuffs and firearms, may be used. In particular, rubber truncheons may be used to repel an attack on civilians or police officers, to overcome resistance offered to a police officer and to repress mass disorder and put an end to collective actions disrupting the operation of transport, means of communication and legal entities. Handcuffs may be used only to overcome resistance to a police officer, to arrest an individual caught while committing a criminal offence against life, health or property and if he is attempting to escape, and to bring arrestees to police stations as well as to transport them and protect them if their behaviour allows the conclusion that they are liable to escape, cause damage to themselves or other individuals or offer resistance to police officers.

2. The Custody Act

107. The Custody Act (no. 103-FZ of 15 July 1995) provides that physical force may by used against a suspect or an accused to prevent commission of an offence or to overcome resistance to lawful orders, if those aims cannot be attained by non-violent methods (section 44).

108. Rubber truncheons and handcuffs may be used in the following cases:

- to repel an attack on a staff member of a detention facility or on other persons;
- to repress mass disorder or put an end to collective violations of the detention rules and regulations;

- to put an end to a refusal to comply with lawful orders of the facility's administration and warders;
- to release hostages and liberate buildings, rooms and vehicles taken over by a detainee;
- to prevent an escape;
- to prevent a detainee from hurting himself (section 45).

THE LAW

I. SCOPE OF THE CASE

109. The Court notes that in his reply to the Government's observations the applicant raised several new complaints under Article 3 of the Convention. In particular, he complained of the allegedly appalling conditions of his detention and of insufficient medical assistance, from January to May 2001.

110. In the Court's view, the new complaints raised by the applicant are not an elaboration of his original complaints lodged with the Court more than three years earlier, on which the parties have already commented. The Court therefore decides not to examine the new complaints within the framework of the present proceedings (see *Isayev v. Russia*, no. 20756/04, §§ 81 to 83, 22 October 2009; *Kravchenko v. Russia*, no. 34615/02, §§ 26 to 28, 2 April 2009; *Melnik v. Ukraine*, no. 72286/01, §§ 61 to 63, 28 March 2006; and *Nuray Şen v. Turkey (no. 2)*, no. 25354/94, § 200, 30 March 2004).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT FROM JANUARY TO APRIL 2001

111. The applicant complained that between January and April 2001 he had been repeatedly ill-treated by the police and that the authorities had not undertaken an effective investigation into his allegations of ill-treatment. He relied on Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

1. The Government

112. In their initial observations the Government pleaded non-exhaustion. They submitted that the criminal proceedings against the police officers who had allegedly ill-treated the applicant were still pending and that the applicant's complaints were premature. In the alternative, they argued that the applicant had failed to comply with the six-month rule. In the absence of the final decision at the domestic level, the six-month period had started to run from the date of the acts complained of, that is from April 2001. The applicant had introduced his application on 25 December 2003, that is two years and seven months later.

113. The Government also argued that the investigation into the applicant's allegations of ill-treatment had been adequate and effective. Its length had been reasonable, having regard to the complexity of the case, its volume, the large number of defendants and witnesses and the necessity of obtaining numerous expert opinions.

114. In their further observations the Government submitted that the police officers who had ill-treated the applicant had been convicted and the applicant had been awarded compensation for the non-pecuniary damage caused by the ill-treatment. The domestic authorities had therefore acknowledged a violation of his rights and had afforded adequate redress. The applicant could no longer claim to be a victim of a violation of Article 3 of the Convention.

2. The applicant

115. The applicant maintained his claim that he had suffered ill-treatment at the hands of the police. The ill-treatment had lasted for weeks and had caused him severe injuries. He argued that the treatment to which he had been subjected was serious enough to be qualified as torture.

116. Further, the applicant submitted that the investigation into his allegations of ill-treatment had been ineffective. His complaints about ill-treatment had remained without reply for several months. During those months he had had no access to a doctor who could have noted his injuries and established their origin. The criminal proceedings against the police officers had not been opened until eight months later. The investigation had been entrusted to the prosecutor's office of the Lipetsk Region, although the investigators from that office, Mr Ibiyev and Mr Andreyev, had been accomplices in the ill-treatment. Accordingly, the investigation had not been independent. Nor had it been prompt. It had procrastinated for years and, in the applicant's opinion, the complexity of the case did not suffice, in itself, to account for its length. There had been substantial delays in the conduct of the proceedings at both the pre-trial and the trial stages, in particular

because of long intervals between trial hearings. Moreover, the scope of the investigation had been insufficient, as no proceedings had been brought against the investigators Mr Ibiyev and Mr Andreyev, who had been implicated in the ill-treatment. The applicant also submitted that during the entire duration of the criminal proceedings the police officers who had ill-treated him had continued to serve in the police and some of them had even been promoted.

117. In reply to the Government's argument that the complaint under Article 3 was premature, the applicant submitted that, given the length of the investigation and its manifest ineffectiveness, he had considered himself absolved from any obligation to wait for its completion before filing his complaint with the Court.

118. The applicant finally argued, as regards his victim status, that the amount awarded to him in respect of non-pecuniary damage had been insufficient to compensate for the very serious and irreversible damage to his health caused by the ill-treatment. Moreover, his claims in respect of pecuniary damage had been rejected. He therefore considered that he had retained his victim status.

B. The Court's assessment

1. Admissibility

119. As regards the Government's argument which related to the fact that the criminal proceedings against the police officers were pending, the Court observes that after this argument was raised the criminal proceedings were completed by a final judgment convicting the police officers. Accordingly, the Court does not find it necessary to examine the Government's objection as to non-exhaustion of domestic remedies, as it has lost its rationale (see, for similar reasoning, *Samoylov v. Russia*, no. 64398/01, § 39, 2 October 2008).

120. As regards compliance with the six-month rule, the Court reiterates that normally the six-month period runs from the final decision in the process of exhaustion of domestic remedies (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, § 157, ECHR 2009-...). In the present case the final decision was given after the lodging of the application, therefore at the time it was lodged the six-month period had not yet started to run. The Government's objection as to non-compliance with the six-month rule is therefore without merit.

121. Further, the Court considers that the question whether the applicant may still claim to be a victim of a violation of Article 3 of the Convention in respect of his alleged ill-treatment is closely linked to the question whether the investigation of the events in question was effective and also whether

the compensation which the applicant received was sufficient. However, these issues relate to the merits of the applicant's complaints under Article 3 of the Convention (see *Vladimir Romanov v. Russia*, no. 41461/02, § 53, 24 July 2008). The Court therefore decides to join this matter to the merits.

122. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 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 of the applicant

123. As the Court has stated on many occasions, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Labita v. Italy* [GC], no. 26772/95, § 120, ECHR 2000-IV). Treatment has been held by the Court to be "inhuman" because, *inter alia,* it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or 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. The question whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *V. v. the United Kingdom* [GC], no. 24888/94, § 71, ECHR 1999-IX).

124. Further, in order to determine whether a particular form of ill-treatment should be qualified as torture, the Court must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The Court has previously had before it cases in which it has found that there has been treatment which could only be described as torture (see *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports of Judgments and Decisions* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83-84 and 86, *Reports* 1997-VI; *Selmouni v. France* [GC], no. 25803/94, § 105, ECHR 1999-V; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; and, in respect of Russia, *Menesheva v. Russia*,

no. 59261/00, §§ 60-62, ECHR 2006-...; *Mikheyev v. Russia*, no. 77617/01, § 135, 26 January 2006; and *Polonskiy v. Russia*, no. 30033/05, § 124, 19 March 2009).

125. In the present case the domestic courts acknowledged that between January and April 2001 the applicant had been repeatedly ill-treated by the police officers of Dolgorukovskoe police station and had sustained numerous injuries. In particular, it was established that the police officers had punched and kicked the applicant, hit his heels with truncheons, subjected him to electric shocks, put a gas mask on him and closed the air vent or forced him to inhale cigarette smoke through the vent, tied his hands behind his back and suspended him in the air by means of a rope, jumped on his chest and stomach, threatened to rape and shoot him, attempted to strangle him, spat at him, and forced him to undress and to kneel in front of a photograph of the policeman of whose murder he had been suspected and apologise for killing him. That treatment had caused him severe mental and physical suffering and resulted in grave injuries, such as brain oedema, post-traumatic displacement of two ribs, post-traumatic hearing impairment, deformation of both feet and shoulder-blade deformation, as well as in a general brain dysfunction and a chronic psychiatric disorder. The applicant had sustained very serious and irreversible damage to his health. It was also established that the use of force had been aimed at debasing the applicant, driving him into submission and making him confess to a criminal offence which he had not committed (see paragraphs 74, 77 and 78 above).

126. Given the purpose, length and intensity of the ill-treatment and the particularly serious health damage caused by it, the Court concludes that it amounted to torture within the meaning of Article 3 of the Convention.

(b) The issue of victim status

127. In paragraph 121 above the Court found that the question whether the applicant might still claim to be a victim in respect of the treatment sustained at the hands of the police was closely linked to the question whether the investigation into the events at issue had been effective and whether the compensation received by the applicant had been sufficient. It thus decided to join the issue of the applicant's victim status to the merits and will examine it now.

128. The Court reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Amuur v. France*, 25 June 1996, § 36, *Reports* 1996-III, and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI).

129. In the present case the domestic authorities expressly acknowledged that the applicant had been subjected to treatment contrary to Article 3 of the Convention (see paragraph 77 above). It remains to be

ascertained whether he was afforded appropriate and sufficient redress for the breach of his rights under the Convention.

130. The Court reiterates that, in the case of a breach of Articles 2 or 3 of the Convention, compensation for the pecuniary and non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress (see *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 109, ECHR 2001-V). However, in cases of wilful ill-treatment the violation of Articles 2 or 3 cannot be remedied exclusively through an award of compensation to the victim. This is so because, if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice (see *Vladimir Romanov*, cited above, §§ 78 and 79, and *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 55 and 56, 20 December 2007). It follows from the above that an effective investigation is required, in addition to adequate compensation, to provide sufficient redress to an applicant complaining of ill-treatment by State agents.

131. Accordingly, to determine whether the applicant in the present case was afforded sufficient redress and lost his status as a "victim" with regard to Article 3, the Court will have to examine the effectiveness of the investigation into his allegations of ill-treatment and the adequacy of the compensation paid to him (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 121 and 126, 1 June 2010).

(i) Effectiveness of the investigation

132. 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 (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).

133. An investigation into serious allegations of ill-treatment must therefore 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 for 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 evidence concerning the incident, including, *inter alia,* eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq.; 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 the persons responsible will risk falling foul of this standard.

134. Further, the Court reiterates that for an investigation into alleged torture or ill-treatment by State officials to be effective, it is necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence (see *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004).

135. Finally, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is 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 was given to the starting 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).

136. Turning to the present case, the Court observes that the applicant started to complain about ill-treatment at the beginning of February 2001. He lodged numerous complaints describing in detail the treatment to which he had been subjected, naming the police officers who had been implicated in it, and referring to the injuries he had sustained (see paragraph 41 above). His allegations seemed to be corroborated by medical documents describing numerous bruises and abrasions on his body (see paragraphs 21 and 22 above). The applicant's claim was therefore "arguable" and the domestic authorities were placed under an obligation to carry out "a thorough and effective investigation capable of leading to the identification and punishment of those responsible" (see, for similar reasoning, *Egmez v. Cyprus*, no. 30873/96, § 66, ECHR 2000-XII, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, §§ 358 and 359, 6 April 2004).

137. It was however not until four months later, in June 2001, that a preliminary inquiry was launched by the prosecutor's office. That inquiry

was limited to questioning some of the police officers accused by the applicant and culminated in a refusal to open criminal proceedings (see paragraph 43 above). Criminal proceedings were ultimately opened in October 2001, that is eight months after the first complaint about ill-treatment lodged by the applicant. In the Court's view, the belated commencement of the criminal proceedings resulted in the loss of precious time which could not but have a negative impact on the success of the investigation (see *Mikheyev,* cited above, § 114).

138. Further, the Court notes that there was an evident link between the officials responsible for the conduct of the criminal proceedings and some of those allegedly involved in the ill-treatment. The investigation into the applicant's allegations of ill-treatment was conducted by the prosecutor's office of the Lipetsk Region. However, according to the applicant, investigators from that office, Mr Andreyev and Mr Ibiyev, had been present during the ill-treatment, had urged him to confess and had threatened that the ill-treatment would continue until he admitted his involvement in the murder. Given that the investigation was conducted by the prosecutor's office, whose officials were allegedly implicated in the mistreatment of the applicant, it cannot be regarded as independent. The Court attaches particular weight to the fact that the applicant's requests for criminal proceedings to be opened against Mr Andreyev and Mr Ibiyev were examined by their colleagues who had carried out an internal inquiry and refused to open criminal proceedings against them. The Court considers that the internal inquiry could not be regarded as adequate for the purposes of Article 3 (see *Jašar v. the former Yugoslav Republic of Macedonia* (dec.), no. 69908/01, 11 April 2006). Accordingly, the scope of the criminal proceedings was limited to the conduct of the police officers of Dolgorukovskoe police station. No independent investigation was ever conducted in respect of Mr Andreyev and Mr Ibiyev, the investigators from the prosecutor's office of the Lipetsk Region, that would have allowed the applicant's allegations against them to be verified and their role in the events complained of to be established.

139. The Court also observes that progress in the investigation was slow and it spanned over more than three years. Thus, the only investigative measure conducted before the end of 2001 was the questioning of two police officers involved in the applicant's arrest. The medical examination of the applicant was performed in January to March 2002, while the applicant and his cellmates were questioned for the first time in May and June 2002, that is more than a year after the alleged ill-treatment. No further action was taken until 2003 when one of the investigators accused by the applicant and counsel for the applicant were questioned and the charges were brought against the police officers of Dolgorukovskoe police station. Several more investigative measures were taken in 2004, but it appears from the documents in the Court's possession that during that same year the

investigation was prone to delays, the investigative authorities sometimes remaining idle for months. Further delays accumulated during the trial stage that started in March 2005 and lasted for more than two and a half years, to which was added a new six-month period of inactivity between the pronouncement of the first-instance judgment and the appeal hearing. As a result of those delays the police officers were not finally convicted and sentenced until June 2008, that is about seven years after their wrongful conduct. The Court is not convinced by the Government's argument that the length of the criminal proceedings was accounted for by the complexity of the case. It considers that their inordinate duration was due to the substantial delays in the conduct of the investigation and trial that were attributable to the authorities. This manner of proceeding appears unacceptable to the Court, considering that the case concerned a serious instance of police violence and thus required a swift reaction by the authorities (see *Nikolova and Velichkova*, cited above, § 59).

140. Finally, with regard to the sentences imposed on the police officers, the Court reiterates that while there is no absolute obligation for all prosecutions to result in conviction or in a particular sentence, the national courts should not under any circumstances be prepared to allow ill-treatment to go unpunished. This is essential for maintaining public confidence, ensuring adherence to the rule of law and preventing any appearance of tolerance of or collusion in unlawful acts (see *Okkalı v. Turkey*, no. 52067/99, § 65, ECHR 2006-XII (extracts)). The important point for the Court to review, therefore, is whether and to what extent the national authorities have done everything within their powers to prosecute and punish the police officers responsible for the ill-treatment and whether they have imposed adequate and deterring sanctions on them. For this reason, although the Court should grant substantial deference to the national courts in the choice of appropriate sanctions for ill-treatment by State agents, it must exercise a certain power of review and intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed. Were it to be otherwise, the States' duty to carry out an effective investigation would lose much of its meaning, and the right enshrined by Article 3, despite its fundamental importance, would be ineffective in practice (see *Gäfgen,* cited above, § 123; *Atalay v. Turkey*, no. 1249/03, § 40, 18 September 2008; and, *mutatis mutandis*, *Nikolova and Velichkova*, cited above*,* § 62).

141. The Court observes that the Russian Criminal Code provided that the offence committed by the police officers was punishable by three to ten years' imprisonment (see paragraph 100 above). However, the domestic courts chose to impose on the police officers sentences that were below the statutory minimum and to suspend those sentences in respect of four of the officers. The only reason for reducing the sentences was the fact that the police officers had been awarded medals for excellent police service and

had positive references from their superiors (see paragraph 75 above). The Court, however, cannot accept those arguments as justifying imposition of lenient sentences on the police officers, who had been found guilty of a particularly serious case of prolonged torture, causing severe and irreparable damage to the applicant's health. The sentences imposed on the police officers must therefore be regarded as manifestly disproportionate to the gravity of the acts committed by them. By punishing the officers with lenient sentences more than seven years after their wrongful conduct, the State in effect fostered the law-enforcement officers' "sense of impunity" instead of showing, as it should have done, that such acts could in no way be tolerated (see, for similar reasoning, *Gäfgen,* cited above, §§ 123 and 124; *Atalay,* cited above, §§ 40 to 44; *Okkalı,* cited above, §§ 73 to 75; and *Nikolova and Velichkova*, cited above*,* §§ 60 to 63).

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

(ii) Adequacy of the compensation

143. The Court reiterates that the question whether the applicant received compensation – comparable to just satisfaction as provided for under Article 41 of the Convention – for the damage caused by the treatment contrary to Article 3 is an important indicator for assessing whether the breach of the Convention was redressed (see *Shilbergs v. Russia*, no. 20075/03, § 72, 17 December 2009, and, *mutatis mutandis, Gäfgen,* cited above, §§ 126 and 127).

144. The Court has already found that an applicant's victim status may depend on the level of compensation awarded at domestic level on the basis of the facts about which he or she complains before the Court. With regard to pecuniary damage, the domestic courts are clearly in a better position to determine its existence and quantum. Regarding non-pecuniary damage, the Court must exercise supervision to verify whether the sums awarded are not unreasonable in comparison with the awards made by the Court in similar cases. Whether the amount awarded may be regarded as reasonable falls to be assessed in the light of all the circumstances of the case. The Court has accepted that it might be easier for the domestic courts to refer to the amounts awarded at domestic level, especially in cases concerning personal injury, damage relating to a relative's death or damage in defamation cases, for example, and rely on their innermost conviction, even if that results in awards of amounts that are somewhat lower than those fixed by the Court in similar cases. However, where the amount of compensation is substantially lower than what the Court generally awards in comparable cases, the applicant retains his status as a "victim" of the alleged breach of the Convention (see, *mutatis mutandis*, *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 182-192 and 202 - 215, ECHR 2006-V).

145. In the present case the applicant was awarded about EUR 16 in medical costs. Although this sum appears to be low, it can be seen from the domestic judgment that the amount of compensation in respect of pecuniary damage was determined on the basis of the documents submitted by the applicant in support of his claim. The remainder of the claim was rejected as unsubstantiated (see paragraph 77 above). The Court has no reason to question that finding. The applicant did not produce any evidence that might lead the Court to consider that the amount awarded was arbitrary or irreconcilable with the available supporting documents or receipts. The Court is therefore satisfied that the applicant received compensation in respect of pecuniary damage in an amount that corresponded to the documents submitted by him in support of the claim.

146. Turning now to non-pecuniary damage, the Court is unable to conclude whether the amount of compensation awarded to the applicant could have been considered sufficient in domestic terms. The parties did not produce any relevant information in this regard. However, the Court's task in the present case is not to review the general practice of the domestic courts in awarding compensation for ill-treatment at the hands of the police and not to set certain monetary figures which would satisfy the requirements of "adequate and sufficient redress" but to determine, in the circumstances of the case, whether the amount of compensation awarded to the applicant was such as to deprive him of "victim status" in view of his complaint under Article 3 of the Convention pertaining to his ill-treatment by police officers of Dolgorukovskoe police station.

147. The Court considers that the duration and severity of the ill-treatment and the gravity of the injuries sustained are among the factors to be taken into account in assessing whether the domestic award could be regarded as adequate and sufficient redress. It reiterates in this respect its previous finding that the treatment to which the applicant was subjected amounted to torture, given its length and intensity and the particularly serious health damage caused by it (see paragraphs 125 and 126 above).

148. The Court is mindful that the task of making an estimate of damages to be awarded is a difficult one. It is especially difficult in a case where personal suffering, whether physical or mental, is the subject of the claim. There is no standard by which pain and suffering, physical discomfort and mental distress and anguish can be measured in monetary terms. The Court does not doubt that the domestic courts in the present case, with every desire to be just and eminently reasonable, attempted to assess the level of physical suffering, emotional distress, anxiety or other harmful effects sustained by the applicant as a result of the ill-treatment (see *Shilbergs,* cited above, § 76, and *Nardone v. Italy* (dec.), no. 34368/02, 25 November 2004). However, it cannot overlook the fact that the amount of EUR 12,500 awarded for the prolonged and extremely cruel torture resulting in very serious and irreversible damage to the applicant's health

was substantially lower than what it generally awards in comparable Russian cases (see, for example, *Mikheyev,* cited above, § 163*,* and *Maslova and Nalbandov v. Russia*, no. 839/02, § 135, ECHR 2008-... (extracts)). That factor in itself leads to a result that is manifestly unreasonable having regard to the Court's case-law. The Court will return to this matter in the context of Article 41 (see paragraphs 180 and 181 below).

149. In view of the above considerations, the Court finds that the compensation awarded to the applicant did not constitute sufficient redress, taking into account the absence of a reasonable relationship of proportionality between its amount and the circumstances of the case.

(c) Conclusion

150. The Court concludes that, given that the investigation into the applicant's allegations of ill-treatment was ineffective and the compensation awarded to him was insufficient, he may still claim to be a "victim" of a breach of his rights under Article 3 of the Convention on account of his ill-treatment by police officers of Dolgorukovskoe police station. The Court further finds that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE USE FORCE ON 27 JUNE 2002

151. The applicant complained that on 27 June 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 into that incident.

A. Admissibility

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

B. Merits

1. Submissions by the parties

153. The applicant submitted that on 27 June 2002 he and his co-defendants had been beaten with truncheons by escorts in the building of the Lipetsk Regional Court. He had been taken to the courthouse for a hearing despite a medical conclusion that his participation in court hearings

was inadvisable owing to his precarious state of health caused by a severe psychiatric disorder. Although he and his co-defendants had indeed at first refused to proceed to the courtroom, they had changed their minds and had agreed to follow the escorts after they had been informed of the judge's order to bring them in by force. He denied attacking the escorts and argued that the escorts' testimony about the attack had been generic and lacking in essential detail. In particular, the escorts had not explained which of the defendants had attacked them or what the applicant's role had been in the attack.

154. The applicant further submitted that the force used by the escorts had in any event been excessive. Firstly, the defendants had been handcuffed in twos, their hands fastened behind their backs. They did not therefore present any danger for the escorts, who had been armed with rubber truncheons and who had moreover outnumbered the defendants (eight escorts to five defendants). Secondly, force had been used against the applicant despite the fact that he was seriously ill. The escorts had administered numerous and random blows to the applicant, who had shown no resistance, those blows provoking an epileptic fit and causing a head injury. Accordingly, the applicant maintained that he had been subjected to inhuman treatment contrary to Article 3.

155. Finally, the applicant argued that the investigation into his allegations of ill-treatment had been ineffective. Only one of his co-defendants had been questioned. The applicant and the other co-defendants, their counsel, the judge and the court clerks present during the incident had never been invited to testify. The scope of the investigation had been insufficient as it had been limited to establishing whether the use of force had been legitimate under domestic law. Neither the prosecutor's office nor the courts had enquired into the issue of whether the force had been excessive. Moreover, in the decision not to open criminal proceedings the prosecutor's office had found, in total disregard of the medical evidence and witness statements, that the applicant had not sustained any injuries. Therefore, the applicant considered that the domestic authorities had failed to conduct an adequate and effective investigation into his allegations of ill-treatment.

156. The Government submitted that the applicant and his co-defendants had intended to escape and attacked the escorts. Physical force and rubber truncheons had been used against them to suppress the attack. In those circumstances the use of force had been lawful and justified. The domestic authorities had conducted a thorough and effective inquiry into the incident and had decided not to open criminal proceedings against the escorts. That decision had been confirmed by domestic courts.

2. The Court's assessment

(a) Whether the use of force was justified

157. The Court reiterates 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-... ; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). However, it is mindful of the potential for violence that exists in prison facilities and of the fact that disobedience by detainees may quickly degenerate into a riot (see *Gömi and Others v. Turkey*, no. 35962/97, § 77, 21 December 2006). It therefore accepts that the use of force may be necessary on occasion to ensure prison security, to maintain order or prevent crime in such facilities. Nevertheless, such force may be used only if it is indispensible and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007, with further references). Any recourse to physical force which has not been made strictly necessary by the detainee's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

158. It was not disputed between the parties that on 27 June 2002 the applicant was beaten with rubber truncheons in the building of the Regional Court. The beatings caused a swelling of his neck and provoked an epileptic fit. The applicant had to be taken to hospital. Against this background the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive (see *Zelilof v. Greece*, no. 17060/03, § 47, 24 May 2007).

159. The Court takes note of the Government's argument that the use of force had been in accordance with the domestic law. However, it reiterates that the manner in which the domestic law regulates the use of force against detainees does not absolve Russia from its responsibilities under the Convention (see *Antipenkov v. Russia*, no. 33470/03, § 55, 15 October 2009, with further references). The Court must therefore assess whether the use of force in the present case was compatible with the Convention standards summarised in paragraph 157 above.

160. The Court observes that the exact circumstances of the use of force against the applicant were disputed by the parties. The applicant argued that the escorts had initiated the beatings while he and his co-defendants were mounting the stairs in the direction of the hearing room, without any defiance or provocation on their part. The Government disputed the applicant's description, insisting that the force had been used lawfully in

response to an attack on the escorts committed by the applicant and his co-defendants.

161. The Court is not convinced by the Government's version of the events. It notes, firstly, that none of the eyewitnesses questioned during the inquiry mentioned that they had seen the defendants attacking the escorts. On the contrary, they all stated that they had seen the escorts hitting the defendants while they were mounting the stairs in the direction of the hearing room. Secondly, the Court doubts that it was feasible for the defendants, who had been handcuffed in twos and were closely surrounded by the escorts in the limited space of the staircase, to launch an attack. Further, the escorts had an explicit order from the judge to use force against the defendants in order to bring them into the hearing room. In those circumstances, it might be reasonably supposed that the escorts complied with that order and used rubber truncheons as soon as they saw the defendants stop in their pace and turn round, as described by Mr Sh. (see paragraph 93 above). Finally, the Court finds it significant that in his decision not to open criminal proceedings against the escorts the prosecutor refrained from making any clear statements as to the existence or otherwise of an attack on the escorts. Instead he used circumspect wording from which it appears that the force was used in response to the defendants' failure to comply with the escorts' order to proceed to the hearing room rather than in response to an attack on the escorts (see paragraph 96 above). The above considerations lead the Court to regard the Government's version of the events with caution.

162. However, even assuming that the Government's version of the events is accurate, the Court is not convinced that the use of rubber truncheons against the applicant was justified in the circumstances of the case. It notes that the escorts were not faced with an unexpected outburst of violence on the part of the defendants to which they would have been obliged to react without prior preparation. The escorts knew that the defendants were unwilling to proceed to the hearing room and must have foreseen a possibility of resistance on their part. The Court cannot but criticise the arrangements made by the escorts who, in a situation of manifest tension conductive to confrontation, chose to transfer the defendants together instead of conveying each of them separately in order to reduce the risk of aggression. The Court considers that the failure by the escorts to ensure that the defendants' transfer was made in safe and orderly conditions was a factor which by its very nature must have increased the risk of altercation and, consequently, the risk of use of retaliatory force by the escorts.

163. Further, as regards the dangerousness of an attack for the escorts, the Court notes that the defendants were handcuffed and were therefore restricted in movement and strength. They were moreover outnumbered by the escorts who were trained and equipped to deal with the type of

behaviour allegedly demonstrated by the defendants. An attack by the defendants could not therefore have been very dangerous for the escorts. Although the Court accepts that some physical force might have been necessary to repress an attack and calm the attackers down, it is not convinced that the use of rubber truncheons was warranted in the circumstances. It notes in this respect that the applicant was hit by truncheons at least several times and was also slapped and kicked. The beatings continued after the alleged attack had been repelled and the defendants had resumed their way up the stairs in the direction of the hearing room. Moreover, according to the applicant's mother, who witnessed the incident, the blows did not stop even after the applicant had fallen on the handrail and fainted. He had then been dragged across the floor by the escorts (see paragraph 83 above). The Government did not challenge that aspect of the applicant's factual submissions, although it was open to them to refute these allegations by way of witness testimony or other evidence if they considered them untrue. The Court considers that the force used against the applicant was excessive and was disproportionate to his alleged misconduct. It appears that the purpose of that treatment was, at least in part, to punish the applicant for his refusal to proceed to the hearing room and drive him into submission.

164. Finally, the Court is particularly struck by the fact that such excessive force was used specifically against the applicant, whose health and mental condition were known to be extremely frail and unstable. It notes that, apart from causing mental and physical suffering, the blows administered to the applicant provoked an epileptic fit which necessitated his hospitalisation.

165. Accordingly, having regard to the circumstances of the use of force and 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 in the building of the Lipetsk Regional Court on 27 June 2002.

(b) Whether the investigation was effective

166. 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 165 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).

167. 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 proceedings against the perpetrators of the beatings. The decision not to open criminal proceedings was

challenged by the applicant before the domestic courts, which examined his complaints at two levels of jurisdiction. In the Court's opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there had been one, but whether it was "effective" in the sense developed above (see paragraphs 132 to 135 above).

168. It appears that the prosecutor's office opened its investigation immediately after being notified of the alleged beatings. The inquiry was conducted promptly and was completed within less than three weeks.

169. However, with regard to the thoroughness of the investigation, the Court notes serious shortcomings capable of undermining its reliability and effectiveness. Firstly, no forensic medical examination was carried out, and this apparently prevented the establishment of the quantity and nature of the applicant's injuries. The Court reiterates in this respect 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 have been allocated a mandate which is sufficiently broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). The Court notes with concern that the lack of confirmed injuries was subsequently relied on, in the prosecutor's decision of 15 July 2002, as a ground for the refusal to institute criminal proceedings against the escorts. That finding is unusual as it contradicts the diagnoses contained in the medical certificate issued by the head of Lipetsk hospital No. 4 (see paragraph 85 above). However, in the absence of any explanations in the decision of 15 July 2002, it is impossible to ascertain whether the prosecutor simply chose to disregard that medical certificate or whether he intended to dismiss it as inadmissible evidence because it had not been analysed or confirmed by a forensic expert. In any event, the failure to perform a forensic medical examination of the applicant seriously undermined the effectiveness of the investigation.

170. Another shortcoming of the investigation was the authorities' failure to establish the exact sequence of the events and to address the discrepancies in witness testimony. The Court considers it a very serious omission that the applicant and three of his co-defendants were never questioned about the circumstances of their beatings. The inquiry was limited to questioning the escorts, one of the applicant's co-defendants and the co-defendants' relatives. There were serious contradictions in the testimony of those witnesses as to precisely what had happened, especially as to whether there had been an attack on the escorts by the applicant and his co-defendants. However, despite discrepancies in the witness testimony, the investigating authorities disregarded the importance of establishing the exact circumstances of the incident and did not take any effective steps to clarify the points on which the witnesses either disagreed or failed to provide a complete account. This could have been accomplished by, *inter alia*, posing specific questions to the witnesses with a view to clarifying

specific details of the sequence and timing of how events unfolded, conducting face-to-face confrontations between those witnesses who gave conflicting testimony, seeking to identify and question other eyewitnesses to the incident, such as, for example, counsel for the applicant and his co-defendants, court clerks or ushers who were present in the court building at the material time, examining the location in which the incident took place or carrying out a forensic simulation in order to reconstruct the circumstances of the incident and verify the statements by the witnesses. The investigating authorities' failure to take the above steps contributed to the investigation's inability to produce a complete and detailed factual picture of the incident (see, for similar reasoning, *Mikayil Mammadov v. Azerbaijan*, no. 4762/05, § 129, 17 December 2009).

171. Further, the Court observes that the prosecutor's decision of 15 July 2002 refusing to open criminal proceedings against the escorts was scarcely reasoned. The prosecutor merely cited the witness statements collected without attempting to reconcile the contradictions between them or even stating which of the versions of the events he considered to be accurate. The decision did not contain any reasoning pertaining to the establishment or evaluation of the facts. The prosecutor simply found, without giving any reasons for that finding, that the escorts had lawfully assaulted the applicant and his co-defendants in response to their failure to comply with the escorts' legitimate order. The Court also does not lose sight of the fact that the prosecutor did not embark on an assessment of the proportionality of the force used against the applicant. He did not endeavour to analyse the degree of force used by the escorts or whether it was necessary in the circumstances and proportionate to the alleged misconduct of the applicant. The prosecuting authorities' failure to provide sufficient reasons for the refusal to open criminal proceedings must be considered to be a particularly serious shortcoming in the investigation.

172. Finally, the Court considers that the judicial proceedings initiated by the applicant did not remedy the defects of the investigation identified above. The domestic courts in their conclusions relied heavily on the findings made by the prosecutor in his decision of 15 July 2002. Neither the Sovetskiy District Court nor the Lipetsk Regional Court questioned personally the escorts, the applicant, the eyewitnesses mentioned in the decision or any additional witnesses, or examined any other evidence. Given that the courts did not make any independent establishment or evaluation of the facts, the Court concludes that the judicial proceedings were not sufficiently effective.

173. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the incident of 27 June 2002.

(c) Conclusion

174. The Court has found that on 27 June 2002 the applicant was ill-treated by the escorts in the building of the Lipetsk Regional Court and that the official inquiry into his allegations of ill-treatment was ineffective. It therefore concludes that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

175. The applicant complained that the investigations into his allegations of ill-treatment by the police in January to April 2001 and by the escorts on 27 June 2002 had been ineffective contrary to Article 13 of the Convention, which provides:

> "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."

176. The Court observes that this complaint concerns the same issues as those examined in paragraphs 132 to 142 and 166 to 173 above under the procedural limb of Article 3 of the Convention. Therefore, the complaint should be declared admissible. However, having regard to its conclusion above under Article 3 of the Convention, the Court considers it unnecessary to examine those issues separately under Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

177. 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

178. The applicant claimed 220,000 euros (EUR) in respect of non-pecuniary damage. He submitted that he had been subjected to prolonged torture and had suffered exceptionally serious and irreversible damage to his health as a result. He added that he had to follow constant and expensive treatment, had difficulty walking and was dependent on other people in his everyday life. He had become unable to work and develop professionally. All these factors caused him constant and severe mental anguish and physical suffering.

179. The Government submitted that the claim was excessive. The applicant had not submitted any documents confirming the amount of the

medical expenses and therefore he was not entitled to compensation in respect of pecuniary damage.

180. The Court reiterates that the amount it will award under the head of non-pecuniary damage under Article 41 may be less than that indicated in its case-law where the applicant has already obtained a finding of a violation at domestic level and compensation by using a domestic remedy. The Court considers, however, that where an applicant can still claim to be a "victim" after making use of that domestic remedy he or she must be awarded the difference between the amount actually obtained from the national authorities and an amount that would not have been regarded as manifestly unreasonable compared with the amount awarded by the Court in analogous cases.

181. Regard being had to the above criteria, and taking into account the severity of the ill-treatment to which the applicant was subjected and the very serious consequences it entailed for his health, the Court awards the applicant EUR 105,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

182. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join to the merits the question whether the applicant may still claim to be a victim of a violation of Article 3 of the Convention on account of the treatment to which he was subjected from January to April 2001;

2. *Declares* the application admissible;

3. *Holds* that the applicant may still claim to be a victim and that there has been a violation of Article 3 of the Convention on account of the treatment to which he was subjected from January to April 2001;

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 complaints about his ill-treatment from January to April 2001;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the treatment to which the applicant was subjected on 27 June 2002;

6. *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 complaints about his ill-treatment on 27 June 2002;

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

8. *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 105,000 (one hundred and five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
(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;

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

Done in English, and notified in writing on 29 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President