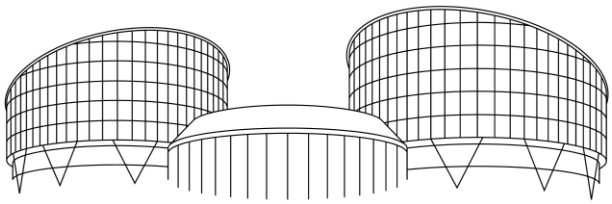

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SHISHKIN v. RUSSIA

(Application no. 18280/04)

JUDGMENT

STRASBOURG

7 July 2011

FINAL

10/07/2011

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

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

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

Dean Spielmann, *President,*
Karel Jungwiert,
Anatoly Kovler,
Mark Villiger,
Isabelle Berro-Lefèvre,
Ann Power,
Angelika Nußberger, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 14 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 18280/04) 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 Sergey Valentinovich Shishkin ("the applicant"), on 30 April 2004.

2. The applicant was represented by Mr M. Rachkovskiy, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

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. He also alleged that he had been denied access to counsel during part of the investigation stage of the proceedings.

4. On 2 March 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in Lipetsk.

6. In November 2000 the authorities opened criminal proceedings against the applicant in respect of three incidents of robbery and theft committed in the Lipetsk and Tambov regions.

7. On 17 January 2001 separate criminal proceedings were instituted against the applicant on suspicion of his involvement in the manslaughter of police officer A. and the robbery of M.

A. Ill-treatment by the police in January and February 2001

1. The applicant's arrest and ill-treatment by the police

8. On 23 January 2001 the applicant was arrested and escorted to the Interior Department of the Lipetsk Region. According to him, he was not provided with an explanation of the reason for his arrest, nor was he allowed to inform his family or counsel about it.

9. In the evening of the same day the applicant was transferred to Dolgorukovskoe police station of the Lipetsk Region. He again unsuccessfully requested that he be allowed to inform his family and counsel. He was apprised that he was suspected of the manslaughter of A. and robbery of M.

10. The applicant denied involvement in the above crimes, whereupon he was severely beaten by Mr Abakumov (the head of the Investigations department), Mr Kondratov, Mr Trubitsyn, Mr Lukin (the head of the public safety department) and Mr Gerasimov (the chief of the police station) who punched and kicked him on various parts of the body. At the same time Mr Kavyrshin encouraged the officers to continue the attack, and Mr Trubitsyn was hitting the applicant on the soles of the feet with a rubber truncheon. Mr Trubitsyn and Mr Kondratov suspended the applicant several times in the air by his arms tied behind his back. Mr Abakumov, Mr Kondratov, Mr Trubitsyn, Mr Butsan (a deputy chief of the police station), Mr Lukin, Mr Gerasimov and Mr Kavyrshin also forced the applicant to wear a gas mask whose air vent was occasionally blocked off.

11. Until 5 February 2001 the applicant was subjected to similar treatment by the same police officers on a daily basis. In addition, they threatened to take the applicant's life by placing a loaded pistol in his mouth, left him for lengthy periods of time wrapped in several mattresses with his legs tied together and his hands cuffed behind his back, forced him to wear a smoke-filled gas mask with a blocked air vent and administered electric shocks to various parts of his body through wires connected to a dynamo.

12. On an unspecified date the applicant confessed to the manslaughter of A. and robbery of M. On 23 and 27 January 2001 he also waived his right to counsel. According to the applicant, the waiver was the result of coercion by the police officers.

13. The investigator of the prosecutor's office of the Lipetsk Region Mr Ibiyev was in charge of investigation of the manslaughter of A. and the robbery of M.

14. On 30 January 2001 the applicant's relatives retained counsel Sh. who tried unsuccessfully to see the applicant on 30 and 31 January 2001.

15. The applicant was first allowed access to counsel on 2 February 2001.

16. On 7 February 2001 a forensic medical examination of the applicant recorded a bruise on his left shoulder, which might have been inflicted about two weeks prior to the examination.

17. On 13 and 19 February 2001 respectively the applicant complained to the prosecutor of the Lipetsk Region and his counsel that he had been ill-treated from 23 January to 5 February and from 9 to 13 February 2001 at Dolgorukovskoe police station, with the knowledge of the investigator Mr Ibiyev. He wrote that under the duress he had confessed to involvement in the robbery of M. and manslaughter of A. and had slandered his co-suspects.

18. On 26 May 2001 the criminal proceedings against the applicant for manslaughter and robbery were terminated, following the discovery of other suspects, who were later convicted by a court.

2. Investigation into the alleged ill-treatment and trial

19. On 14 March 2001 the applicant requested the prosecutor's office of Yelets to institute criminal proceedings against the aforementioned police officers for ill-treatment.

20. On 6 July and 14 September 2001 the prosecutor's office rejected the applicant's request, finding no evidence that an offence had been committed. The decisions contained, in particular, the results of expert medical examinations and statements obtained from several police officers. These decisions were reversed by the prosecutor's office of the Lipetsk Region on 7 August and 11 October 2001 respectively, on the ground that the inquiry had been incomplete.

21. On 11 October 2001 the prosecutor's office of the Lipetsk Region opened criminal proceedings against the alleged offenders. The applicant was granted victim status.

22. Between November 2001 and August 2002 the investigator again questioned the police officers, the applicant and his former cellmates and held confrontations between the police and the applicant.

23. 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.

24. On 11 August 2002 the criminal proceedings were again terminated on the grounds that there was insufficient evidence that the offence had been committed.

25. By a letter of 18 October 2002 the office of the Prosecutor General reprimanded the lower office for the discrepancies between the facts of the case and the conclusions reached by the investigator, and for attempts to cover up the violence committed by the police against the applicant.

26. On 10 November 2002 the prosecutor's office of the Lipetsk Region quashed the decision of 11 August 2002. The proceedings were resumed.

27. On 16 May 2003 the police officers of Dolgorukovskoe police station, namely Mr Abakumov, Mr Kondratov, Mr Trubitsyn and Mr Lukin, were charged with abuse of authority 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.

28. By a letter of 12 February 2004 the office of the Prosecutor General again reprimanded the lower office for poor quality and excessive length of the investigation. It pointed out, in particular, that not all the suspects had been charged and that the charges had been drawn up with certain procedural irregularities. It was suggested that the lower office resume the investigation with a different investigating group.

29. On 29 and 30 April, 5 May 2004 ten police officers were charged with actions committed in abuse of authority and in violation of the citizens' rights, involving the use of violence and weapons and entailing grave consequences, an offence under Article 286 § 3 (a, b, c) of the Criminal Code of Russia.

30. On 20 December 2004 the criminal case against the police officers of Dolgorukovskoe police station was set down for trial before the Yelets Town Court, Lipetsk Region.

31. On 28 December 2007 the Yelets Town Court found the policemen guilty as charged. The court found, *inter alia*, that the applicant had been ill-treated in the circumstances described above (see paragraphs 10 and 11 above) as a suspect in the manslaughter of A. and the robbery of M. It detailed further that

> "unlawful methods were used to revenge A.'s death as well as with a view to coercion of the suspects to confess in the aforementioned crimes, to confirm them and to waive legal assistance".

32. The court sentenced the defendants to terms of imprisonment ranging from four years to five years and eight months, with a subsequent three-year prohibition on serving in law-enforcement agencies.

33. The court also recognised the applicant's right to compensation in separate civil proceedings.

34. On 2 June 2008 the Lipetsk Regional Court upheld the conviction on appeal but decided to commute the sentences and eliminate the prohibition on holding certain offices. The court 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. It 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.

3. Civil action for damages

35. On an unspecified date the applicant sued the Ministry of Finance, the Interior Ministry and Dolgorukovskoe police station for compensation in respect of non-pecuniary damage caused by the ill-treatment. He claimed 50,000,000 Russian roubles (RUB).

36. On 14 May 2009 the Moscow Zamoskvoretskiy District Court allowed the claim in part. It found that the applicant had been subjected to physical and psychological violence and awarded him RUB 100,000 (about 2,300 euros (EUR)) as compensation.

37. On an unspecified date the Moscow City Court upheld the judgment on appeal.

B. Ill-treatment by escorts on 27 June 2002

1. Use of force by the escorts in the court-house

38. On an unspecified date the remaining criminal charges against the applicant were submitted to the Lipetsk Regional Court for examination on the merits.

39. On 27 June 2002 the applicant and other defendants were escorted to the Lipetsk Regional Court for a hearing. According to the applicant, he and other defendants decided not to go into the courtroom, in protest against the postponement of the hearing and lack of medical assistance to some of the defendants. The presiding judge ordered that they be brought in by force.

40. In a report drawn up on the same day the head of the escorts group described the subsequent events in the following way:

> "After a discussion the accused agreed to proceed to the courtroom. While being escorted they attacked the escorting police officers. Physical force and special means were used against them in order to stop the assault and break their resistance."

2. Investigation into the alleged ill-treatment

41. On 15 July 2002 the prosecutor's office of the Sovetskiy District of Lipetsk refused the request of the relatives of the accused for institution of criminal proceedings against the police officers who had escorted and beaten the accused. The decision contained the statements of the relatives

who had been eyewitnesses to the events in part, the applicant's version of the events and the statements of the escorts.

42. Five eyewitnesses submitted that at a certain moment they had heard a noise from the staircase leading from the basement and had soon seen the accused being driven up the stairs with blows from the escort officers' truncheons. The applicant's mother went on to describe the officer who was beating the applicant and added that innumerable blows had been delivered by the officer, who had used his hands, feet and the truncheon.

43. The applicant's version of the events read as follows:

> "[The accused] agreed to enter the courtroom under the condition that they would be allowed to see their family members in the lobby... [They] started going up the stairs, but seeing that not all of their families were in the lobby they turned back. [The applicant] was handcuffed to his co-accused B. Then the escorts started pushing them into the courtroom. He does not know who was beating him...After the incident he had bruises on his body".

44. The statement by the head of the escort group was similar to the report drawn up by him on the day of the incident. In addition, he specified that

> "[w]hile going up the stairs, the accused P. bolted to the right and the rest attacked the escorting officers."

45. The escorts made similar statements. The presiding judge refused to testify.

46. The decision not to institute criminal proceedings found it established that the escorts had acted on the judge's order to bring the accused in by force and had not overstepped the lawful boundaries. It also mentioned that the accused had not requested medical assistance or forensic expert examination and therefore it could not be established whether they had sustained any physical harm.

47. On an unspecified date the applicant challenged in court the decision not to institute criminal proceedings.

48. On 20 September 2004 the Lipetsk Sovetskiy District Court heard the applicant, who testified that the escorts had beaten him without any defiance or resistance on his part. Having examined the decision not to institute the proceedings and the escorts' reports, the court found that the impugned decision was well-grounded and disallowed the complaint.

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

50. The Government submitted that the materials of the investigation had been studied by the office of the Prosecutor General, which had returned them to the regional office on 22 January 2007 without any comments.

C. Criminal proceedings against the applicant

51. As transpires from the text of the trial judgment (see paragraph 56 below), on 4 April 2001 the applicant was questioned as an accused within the investigation opened on account of three incidents of robbery and theft committed in the Lipetsk and Tambov Regions (see paragraph 6 above). The parties did not submit the records of the interviews given by the applicant either before or after that date.

52. In October 2001 the criminal case against him was set down for trial.

53. The applicant pleaded not guilty at the trial and contended that his testimony in relation to the crimes he was being charged with had been obtained under duress at Dolgorukovskoe police station as well as under pressure from other police officers. He emphasised that he had been ill-treated at the police station in connection not only with the manslaughter of A. but also with the other charges pending against him. He also asserted that the waivers of legal assistance had been signed by him against his will and that the waiver of 31 January 2001 had been forged by the investigator. His legal counsel had not been informed by the investigator of the investigative actions.

54. On 28 April 2003 the Lipetsk Regional Court found the applicant guilty of assault, aiding and abetting attempted robbery, and theft, and sentenced him to six years' imprisonment. Three of his co-defendants were also found guilty and sentenced to various terms of imprisonment.

55. In determining the criminal charges against the applicant and his co-defendants the trial court relied on the statements made by them during the pre-trial investigation, the circumstantial evidence supplied by the victims, the statements of one of the police officers who had questioned the co-accused during the pre-trial investigation, the records of crime scene reconstructions and expert examinations of several items, which had not ruled out the possibility that the physiological evidence found on them belonged to the applicant or his co-defendants.

56. The trial court rejected the records of interviews given by the applicant as a suspect before 4 April 2001 in respect of the second incident as obtained in violation of the procedural norms, namely without a previous imposition of a measure of restraint on the suspect. It also did not rely in its assessment of evidence on any statements made by the applicant in respect of the first and third incidents.

57. In respect of the applicant's claim that the statements made during the pre-trial investigation were false and had been given under duress, the court stated:

> "... The court cannot agree with the[se] arguments ... as the case materials do not contain any objective information on this account ... They are also refuted by the evidence examined in the proceedings and by the fact that the confessions contained such information as could only be known to the perpetrators of the crime.

> [The applicant] made his pre-trial statements of his own will and by his own initiative; [he] had been explained the provisions of Article 51 of the Constitution including his right not to testify against himself ..."

58. As to the alleged lack of legal assistance at the stage of the initial investigation, the trial court found that counsel had been retained to provide assistance in respect of the investigation of the manslaughter of A., but not in respect of the rest of the charges.

59. In his appeal to the Supreme Court of Russia the applicant's legal counsel challenged the judgment on a number of points. He challenged the court's analysis of the witnesses' statements and other evidence, maintained that part of the evidence was inadmissible for procedural flaws, lack of legal assistance during the investigation or due to the coercion applied by the police officers.

60. On 26 November 2003 the Supreme Court rejected the appeal and upheld the judgment.

D. Conditions of the applicant's detention

61. The applicant was held in Yelets T-2 prison from 5 February to 13 June 2001. He was also held in Yelets IZ-48/1 detention facility from 13 June 2001 to 27 December 2003 and from 24 February to 29 April 2004. After the conviction he served his sentence in Yelets correctional colony IK-3 from 27 December 2003 to 24 February 2004 and from 29 April to 5 May 2004.

1. The applicant's account

62. The applicant submitted that in the T-2 and IZ-48/1 detention facilities the cells had been poorly ventilated, their window structures had not allowed access to fresh air, and the lighting had been inadequate. He further submitted that the toilet facilities had not been separated from the living area and that the cells had been infested with rats and mice.

63. As to the conditions of detention in the correctional colony, the applicant alleged in general terms a lack of proper ventilation, lighting and disinfection, as well as deficiencies in the quality and amount of food supplied.

64. On an unspecified date the applicant brought proceedings against the T-2 detention facility, seeking compensation for non-pecuniary damage sustained as a result of the poor conditions of detention. In particular, he complained of stuffiness and unpleasant odour in the cells where he had been kept, lack of proper electric lighting and natural light that had allegedly led to deterioration of his eyesight, poor sanitary maintenance of the cells and breach of the statutory standards of catering for the detainees. He also raised numerous other grievances. On 16 May 2006 the Yelets Town Court of the Lipetsk Region heard the applicant and several witnesses

in person, considered witness depositions and the regulations pertaining to the subject, and rejected the complaints as unfounded.

65. It is not clear whether the applicant appealed against the judgment.

2. The Government's account

66. The Government submitted that the cell windows of the detention facilities which had housed the applicant had never been fitted with metallic sheets or grilles which could have blocked natural light. Instead, the windows were fitted with white-painted venetian blinds which did not inhibit access of daylight to the cells. These blinds were removed from IZ-48/1 and T-2 in late 2002 in accordance with the order of the Prisons Department of the Ministry of Justice of 25 November 2002. The cell windows in the correctional colony were fitted in accordance with the standards proscribed by the decree of the Ministry of Justice of 2 June 2003. During daytime the cells of the detention facilities were lit by 40-watt light bulbs whose number was in proportion with the floor area of the cells.

67. The cells in IZ-48/1 and T-2 were equipped with combined extract-and-input ventilation in working condition. Such ventilation did not exist in the cells of the correctional colony, as the inmates only slept there. All the detention facilities were naturally ventilated by way of vent lights in the windows.

68. IZ-48/1 and T-2 were equipped with sanitary facilities in working order. The toilets, which were 1.2 to 3 metres from the living area, were fitted with partitions measuring from 1 to 1.8 metres in height, which ensured sufficient privacy. The correctional colony's quarantine unit and unit 2 had separate sanitary rooms. The cleaning of the sanitary facilities in T-2 and IZ-48/1 was done by the inmates according to the internal regulations. In the correctional colony this cleaning was done twice a day.

69. There were no discoveries of mice, rats or parasitical insects in the concerned detention facilities during the applicant's period of detention. In T-2 the disinfection and disinfestation took place on a monthly basis, with additional daily inspection of the cells. In IZ-48/1 and the correctional colony such operations were carried out by a staff disinfector in accordance with a set schedule. In addition, all of the concerned facilities disinfested the inmates' clothes and bedding on a weekly basis.

70. As to the catering, the Government submitted that it had been provided in accordance with the statutory standards.

II. RELEVANT DOMESTIC LAW

A. Criminal-law remedies against ill-treatment

1. Applicable criminal offences

71. 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

72. 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 party concerned. The decision was amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction (Articles 113 and 209).

73. 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 a 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 relevant investigative authority. The complainant must be notified of any decision taken. 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 court.

B. Civil law remedies against illegal acts by public officials

74. 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 by 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 Custody Act (no. 103-FZ of 15 July 1995) (Федеральный закон «О содержании под стражей подозреваемых и обвиняемых в совершении преступлений»)*

75. Rubber truncheons may be used in the following cases:

- to repel an attack on a staff member of a detention facility or on other persons;
- to suppress mass disorder or put an end to collective violations of detention rules and regulations;
- to put an end to a refusal to comply with lawful orders of facility 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).

2. *The Police Act (no. 1026-1 of 18 April 1991) (Закон РФ «О милиции»)*

76. Police officers are only entitled to use physical force, special means and firearms in cases and within procedures 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 (section 12).

77. Section 12 of the Police Act provides that a police officer resorting to physical force, special means or a firearm should warn an individual that force/special means/firearms are to be used against him. In cases when a delay in the use of force, special means or firearms may endanger the life

and health of civilians or police officers or cause other serious damage such a warning is not necessary. Police officers should ensure that damage caused by the use of force/special means/firearms is minimal and corresponds to the character and extent of the danger that unlawful conduct by a perpetrator may pose and the resistance that the perpetrator offers. Police officers should also ensure that individuals who have been injured as a result of the use of force/special means/firearms receive medical assistance.

78. By virtue of section 13 of the Police Act police officers may use physical force, including combat methods, to prevent criminal and administrative offences, to arrest individuals who have committed such offences, to overcome resistance to lawful orders, or if non-violent methods do not ensure compliance with responsibilities entrusted to the police.

79. Sections 14 and 15 of the Police Act lay down an exhaustive list of cases when special means, including rubber truncheons and 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 work of transport, means of communication and legal entities. Handcuffs may only be used to overcome resistance offered to a police officer, to arrest an individual caught when he is committing a criminal offence against life, health or property and if he is attempting to escape, and to take arrestees to police stations, to transport 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.

D. Access to counsel

80. Under Article 47 § 1 of the old CCrP, in force at the material time, counsel could be admitted to proceedings from the moment charges were announced or listed, or, for an arrested or detained suspect, from the moment he or she is given access to the arrest record or detention order. If privately-retained counsel did not appear within twenty-four hours, the authority in charge of the case was allowed to suggest that the person retain other counsel, or to appoint counsel itself (Article 47 § 2).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT AT DOLGORUKOVSKOE POLICE STATION

81. The applicant complained under Articles 2 and 3 of the Convention that he had been subjected to torture at Dolgorukovskoe police station in early 2001 and that the authorities had not undertaken an effective investigation into his complaints. The Court considers that this complaint should be examined under 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

82. The Government confirmed that the applicant had been ill-treated at Dolgorukovskoe police station in January and February 2001, referring to the conclusions reached by the trial court in the proceedings against the offending police officers. They further contended that the investigations into the offences had been thorough and effective, as evidenced by the fact that the offenders had been convicted. They pleaded that the applicant had lost his victim status before the Court following the conviction of the offenders and the award of compensation for non-pecuniary damage to him by the domestic court.

2. The applicant

83. The applicant disagreed that the investigation into his complaints had been effective. He submitted that it had been too lengthy and had not led to criminal prosecution of the investigators of the prosecutor's office, Mr Ibiyev and Mr Andreyev. He claimed that the compensation for ill-treatment awarded by the domestic court had been insufficient and that he had retained his victim status under the Convention.

B. The Court's assessment

1. Admissibility

84. 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 decided to join this matter to the merits.

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

2. Merits

(a) Alleged ill-treatment of the applicant

86. 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).

87. 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 ECHR 2006-III; *Mikheyev v. Russia*, no. 77617/01, § 135, 26 January 2006; and *Polonskiy v. Russia*, no. 30033/05, § 124, 19 March 2009). In assessing whether the pain and suffering inflicted on a person amounts to torture in the meaning of Article 3 of the Convention, the Court takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies (see *Selmouni*, cited above, § 101).

88. In the present case the domestic courts acknowledged that in January and February 2001 the applicant had been repeatedly ill-treated by the police officers of Dolgorukovskoe police station. In particular, it had been established that the police officers had punched and kicked the applicant, hit him on the heels with truncheons, subjected him to electric shocks, put a gas mask on him and closed its 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 a rope. This treatment had undoubtedly caused the applicant severe mental and physical suffering, even if the actual bodily injury might not have been particularly serious (see paragraph 16 above). 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 31 and 36 above).

89. Given the purpose, length and intensity of the ill-treatment, the Court concludes that it amounted to torture within the meaning of Article 3 of the Convention.

(b) The issue of victim status

90. In paragraph 84 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.

91. 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).

92. 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 36 above). It remains to be ascertained whether he was afforded appropriate and sufficient redress for the breach of his rights under the Convention.

93. 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, §§ 78-79, and *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, §§ 55-56, 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.

94. 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, ECHR 2010-...).

(i) Effectiveness of the investigation

95. 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).

96. 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.

97. 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).

98. 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*, cited above, § 133 et seq.). 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).

99. Turning to the present case, the Court observes that the applicant complained of ill-treatment in his request for institution of criminal proceedings filed on 14 March 2001. At the material time the results of his medical examination had already been known and, therefore, he had an "arguable claim" that obliged the domestic authorities 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, §§ 358-59, 6 April 2004).

100. However, a preliminary inquiry was launched by the prosecutor's office only several months later, and was limited to questioning of some of the police officers identified by the applicant. Criminal proceedings were ultimately opened in October 2001, that is eight months after the first complaint of 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).

101. The Court also observes that progress in the investigation was slow and spanned over three years. It appears from the letters of the office of the Prosecutor General and the decisions of the regional prosecutor's office that the investigation had suffered from delays and haphazard investigatory measures (see paragraphs 20, 23, 25 and 28 above). Further delays accumulated during the trial stage that started in March 2005 and lasted for more than two years. As a result of those delays the police officers were not finally convicted and sentenced until June 2008, about seven years after their wrongful conduct. This approach 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).

102. 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 imposition of 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 deterrent sanctions on them. For this reason, although the Court acknowledges the role of 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).

103. 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 71 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 work and had positive references from their superiors (see paragraph 34 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. 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, §§ 123-24; *Atalay*, cited above, §§ 40-44; *Okkalı*, cited above, §§ 73-75; and *Nikolova and Velichkova*, cited above, §§ 60-63).

104. Regard being had to the above, 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

105. 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 a breach of the Convention has been redressed (see *Shilbergs v. Russia*, no. 20075/03, § 72, 17 December 2009, and, *mutatis mutandis*, *Gäfgen*, cited above, §§ 126-27).

106. 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, §§ 182-92 and 202-15, ECHR 2006-V).

107. In the present case, the Court's task is 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.

108. The Court considers that the duration and severity of the ill-treatment 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 (see paragraphs 88 and 89 above).

109. 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 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 2,300 awarded for the prolonged and extremely cruel torture was substantially lower than what it generally awards in comparable Russian cases (see, for example, *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 159 to 160 below).

(c) Conclusion

110. 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 manifestly 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.

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

111. 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. Submissions by the parties

112. The Government submitted that the applicant's allegations of mistreatment on 27 June 2002 had no merit. The inquiry into the allegations was conducted in accordance with Article 3 of the Convention, was comprehensive and objective.

113. The applicant asserted that the use of force during the escort to the courtroom had not been justified or necessary as he had not attacked the escorts. He argued that if he had indeed attempted an escape or attack on the escorts he would have had criminal proceedings opened against him under Articles 295 and 313 of the Criminal Code (attempted taking of life of an individual involved in administration of justice and escape from detention, respectively). He further stated that the investigation of his allegations of ill-treatment had not been effective, having been limited to establishment of the grounds for the use of physical force and special means and had not included questioning of all the defendants, counsel, court staff and the presiding judge.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) The alleged breach of Article 3 under its procedural limb

115. The Court observes that the use of physical force and special means by the escorts on 27 June 2002 is not in dispute between the parties. It further notes that this incident was witnessed at least by several family members of the defendants who immediately asked for an official inquiry into it on account of the alleged brutality of the escorts' actions. Being

provided with the eyewitnesses' accounts, the authorities thus had an obligation to carry out an effective investigation into the circumstances of the incident.

116. The Court observes 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.

117. 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 facts as to whether the applicant had received any injuries. The Court reiterates in this respect that proper medical examinations are an essential safeguard against ill-treatment (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). It notes 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.

118. Another shortcoming of the investigation was the authorities' failure to establish the exact sequence of events and to address the discrepancies in the testimony of the defendants' relatives, the applicant and the escorts. 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 defendants, court staff 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).

119. 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.

120. 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.

121. 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.

(b) The alleged breach of Article 3 under its substantive limb

122. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Selmouni*, cited above, § 95, and *Assenov and Others*, cited above, § 93).

123. Allegations of ill-treatment must be supported by appropriate evidence (see, mutatis mutandis, *Klaas v. Germany*, 22 September 1993, §30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

124. The Court reiterates that, while not disputing the fact of the use of force, the parties did not agree on the exact circumstances surrounding it.

125. It notes that the applicant's version of the events is only partially supported by the testimony of the eyewitnesses. Following lack of medical records, the Court is not in a position to estimate independently the intensity of the force applied by the escorts.

126. It has further regard to its findings concerning numerous deficiencies in the domestic investigation into the applicant's alleged ill-treatment (see paragraphs 115 and 121 above).

127. Having regard to the parties' submissions and all the materials in its possession, the Court considers that the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to treatment contrary to Article 3, as alleged (see, *a contrario*, *Kopylov v. Russia*, no. 3933/04, § 165, 29 July 2010). In this respect it particularly emphasises that its inability to reach any conclusions as to whether there has been treatment prohibited by Article 3 of the Convention derives in considerable part from the failure of the domestic authorities to react effectively to the applicant's complaints at the relevant time (compare *Lopata v. Russia*, no. 72250/01, § 125, 13 July 2010).

128. Consequently, the Court cannot establish a substantive violation of Article 3 of the Convention in respect of the applicant's alleged ill-treatment in the building of the court.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF CONDITIONS OF DETENTION

129. The applicant complained under Article 3 of the Convention that the conditions of his detention in T-2 and IZ-48/1 detention facilities and in Yelets correctional colony IK-3 had been deplorable.

A. The parties' submissions

130. The Government provided their own account of the situation (see paragraphs 66 to 70 above) denying any issues. In support of their arguments they submitted numerous statements from the authorities of the detention facilities where the applicant had been kept concerning various aspects of the conditions of detention. The Government also supplied detailed technical information regarding the sanitary equipment, ventilation and lighting in the cells, the disinfection schedule in the facilities and catering standards.

131. The applicant maintained his complaints and added that submission of the information on catering standards by the Government did not prove that those standards had been complied with.

B. The Court's assessment

132. The Court first reiterates that Article 3 of the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among other authorities, *Labita*, cited above, § 119). Measures depriving a person

of his or her liberty may often involve an inevitable element of suffering or humiliation. Nevertheless, it is incumbent on the State to ensure that a person is detained in conditions which are compatible with respect for his or her human dignity, and that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention (see *Valašinas v. Lithuania*, no. 44558/98, §§ 101-02, ECHR 2001-VIII).

133. Having regard to the present case, the Court observes that the parties' descriptions of the conditions of the applicant's detention contradict each other. Since the applicant's allegations were not supported by any proof, it finds it difficult to verify the truthfulness of his descriptions. The Court takes into consideration that the applicant might have experienced difficulties in procuring documentary evidence. It points out at the same time that in cases where detainees are unable to produce documents to support their complaints it has relied on other evidence, for example, written statements signed by eyewitnesses who shared the applicant's cells (see, for example, *Khudobin* v. Russia, no. 59696/00, § 87, ECHR 2006-XII (extracts)). Accordingly, it was open to the applicant to provide the Court with written statements by his cellmates. It also does not lose sight of the fact that the domestic court has examined the applicant's complaints, which were very similar to those presented before the Court, and rejected them as unfounded.

134. Owing to lack of evidence, the Court is therefore not in a position to conclude that the applicant has made a prima facie case as regards the poor conditions of his detention.

135. It follows that this complaint must be rejected as being manifestly ill-founded under Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 3 (c) ON ACCOUNT OF LACK OF LEGAL ASSISTANCE

136. The applicant complained that he had not been allowed access to counsel from the date of his arrest until 2 February 2001, in violation of Article 6 § 3 (c) of the Convention, which reads as follows:

> "Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

A. Admissibility

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

B. Merits

1. The parties' submissions

138. The Government admitted that the applicant had had no access to counsel during the period when he was kept at Dolgorukovskoe police station. They submitted that he had met with his counsel on 2 and 13 February 2001 and received regular legal assistance thereafter from his counsel Sh. and later counsel Kh., both of whom had been privately retained.

139. The applicant maintained his complaint.

2. The Court's assessment

140. Article 6 § 3 (c) of the Convention requires that, as a rule, access to a lawyer should be provided as from the first questioning of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, 27 November 2008; see also *Dayanan v. Turkey*, no. 7377/03, §§ 29-34, 13 October 2009). Even where compelling reasons may exceptionally justify denial of access to a lawyer, such a restriction, whatever its justification, must not unduly prejudice the rights of the accused under Article 6 (*ibid*).

141. The Court further emphasises the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage determines the framework in which the offence charged will be considered at the trial (see *Salduz*, cited above, § 54). At the same time, an accused often finds himself in a particularly vulnerable position at that stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure tends to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases, this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task is, among other things, to help to ensure respect for the right of an accused not to incriminate himself (see *Jalloh*, cited above, § 100, and *Kolu v. Turkey*, no. 35811/97, § 51, 2 August 2005). Referring to the recommendations of the European Committee for the Prevention of Torture and Inhuman or

Degrading Treatment or Punishment, the Court has previously pointed out that the right of a detainee to have access to legal advice is a fundamental safeguard against ill-treatment (see *Salduz*, cited above, § 54).

142. With regard to the present case, the Court observes that the Government did not contest that the applicant had requested legal assistance during his detention at Dolgorukovskoe police station, nor did they give any justification for not having granted this request. They also did not argue that a ban or restriction on the applicant's right of access to a lawyer had been imposed in accordance with requirements of domestic law. Instead, their submissions appear to imply that subsequent access to counsel remedied the initial defect. However, regard being had to the principles outlined above and, in particular, the importance of legal assistance from the very moment of the arrest, the Court cannot accept that the purposeful denial of such assistance during the first ten days of detention, when the applicant was tortured and interrogated on the criminal charges pending against him, could have been remedied later.

143. Accordingly, the Court finds that the lack of legal assistance to the applicant at the early stages of police questioning irretrievably affected his rights under the Convention and undermined the appearance of a fair trial and the principle of equality of arms.

144. In view of the above, the Court concludes that there has been a violation of Article 6 § 3 (c) of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF USE OF EVIDENCE OBTAINED UNDER DURESS

145. The applicant complained that his right not to incriminate himself and right to a fair trial had been infringed by the use at his trial of the confessions obtained under duress. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

146. The Government contested that argument. They claimed that the police officers of Dolgorukovskoe police station who had indeed tortured the applicant had not been involved in the investigation of the crimes of which the applicant had been subsequently convicted. They further argued that the applicant had been apprised of his right not to incriminate himself under Article 51 of the Constitution, as evidenced by his signatures in the

records of interview. In addition, the applicant's conviction had been based on duly elucidated body of evidence.

147. The applicant noted that the investigation of all the charges against him had taken place during the same period of time and that he had been questioned in relation to all of the charges at Dolgorukovskoe police station, where his confessions had been made under duress and dictated by the police officers. He also claimed that most of the adduced evidence in the criminal proceedings against him had proven only that the offences had been committed, but not his guilt, and that the court had relied on the confession statements made under duress as the main argument in favour of his involvement in the crimes. He alleged that the officers from the other law-enforcement bodies had conducted investigative actions with him on the premises of Dolgorukovskoe police station and at the time when he had been tortured, and that they had been aware of his ill-treatment.

B. The Court's assessment

148. The Court reiterates that it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (see, *inter alia*, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V; *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 76, ECHR 2001-IX; and *Allan v. the United Kingdom*, no. 48539/99, § 42, ECHR 2002-IX).

149. The Court further reiterates that particular considerations apply in respect of the use in criminal proceedings of evidence recovered by a measure found to be in breach of Article 3. The use of such evidence, obtained as a result of a violation of one of the core rights guaranteed by the Convention, always raises serious issues as to the fairness of the proceedings even if the admission of such evidence was not decisive in securing the conviction (see *İçöz v. Turkey* (dec.), no. 54919/00, 9 January 2003; *Jalloh v. Germany* [GC], no. 54810/00, §§ 99 and 104, ECHR 2006-IX; *Göçmen v. Turkey*, no. 72000/01, § 73, 17 October 2006; and *Harutyunyan v. Armenia*, no. 36549/03, § 63, ECHR 2007-VIII).

150. In the instant case, the Court observes that the parties failed to submit copies of the interview records, which would have allowed it to independently ascertain whether between 23 January and 2 February 2001 the applicant made any statements in respect of the charges he was subsequently convicted of. It also takes special cognisance of the fact that

during this period the applicant was deprived of access to counsel. In these circumstances, irrespective of the fact that the trial court claims to have rejected the interview records in respect of one of the incidents made before 4 April 2001 and not to have relied on the applicant's other pre-trial statements in its assessment of evidence (see paragraph 56 above), the Court cannot rule out that between the date of his arrest and his first opportunity to communicate with counsel the applicant may have made statements which were subsequently used to obtain evidence leading to his conviction, particularly taking into account the fact that the two sets of proceedings had commenced at approximately the same time and that the inquiries had overlapped (see paragraph 57 above).

151. Even in the absence of a clear indication that the applicant made any self-incriminating statements in respect of the charges of which he was finally convicted during the period when he was tortured in relation to other charges, the Court considers that the lack of access to counsel and the use of the interrogation methods proscribed by Article 3 of the Convention immediately after the applicant's arrest tainted the parallel proceedings to such an extent as to render them unfair as a whole.

152. Accordingly, there has been a violation of Article 6 § 1.

VI. OTHER ALLEGED VIOLATIONS

153. The applicant also complained under Article 5 of the Convention of lengthy and unlawful pre-trial detention and Article 6 § 1 of the Convention that the length of the criminal proceedings against him had been excessive.

154. The Court observes that the applicant's pre-trial detention ended on 28 April 2003 with his conviction. Therefore, this complaint is lodged out of time and should be rejected in accordance with Article 35 § 1 of the Convention.

155. As to the complaint of excessive length of criminal proceedings, the Court notes that they lasted for approximately three years at two levels of jurisdiction, which does not appear unreasonable, given the multiple charges and the large number of defendants. It follows that this complaint is manifestly ill-founded and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

156. 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

157. The applicant claimed 80,000 euros (EUR) in respect of non-pecuniary damage. He submitted that he had been subjected to inhuman treatment at the hands of the police and had suffered bodily injuries and distress while fearing for his life.

158. The Government submitted that the claim was excessive.

159. 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 the 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.

160. Regard being had to the above criteria, and taking into account the severity of the ill-treatment to which the applicant was subjected as well as the compensation he has received at the domestic level, the Court awards the applicant EUR 77,700.

B. Costs and expenses

161. The applicant also claimed EUR 70,000 for the costs and expenses incurred before the domestic courts and in Strasbourg proceedings. In particular, he submitted several legal bills incurred in the criminal proceedings against the police officers and in the subsequent civil proceedings for damage, and postal receipts to Strasbourg.

162. The Government noted that the sum total of the submitted bills and receipts amounted to EUR 18,500 and the applicant had not proved that those had been necessary and reasonable.

163. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its

possession and the above criteria, the Court considers it reasonable to award the sum of EUR 260 covering costs under all heads.

C. Default interest

164. 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 in January and February 2001;

2. *Declares* the complaints concerning ill-treatment by the police in 2001 and 2002, ineffective investigation into the ill-treatment, lack of legal assistance at the initial stage of police questioning and unfair trial admissible and the remainder of the application inadmissible;

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 torture to which he was subjected in police custody in January and February 2001;

4. *Holds* that there has been a violation of Article 3 on account of the authorities' failure to investigate effectively the applicant's complaints about his torture in January and February 2001;

5. *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 alleged ill-treatment on 27 June 2002;

6. *Holds* that there has been no violation of Article 3 of the Convention on account of alleged ill-treatment on 27 June 2002;

7. *Holds* that there has been a violation of Article 6 § 3 (c) of the Convention on account of lack of legal assistance at the initial stages of police questioning;

8. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of lack of a fair trial;

9. *Holds*

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

(i) EUR 77,700 (seventy-seven thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 260 (two hundred and sixty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on 7 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President