CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF BELOUSOV v. RUSSIA

(Application no. 1748/02)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Belousov v. Russia,

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

Peer Lorenzen, *President,*
Rait Maruste,
Volodymyr Butkevych,
Anatoly Kovler,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 9 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 1748/02) 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 Ivan Aleksandrovich Belousov ("the applicant"), on 24 July 2000.

2. The applicant was represented by Ms M. Samorodkina, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev and subsequently by Mrs V. Milinchuk, Representatives of the Russian Federation at the European Court of Human Rights.

3. On 13 February 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

4. 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

5. The applicant was born in 1973 and lives in the town of Yuzhno-Sakhalinsk in the Sakhalin region.

6. In December 1999 the applicant arrived in Moscow. On 3 December 1999 he was examined by the Moscow medical commission, which found him to be in good health and fit to drive a car.

A. The events of 5 December 1999 and the applicant's state of health

7. On 5 December 1999 the applicant gave an interview to a national TV station, NTV, which was running a story on a dispute between private holders of government bonds and the Ministry of Finance. During the interview the applicant, the head of a group of private bondholders, accused the Ministry of initiating a vendetta against him and ordering assaults on bondholders to pressurise them into withdrawing their lawsuits against the Ministry. The interview was aired on NTV's weekly political analysis show, *Itogi*.

8. On the same day police officers stopped the applicant and his brother in the street and asked them to show identification documents. The Government alleged that the police officers had acted on information about wanted criminals who looked remarkably similar to the applicant and his brother. According to the Government, the applicant and his brother were not in possession of any papers which could have proved their identity and they were taken to Koptevo police station in Moscow (*ОВД «Коптево» г. Москвы*) owing to their "refusal to comply with the orders of the police officers and use of obscene language in public". According to the applicant, he and his brother disclosed their identity, his brother presenting a military ID card and the applicant showing a work pass.

9. At the station a police officer, Kh., drew up a note addressed to the head of the Koptevo police department. The note read as follows:

> "[I] am writing to inform you that on 5 December 1999, at 1.45 p.m., Mr Belousov was brought to the police station together with Mr V. [NB: the police officer]; at the address ..., following several requests to present documents proving his identity, [Mr Belousov] refused to show them and started swearing at us in the presence of private individuals, using obscene language and at the same time repeating that it would cost us five thousand roubles; the two men refused to follow us to Koptevo police station.
>
> The identity check was prompted by telephone message no. 12316."

10. According to the applicant, he was severely beaten in the police station by a group of allegedly drunk police officers. After the beatings he was moved to a cell. Several hours later he was brought to a room and forced to strip to the waist. He placed his clothes in a bag and was forced to lift the bag, which weighed approximately four kilograms, and to put it down. He had to perform this "exercise" over and over again. The applicant alleged that the task had been extremely difficult for him, as on 6 October 1999 he had undergone surgery and had been prohibited from lifting

weights heavier than a kilogram. The applicant lost consciousness and was taken to the Botkin clinical hospital.

11. The Government, relying on information provided by the Prosecutor General's Office, confirmed the fact that the applicant had sustained injuries.

12. In the hospital the applicant was examined by a neurosurgeon, a neuropathologist, a urologist and an oculist. Medical report no. 29314 was drawn up. The report indicated that the applicant had been admitted to the hospital at 6.45 p.m. on 5 December 1999 and that he had been diagnosed with "an injury to the front abdominal wall, bruises on the forehead and left hand, an injury to the kidneys, a craniocerebral injury and concussion".

13. The applicant stayed in the hospital until 10 December 1999. According to medical certificates nos. 081114, 066415 and 091922 issued on 10 and 21 December 1999 and 4 February 2000 respectively, the applicant was on sick leave until 10 February 2000 and underwent treatment at home.

14. On 10 February 2000 the applicant was examined by an occupational medical expert panel (*врачебно-трудовая экспертная комиссия)* and recognised as physically disabled. Medical certificate no. 163147 issued by the panel indicated that the applicant had "a second-degree disability".

B. Investigation into the applicant's complaints

15. The applicant's mother complained to the Koptevo district prosecutor's office that on 5 December 1999 the applicant had been unlawfully arrested and beaten up.

16. On 14 December 1999 the Koptevo district deputy prosecutor sent a letter to the applicant's mother informing her that criminal proceedings had been instituted against the police officers at Koptevo police station.

17. On 14 March 2000 an investigator from the Koptevo district prosecutor's office closed the criminal proceedings, finding that there was no case of ill-treatment to answer. The relevant part of the decision read as follows:

> "In the course of the investigation it was established that on 14 December 1999, at 1.45 p.m., Kh. and V., on-duty officers from the Koptevo district police department, stopped two persons near house no. ... who resembled persons wanted in connection with telephone message no. 12316. The persons concerned refused to present identity documents and were brought to Koptevo police station for an identity check. At the station one of them identified himself as Mr Dmitriy Aleksandrovich Belousov, a third-year student at a military academy; the other introduced himself as Mr Aleksandr Aleksandrovich Konstantinov. Following a check though the Central Data System the identity of Mr D.A. Belousov was confirmed, and at 4 p.m. he was handed over to a representative of the military commander's office. The second person (Mr I.A. Belousov, as it was established later) was placed in a cell for administrative arrestees; later he felt sick and an ambulance was called for him. At

5.45 p.m. he was handed over to an emergency team which took him to the Botkin clinical hospital.

According to a statement by [the applicant], on 5 December 1999 he and his brother Dmitriy were on their way to Koptevo market. At approximately 12.10 p.m. a police officer, wearing no badge of rank or insignia, stopped them and asked them to show some identity documents. [The applicant] showed his "Lukoil-City" company work pass, and [his brother] showed his military ID card. At that moment another police officer, wearing badge no. 4461, approached them and pushed [the applicant]; [the latter] screamed and the police officer then twisted his arm. Consequently [the applicant] asked to be taken to a police station for an explanation. An on-duty patrol which had arrived at the scene took [the applicant] and [his brother] to Koptevo district police station. At the police station [the applicant] went into the lobby to smoke a cigarette. An on-duty sergeant, wearing badge no. 4491, said that arrestees could not smoke there; [the applicant] responded that he had not been arrested, and the sergeant then called a captain who was standing on the steps of the police station. The captain started hitting [the applicant]; when, responding to [the applicant's] screams, [his brother] ran from the duty room, the captain hit [his brother] with a machine gun and dragged him back to the duty room. The sergeant wearing badge no. 4491 and another sergeant, wearing badge no. 4488, continued beating [the applicant] up. Then [the applicant] crawled to the duty room and asked the police officers who were there to call an ambulance. [The applicant] and [his brother] were placed in a cell for administrative arrestees; the police officers dismissed all their requests to place a call to their house or to call an ambulance. During his detention at the station [the applicant] was twice submitted to a bodily search without any record being taken ... At 5.20 p.m. a major from the military academy arrived to pick up [his brother]. Subsequently a district police officer arrived at the station and, after forcing [the applicant] to strip to the waist, he and the captain present at the station made [the applicant] lift his clothes and move them from one place to another, following which [the applicant] lost consciousness. [The applicant] regained consciousness in a room where it was extremely hot; the police officers took him to a shower room where an officer on duty provided him with medical assistance. From that time on [the applicant] was almost unconscious until his transfer to the surgical wing of the hospital. An ambulance was called for him and subsequently [the applicant] was brought to the Botkin clinical hospital.

[The applicant's brother], who was questioned as a witness, confirmed [the applicant's] statements in general, but also stated that two police officers had carried [the applicant] from the lobby. When [the applicant's brother] was leaving the station, [the applicant] had not had any injuries to his head and hands.

According to a report by the Koptevo district police department, badge no. 4461 is assigned to Mr P., badge no. 4488 is attributed to Mr V. and badge no. 4491 is assigned to Mr Kh. During an identification parade in which the police officer wearing badge no. 4491 (Mr Kh.) took part, [the applicant] identified him and noted that the police officer in question had not beaten him up but that he had arrested him; [that statement] is corroborated by other police officers' statements.

According to a statement by the police officer, Mr Kh., he and Mr V. were on duty near Koptevo market on 5 December 1999. At approximately 1.40 p.m. they noticed two men who looked similar to criminals wanted in connection with telephone message no. 12316. In response to a request for identity documents, a man ([the applicant], as it was subsequently established) started screaming obscenities at the

police officers. The two men refused to show identity documents. In response to the officers' request that they go to Koptevo police station, [the applicant] said that he would not follow the officers and that he would not speak to a police officer below the rank of major; he also demanded that they call a car. A group on patrol was called to the scene to bring the two men to the police station. Physical force was not used against the two men.

Mr Kh.'s statements are fully corroborated by a statement from Mr V.

Mr D., who was questioned as a witness, stated that on 5 December 1999, in response to a call from an on-duty officer he, as a member of a group on patrol, together with Mr L. and Mr K., had arrived to render assistance to the on-duty officers. Two apprehended persons were handed over to them; the patrol took them to Koptevo police station. They did not use physical force against the two men. Mr D.'s statements are fully corroborated by statements from Mr L. and Mr K.

Mr Do., an officer on duty at Koptevo police station, who was questioned as a witness, stated that on 5 December 1999 two apprehended persons had been brought to the duty unit of Koptevo police station. One of the arrestees introduced himself as Mr Dmitriy Aleksandrovich Belousov, a student at the military academy, and showed his military ID card...; the other person introduced himself as Mr Aleksandr Alekseyevich Konstantinov and did not have any documents on him. Following a check through ... databases which produced a negative response, [the applicant] was asked to state his real name. Subsequently [the applicant] attempted to leave the station and started smoking. An officer on duty, Mr P., made a remark, following which [the applicant] fell to the floor and started screaming that he was being beaten up. When [Mr Do.] asked him what was going on, [the applicant] said that he had undergone surgery and showed scars on his stomach. The arrestee was reprimanded and placed behind bars. Subsequently [the applicant] continued behaving provocatively, used obscene language, threatened the police officers and tore up roubles and dollars. At 5.30 p.m. he complained that he did not feel well and emergency doctors were called, who transferred him to the Botkin clinical hospital. The police officers behaved properly towards [the applicant]; no physical force was used.

Mr Do.'s statements were confirmed by statements from police officers Mr R., Mr P., Mr Ka. and Mr S.

According to the statements given by a witness, Mr F., on 5 December he and a group of emergency doctors arrived at Koptevo police station. A man was sitting in the station behind bars, with his hand on his stomach. He complained of pain in his stomach. During conversation he stated that he was disabled and that he had recently undergone surgery during which a part of his stomach had been removed; he began showing the scars on his stomach. No visible injuries were discovered on [the applicant]. The police officers behaved properly towards [the applicant]. The patient was taken to the Botkin clinical hospital.

Mr Vu., an emergency team medical assistant, who was questioned as a witness, testified that on 5 December 1999 he and the emergency team had arrived at Koptevo police station. A man (the applicant, as was later established) was sitting on a couch behind bars with his hand on his stomach. [The applicant] said that he had been beaten up by the police. Other arrestees held at the station said that [the applicant] was lying. In the car [the applicant] talked, saying that he had undergone surgery. He stated that

when he had been approached by police officers in the street and had been asked to show some identity documents he had used obscene language.

Ms S., who was questioned as a witness, stated that on 5 December 1999 she had been in a room for administrative arrestees. Three more persons were being held there; one of them ([the applicant], as it transpired later) behaved provocatively, screaming and threatening the police officers. The police officers behaved properly towards all the arrested persons; they did not use physical force.

During an additional interview [the applicant] stated that a captain had begun hitting him in the lobby. At first [the captain] had hit him with his right hand on the upper part of the left shoulder; after that blow [the applicant] slipped down by the wall and fell near a rubbish bin. Then the captain kicked [the applicant] twice: once in the stomach and once in the back near the kidneys. The first kick in the stomach was particularly hard. After that the sergeants approached [the applicant] and hit him approximately six times in the stomach and back. The applicant then crawled into the duty room where he was hit several times in the buttocks...

According to a report issued in the Botkin clinical hospital [the applicant] had an injury to the abdominal wall, an injury to the right kidney, bruises on the forehead and left hand, a craniocerebral injury and concussion; his state of health was satisfactory. Following ultrasound examinations of the abdominal cavity and kidneys no pathology was detected.

A forensic medical examination of [the applicant] was performed in the case. According to the expert report, [the applicant] had sustained concussion and an injury to the forehead, which constituted elements of a single trauma and belonged to the category of injuries causing mild damage to health, that is, a short-term deterioration in health lasting less than three weeks... The diagnosis of "an injury to a kidney" indicated in the medical documents was not confirmed by objective clinical data and the results of the special examinations... The diagnosis "traumatic encephalopathy" indicated in the medical documents could not be examined by the expert, because there was insufficient objective data for analysis... At present [the applicant is suffering] from psycho-vegetative syndrome and depression, and needs psychiatric treatment. There is no mention of an injury to the post-surgical sutures in the medical documents presented for expert examination. Differences in the scar tissue along the line of the postsurgical sutures do not exclude a possible partial opening of the sutures in the upper part.

Taking into account the fact that the arguments raised by [the applicant] were not objectively confirmed in the course of the pre-trial investigation ..., [the investigator] orders the closure of the criminal proceedings instituted pursuant to Article 286 § 3 (a) of the Criminal Code of the Russian Federation..."

18. The applicant complained to the Moscow city prosecutor and the Koptevo District Court of Moscow that the criminal proceedings against the policemen had been closed.

19. According to the Government, the decision of 14 March 2000 was quashed on 24 March 2000 by a higher-ranking prosecutor and the case was remitted for additional examination. No copy of that decision was submitted to the Court.

20. On 27 April 2000 an investigator from the Koptevo district prosecutor's office again discontinued the criminal proceedings, finding that there was no case of ill-treatment to answer. The decision of 27 April 2000 was identical in its wording to the decision of 14 March 2000, save for two additional paragraphs in which the investigator recounted the testimonies of two witnesses, Mr Ch. and Mr Ku., who had been detained at the police station together with the applicant. Both witnesses stated that they had not seen the alleged beatings and that the applicant had behaved "provocatively". According to the applicant, the decision of 27 April 2000 was not served on him.

21. In the meantime, on 18 April 2000, the Koptevo District Court of Moscow disallowed the applicant's complaint against the decision of 14 March 2000. The District Court held as follows:

> "The plaintiff challenges the decision issued in criminal case no. 268869.
>
> A complaint concerning a decision issued in the course of criminal proceedings cannot be examined in civil court proceedings. Complaints concerning actions of the prosecution authorities cannot be examined by courts of general jurisdiction, as special laws exist relating to the prosecution".

The Government, relying on a report issued by the President of the Koptevo District Court in March 2006, submitted that the District Court had refused to examine the applicant's complaint because the decision of 14 March 2000 had been quashed by a prosecutor and the investigation had been reopened.

22. On 12 May 2000 the applicant received a copy of the decision of 18 April 2000. The applicant's representative asked the District Court to restore the time-limit for lodging an appeal against that decision. A copy of the statement of appeal was attached to the request. No response followed. On 27 November 2001 the applicant's representative complained to the President of the Koptevo District Court that her request had not been examined. The stamp on the letter of 27 November 2001 shows that the District Court received the letter the same day. The applicant did not receive any response.

23. On 20 March 2006 the Moscow city deputy prosecutor quashed the decision of 27 April 2000 and reopened the investigation into the applicant's ill-treatment complaint, finding as follows:

> "The decision [of 27 April 2000] on the closing of a criminal case was issued unlawfully and without any grounds and should be quashed, because in this case it is necessary to question [the applicant's mother]; to identify and question all the individuals detained in the cell for administrative arrestees when [the applicant] and [his brother] were at the police station; to question further [the applicant's brother] about his and [the applicant's] injuries and about material evidence showing that those injuries were sustained; to question further the emergency doctors who arrived at the police station and took [the applicant] to the Botkin clinical hospital in Moscow about the visible injuries; to question thoroughly the doctor who performed the initial examination of [the applicant] in the Botkin hospital; to organise, if necessary,

> confrontation interviews between the doctors; to carry out a legal evaluation of the [the applicant's] injuries discovered during the forensic medical examination (concussion, an injury to the forehead, an injury to the left hand and an injury to the right shoulder) and to perform other investigative actions aimed at establishing the truth in the case."

24. On 29 October 2006 an investigator from the Koptevo district prosecutor's office discontinued the criminal proceedings against the police officers, concluding that no criminal conduct had occurred (Article 24 § 2 of the Code of Criminal Procedure). The investigator copied the wording of the decision of 27 April 2000, merely adding that the forensic medical examination had established that the applicant's injuries could have been caused by blows administered with a blunt firm object, possibly on 5 December 1999. He also included additional statements by the two witnesses Ms S. and Mr Ku., who had been unable to recall further details of their stay at the police station in December 1999 owing to the length of time since the events, and had merely confirmed their statements given to the investigator in 2000. The investigator did not question the applicant's mother and brother because he could not establish their place of residence. He was also unable to identify all the individuals who had been detained at the police station together with the applicant, because the registration logs bearing the names of persons detained at Koptevo police station had been destroyed.

25. On 19 January 2007 the Moscow city deputy prosecutor quashed the decision of 29 October 2006, reopened the investigation into the applicant's ill-treatment complaints and ordered that investigators should "take procedural decisions concerning the fact that injuries were inflicted on [the applicant], question [police officers] Mr Sh. and Mr V. and take other investigative actions necessary in the course of the investigation". It appears that the proceedings are now pending.

II. RELEVANT DOMESTIC LAW

A. Investigation of criminal offences

26. The RSFSR Code of Criminal Procedure (in force until 1 July 2002, "the CCrP") 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 (Articles 210 and 211). He could order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. If there were no grounds to initiate or continue a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect which had to be notified to the

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

27. On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation ("the new CCP"). Article 125 of the new CCP 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. Administrative arrest

28. The Constitution of the Russian Federation adopted by referendum on 12 December 1993 provides, in so far as relevant, as follows:

Article 22

"1. Everyone has a right to liberty and personal security.

2. Arrest, detention and placement in custody shall be subject to a court decision. No one may be detained longer than 48 hours before the court decision is taken."

Section 239 of the Administrative Code (in force until 1 July 2002) provided that the police could subject a person to an administrative arrest to prevent an administrative offence, to establish a person's identity, to issue a document certifying that an administrative offence had been committed, if it was necessary and could not be done on the spot, and to ensure effective proceedings or the enforcement of administrative sanctions. Section 242 provided, in particular, that the term of administrative arrest should not exceed three hours, except for certain categories of offenders including those who had committed a minor disorderly act, who could be detained as long as necessary until their case was considered by a district (town) judge or a high-ranking police officer. Section 240 set out the requirements with regard to arrest reports. By virtue of section 240 an arrest report was to be signed by the official enforcing the arrest and the arrestee. Section 246 of the Administrative Code provided for appeal against administrative arrest to a prosecutor or a high-ranking police officer.

C. Definition of a minor disorderly act

29. Section 158 of the Administrative Code (see above) established that a minor disorderly act, that is, use of offensive language in public, harassment and other similar acts which disturbed the public order and the peace of individuals, was punishable by up to fifteen days' administrative arrest.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

30. The applicant complained that on 5 December 1999 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 those events, amounting to a breach of Article 13 of the Convention. The Court will examine this complaint from the standpoint of the State's negative and positive obligations flowing from Article 3, which reads as follows:

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

A. Submissions by the parties

31. The Government confirmed that injuries had been caused to the applicant. As a consequence, the criminal proceedings against the police officers had been reopened on 20 March 2006 in view of the necessity of performing a number of additional investigative actions significant for the legal evaluation of the police officers' conduct. The Government further noted that although it was found that injuries had been inflicted on the applicant, it was impossible to conclude that the applicant's rights guaranteed under Article 3 of the Convention had been violated as a result of the treatment sustained at the hands of the police officers, so long as all the circumstances surrounding the crime had not been investigated.

32. The Government also argued that the applicant had not exhausted the available domestic remedies. Their assertion was based on two grounds. Firstly, the applicant had not appealed against the decision of 14 March 2000 to a higher-ranking prosecutor. Nor had he made use of the judicial avenue of exhaustion, as his complaint to the Koptevo District Court against that decision had been disallowed. Secondly, the investigation into the events of 5 December 1999 was still being conducted and no final decision had yet been taken at the domestic level. Therefore, his complaint was premature.

33. The applicant stood by his description of the events of 5 December 1999. He noted that the results of the medical examination conducted on 3 December 1999 and his interview to the TV station on 5 December 1999 could serve as evidence that he had been in good health before his unfortunate encounter with the police. Furthermore, prior to that incident he had not been disabled, nor had he informed the emergency doctors that he was disabled, despite the Government's assertion to the contrary. He pointed out that although the Government accepted that he had been injured at the police station, they had not confirmed that the treatment he had

sustained was contrary to the guarantees of Article 3 of the Convention. Furthermore, they had not commented on the effectiveness of the investigation into the events in question.

34. The applicant insisted that the investigation had been ineffective. Witnesses, including his mother and staff at the TV station, had not been questioned. The forensic medical examination to which the investigators referred in their decisions had been performed three months after the incident. By that time the applicant had already completed his treatment at the Botkin hospital and had undergone treatment at home and in another hospital. Furthermore, he had never been given a copy of the expert report and had not been provided with an opportunity of putting questions to the expert. The applicant stressed that he had remembered the badge numbers of the police officers involved in the incident. However, certain police officers had not been questioned and had not taken part in an identification parade, and he had not been given an opportunity of confronting them. The applicant noted that despite the fact that the police officer, Mr Do., had advanced his own version of events, the investigators had never examined that version. In the applicant's opinion, the fact that the proceedings had once again been reopened in 2006 and were still pending was proof in itself of the ineffectiveness of the investigation.

B. The Court's assessment

1. Admissibility

(a) Non-exhaustion issue

(i) Failure to appeal against the decisions of 14 March and 27 April 2000

35. The Court notes the Government's argument that the applicant did not exhaust domestic remedies as he failed to appeal against the investigator's decision of 14 March 2000 to a higher-ranking prosecutor or a court. In this connection the Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52, and *Akdıvar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

36. The applicant's allegations of ill-treatment were examined by the investigator, who in a decision of 14 March 2000 decided to discontinue the criminal proceedings. Under Article 209 of the RSFSR Code of Criminal Procedure, which was in force at the material time, that decision was amenable to appeal to a higher prosecutor or a court of general jurisdiction (see paragraph 26 above). The Government argued that the applicant had not made use of either avenue of exhaustion. In this connection, the Court reiterates the applicant's assertion (see paragraph 18 above) and the Government's further submission that on 24 March 2000 a higher-ranking prosecutor quashed the decision of 14 March 2000 and reopened the investigation (see paragraph 19 above).

37. As regards the Government's argument that the applicant at the same time did not avail himself of an alternative judicial remedy, the Court reiterates that where there is a choice of remedies open to an applicant, Article 35 must be applied to reflect the practical realities of the applicant's position in order to ensure the effective protection of the rights and freedoms guaranteed by the Convention (see *Hilal v. the United Kingdom* (dec.), no. 45276/99, 8 February 2000; as confirmed in *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 56, 12 April 2007 and *Trykhlib v. Ukraine*, no. 58312/00, § 38, 20 September 2005). The Court notes the Government's submission that the Koptevo District Court refused to examine the applicant's complaint precisely on the ground that the decision of 14 March 2000 had already been quashed. In such circumstances, the Court does not consider that the applicant's decision to pursue the possibility of a complaint to a higher-ranking prosecutor was unreasonable or incapable of furnishing him with a remedy. The Court is also mindful of the fact that the Government did not argue that an appeal against the District Court's decision of 18 April 2000 would have been any more successful or would have been decided on the basis of any other issues.

38. The Government further argued that the applicant had also not appealed to a court against the decision of 27 April 2000 by which the criminal proceedings against the police officers were once again discontinued. In this connection the Court reiterates that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. The Court has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant (see *Akdivar and Others*, cited above, p. 1211, § 69, and *Aksoy*, cited above, p. 2276, §§ 53-54).

39. The Court notes the Government's argument that the applicant could have lodged a complaint before a court seeking annulment of the decision of 27 April 2000 and the reopening of the investigation. It observes that the Government cited the decision of 27 April 2000 as a precondition for the applicant's complaint before a court. However, the applicant was not notified of the decision of 27 April 2000 and no copy of that decision was served on him. This fact was not disputed by the Government.

40. In the Court's view, against this background the applicant could not have been expected to apply to a court. Indeed, in a situation where the applicant was unaware of the decision of 27 April 2000 and did not have a copy of it, he would not have been able to argue his case before a court or even state the reasons for the action in order to pass the admissibility stage. In other words, in the circumstances of the present case, the applicant would have had no realistic opportunity of applying effectively to a court (see *Kantyrev v. Russia*, no. 37213/02, § 43, 21 June 2007). In the light of the foregoing, the Court considers that it has not been established with sufficient certainty that the remedy advanced by the Government could have been effective.

41. Having regard to the findings in paragraphs 36, 37 and 40, the Court dismisses this part of the Government's objection as to the applicant's failure to exhaust domestic remedies.

(ii) Pending criminal proceedings against the police officers

42. The Government argued in the alternative that the applicant had not provided the Russian Federation with the opportunity of remedying the matter, as the criminal proceedings had been reopened and were pending, the national authorities were conducting the investigation and the full circumstances of the case were still unknown. Therefore, his complaint should be dismissed for failure to exhaust domestic remedies, as it was premature.

43. The Court reiterates in this respect that if an individual raises an arguable claim that he has been seriously ill-treated by the police, a criminal law complaint may be regarded as an adequate remedy within the meaning of Article 35 § 1 of the Convention (see *Assenov and others v. Bulgaria*, no. 24760/94, 27 June 1996, DR 86-B, p. 71). Indeed, as a general rule, the State should be given an opportunity to investigate the case and give answer to the allegations of ill-treatment. At the same time an applicant does not need to exercise remedies which, although theoretically of a nature to constitute remedies, do not in reality offer any chance of redressing the alleged breach (see *Yoyler v. Turkey*, no. 26973/95, 13 January 1997, and *Akdivar and Others v. Turkey*, judgment of 30 August 1996, *Reports* 1996-IV, p. 1210, § 68). If the remedy chosen is adequate in theory, but in the course of time proves to be ineffective, the applicant is no longer

obliged to exhaust it (see *Tepe v. Turkey*, 27244/95, Commission decision of 25 November 1996, as confirmed in *Mikheyev v. Russia*, no. 77617/01, § 86, 26 January 2006).

44. The Court observes that in the present case the Government accepted that the applicant had sustained injuries at the police station. 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. The applicant made use of the possibility of seeking the institution of criminal proceedings against the police officers by putting his complaint into the hands of the authorities competent to pursue the matter. The investigation is still pending. The applicant and the Government disagree as to the effectiveness of this investigation. The Court therefore considers that this limb of the Government's objection as to non-exhaustion of domestic remedies raises issues which are linked to the merits of the applicant's complaints under Articles 3 of the Convention. The Court therefore decides to join this issue to the merits.

(b) The Court's decision on the admissibility of the complaint

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

2. Merits

(a) Establishment of the facts

46. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In the absence of such explanation the Court can draw inferences which may be unfavourable for the respondent Government (see *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002).

47. It was not disputed between the parties that the applicant's injuries, as shown by the medical and expert reports (see paragraphs 12, 17 and 24 above), were sustained at Koptevo police station on 5 December 1999. In particular, a group of doctors who examined the applicant in the Botkin clinical hospital immediately after the events in question recorded an injury to the front abdominal wall, bruises on the forehead and left hand, a kidney injury, a craniocerebral injury and concussion. According to the expert report, which was not presented to the Court but is mentioned in the investigator's decisions of 14 March and 27 April 2000 and 29 October 2006, the applicant also sustained an injury to the right shoulder and had a partial opening of a surgical suture. That expert report also confirmed that the applicant's injuries could have been caused by blows administered with a blunt firm object (see paragraph 24 above).

48. The Court observes that the applicant provided a detailed description of the ill-treatment to which he was allegedly subjected, indicated its place, time and duration and identified the police officers who had been present. If the Government considered the applicant's allegations untrue, it was open to them to refute them by providing their own plausible version of events and submitting, for instance, witness testimony and other evidence to corroborate their version. Nevertheless, at no point in the proceedings before the Court did the Government challenge the applicant's factual submissions. The Court notes that the Government did not provide any explanation as to how the applicant had acquired the injuries at the police station, merely citing the impossibility of drawing any conclusions due to the ongoing investigation into the applicant's ill-treatment complaints. The Court further notes that in order to be able to assess the merits of the applicant's ill-treatment complaint and in view of the nature of the allegations, it asked the respondent Government to submit a copy of the complete investigation file relating to the criminal proceedings against the police officers. The Government, without giving any reasons, failed to provide the Court with the materials sought, limiting themselves to submitting copies of the investigators' and prosecutors' decisions. In these circumstances, bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody, and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court considers that it can draw inferences from the Government's conduct and finds it established to the standard of proof required in the Convention proceedings that the injuries sustained by the applicant were the result of the treatment of which he complained and for which the Government bore responsibility (see *Selmouni v. France* [GC], no. 25803/94, § 88, ECHR 1999-V; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004; *Mikheyev v. Russia*, no. 77617/01, §§ 104-105, 26 January 2006; and *Dedovskiy and Others v. Russia*, no. 7178/03, §§ 78-79, 15 May 2008). The Court, therefore, shall proceed to the

examination of the merits of the case on the basis of the applicant's submissions and the existing elements in the file.

(b) Alleged inadequacy of the investigation

49. In paragraph 44 above, the Court found that the question whether the applicant's complaints under Article 3 of the Convention were premature in view of the ongoing investigation at the national level was closely linked to the question as to whether the investigation of the events at hand was effective. It thus decided to join the issue to the merits and will examine it now. Before embarking on an analysis of how the investigation unfolded, the Court considers it necessary to reiterate the principles which govern the authorities' duty to investigate ill-treatment occurring as a result of the use of force by State agents.

50. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. 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 (see, among many authorities, *Mikheyev*, cited above, § 107 et seq., and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 102 et seq.). Finally, the investigation must be expedient. In cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation was at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV). Consideration 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*, judgment of 9 June 1998, *Reports* 1998-IV, § 67) and

to the length of time taken for the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

51. Turning to the facts of the present case, the Court observes that the applicant was entirely reliant on the prosecution authorities to assemble the evidence necessary for corroborating his complaint. The prosecutor had the legal powers to interview the police officers, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for establishing the truth of the applicant's account. His role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offence but also to the pursuit by the applicant of other remedies to redress the harm he had suffered (see paragraph 26 above). The Court notes that the prosecution authorities who were made aware of the applicant's alleged beating initiated an investigation which has not yet resulted in criminal prosecutions against the perpetrators of the beating. The investigation was closed and reopened a number of times and is currently pending. In the Court's opinion, the issue is consequently not so much whether there has been an investigation, since the parties do not dispute that there has been one, as whether it has been conducted diligently, whether the authorities have been determined to identify and prosecute those responsible and, accordingly, whether the investigation has been "effective".

52. The Court will therefore first assess the promptness of the prosecutor's investigation, as a gauge of the authorities' determination to prosecute those responsible for the applicant's ill-treatment (see *Selmouni*, cited above, §§ 78 and 79). In the present case the applicant's mother brought the applicant's allegations of ill-treatment to the attention of the authorities by filing a complaint with the Koptevo district prosecutor (see paragraph 15 above). It appears that the Koptevo district prosecutor's office promptly launched an investigation after being notified of the alleged beatings. Within a short period of time the investigation had identified the police officers who had participated in or witnessed the events of 5 December 1999, and questioned them. However, the Court is mindful of the fact that in the period immediately following the events in question no attempts were made to conduct a medical expert examination of the applicant. The Court reiterates in this connection that proper medical examinations are an essential safeguard against ill-treatment. The forensic doctor must enjoy formal and *de facto* independence, have been provided with specialised training and been allocated a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). In the instant case, the Court notes that a delay in requesting an expert opinion led, among other things, to serious discrepancies between the findings of the doctors who had examined the applicant at the Botkin clinical hospital and the conclusions of the forensic medical expert.

53. Furthermore, although it appears from the investigators' decisions submitted by the Government that a number of steps were taken by the authorities at the initial stage of the investigation, the investigation became protracted. The Court finds it striking that for a period of almost six years between April 2000 and March 2006 there were absolutely no further developments and the criminal proceedings remained closed until the present case was communicated to the respondent Government (see paragraphs 3 and 23 above). Since being reopened in March 2006 the investigation has remained pending and the police officers have not yet been brought to trial. The Government failed to provide any explanation for the protraction of the criminal proceedings. In such circumstances the Court is bound to conclude that the authorities failed to comply with the requirement of promptness (see *Kişmir v. Turkey*, no. 27306/95, § 117, 31 May 2005, and *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, ECHR 2007).

54. With regard to the thoroughness of the investigation, the Court notes a number of significant omissions capable of undermining its reliability and effectiveness. Firstly, no evaluation was carried out with respect to the quantity and nature of the applicant's injuries in view of the different versions of what had occurred during the relevant incident. In delivering their decisions the investigators limited themselves to a restatement of the hospital report which listed the injuries sustained by the applicant, and to a selective reiteration of the expert findings. The Court considers it extraordinary that the investigator for the first time cited a possible cause of the applicant's injuries in his decision of 29 October 2006, although that finding was based on the expert report issued in 2000 (see paragraph 24 above).

55. Secondly, the Court observes a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authorities. It is apparent from the decisions submitted to the Court that the investigators based their conclusions mainly on the testimonies given by the police officers involved in the incident. Although excerpts from the applicant's and his brother's testimonies were included in the decisions on discontinuation of the criminal proceedings, the investigators did not consider those testimonies to be credible, apparently because they reflected personal opinions and constituted an accusatory tactic by the applicant and his brother. However, the investigators did accept the police officers' testimonies as credible, despite the fact that their statements could have constituted defence tactics and have been aimed at damaging the applicant's credibility. In the Court's view, the prosecution inquiry applied different standards when assessing the testimonies, as those given by the applicant and his brother were deemed to be subjective but not those given by the police officers. The credibility of the latter testimonies should also have been questioned, as the prosecution investigation was supposed to establish whether the officers were liable on the basis of disciplinary or criminal

charges (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

56. The Court further observes that the investigators' decisions included excerpts from testimonies given by several individuals who were detained together with the applicant at Koptevo police station. Those individuals did not witness the beatings and merely attested to the applicant's allegedly "provocative" behaviour (see paragraphs 17 and 20 above). The Court finds that in the light of the applicant's testimony that he had been beaten up first in the lobby and subsequently in the duty room of the police station, the investigators should not have limited themselves to questioning individuals who had been detained together with the applicant in a cell for administrative arrestees and had, therefore, been unable to see the alleged ill-treatment. While the investigating authorities may not have been provided with the names of individuals who could have seen the applicant at the police station or might have witnessed his alleged beatings, they were expected to take steps of their own initiative to identify possible eyewitnesses. In this connection the Court also notes that, due to the protraction of the investigation, the authorities could no longer identify other persons who had been at Koptevo police station on 5 December 1999 and who might have witnessed the incident, the registration logs of the Koptevo police station had already been destroyed (see paragraph 24 above). Furthermore, it appears that the investigators took no meaningful steps to search the premises where the applicant had allegedly been ill-treated. The Court therefore finds that the investigating authorities' failure to look for corroborating evidence and their deferential attitude to the police officers must be considered to be a particularly serious shortcoming in the investigation (see *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, § 106).

57. Having regard to the above failings of the Russian authorities, the Court finds that the investigation carried out into the applicant's allegations of ill-treatment was not thorough, expedient or effective. The Court recognises that the investigation is still pending but, considering its length so far and the very serious shortcomings identified above, the Court does not consider that the applicant should have waited for completion of the investigation before filing his complaint with the Court (see *Angelova and Iliev*, cited above, § 103, and *Mikheyev*, cited above, § 121). Furthermore the Court does not lose sight of the fact that the applicant lodged his application before the Court on 24 July 2000, that is after the authorities had closed the investigation into his ill-treatment complaints. The Court is mindful that the investigation was only re-opened in March 2006 after the present case was communicated to the Government. Accordingly, the Court dismisses the second limb of the Government's objection as to non-exhaustion of domestic remedies and holds that there has been a violation of Article 3 of the Convention under its procedural limb.

(c) Alleged ill-treatment of the applicant

(i) General principles

58. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3288, § 93).

59. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

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

61. As to the seriousness of the acts of ill-treatment, the Court reiterates that in order to determine whether a particular form of ill-treatment should be qualified as torture, it 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 (see *Selmouni v. France* [GC], no. 25803/94, § 96, ECHR 1999-V). 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*, judgment of 18 December 1996, *Reports* 1996-VI, p. 2279, § 64; *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1891-92, §§ 83-84 and 86; *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; and *Mikheyev v. Russia*, no. 77617/01, § 135, 26 January 2006).

(ii) Assessment of the severity of ill-treatment

62. The Court reiterates that it has found it established that the applicant was beaten up by police officers and that as a result of that beating he sustained serious injuries (see paragraphs 47 and 48 above). The Court does not discern any circumstance which might have necessitated the use of violence against the applicant. It has never been argued that the applicant resisted arrest, attempted to escape or did not comply with lawful orders from the police officers. Furthermore, there is no indication that at any point during his arrest or subsequent detention at the police station he threatened the police officers, for example by openly carrying a weapon or by attacking them (see, by contrast, *Necdet Bulut v. Turkey*, no. 77092/01, § 25, 20 November 2007, and *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 62, 20 June 2002). The Court is mindful of the investigators' findings that the applicant allegedly acted provocatively in the police station, using offensive language against the police officers. However, the Court cannot accept that in these circumstances the officers may have needed to resort to physical force. It appears that the use of force was intentional, retaliatory in nature and aimed at debasing the applicant and forcing him into submission. In addition, the treatment to which the applicant was subjected must have caused him mental and physical suffering. Moreover, it resulted in long-term damage to his health (see paragraphs 13 and 14 above). In these circumstances the Court finds that the applicant was subjected to treatment which can be characterised as torture.

63. There has therefore been a violation of Article 3 of the Convention, in that the Russian authorities subjected the applicant to torture in breach of that provision.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

64. Relying on Article 5 of the Convention, the applicant alleged that his detention at the police station on 5 December 1999 had been unlawful. The relevant parts of Article 5 § 1 read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

A. Submissions by the parties

65. The Government submitted that the applicant had not appealed against his allegedly unlawful arrest and detention to a court. Therefore, he had failed to exhaust domestic remedies. If, however, the Court were to dismiss that objection, his complaint would still be inadmissible, being manifestly ill-founded. The Government constructed their arguments along two general lines. Firstly, they submitted that the police officers had rightfully arrested the applicant because he had refused to disclose his identity. The officers had acted in response to phone message no. 12316, which contained information on wanted criminals who looked similar to the applicant and his brother. Relying on section 11 of the Police Act, the Government stressed that police officers were entitled to check persons' identity documents if there were sufficient grounds to suspect them of having committed a criminal or administrative offence. In their second line of argument, the Government stated that the applicant had been arrested because, by using offensive language in public, he had committed a minor disorderly act, that is to say, an administrative offence. Hence, by virtue of section 242 of the Administrative Code, he could be detained until his case was to be examined by a judge or a high-ranking police officer. The Government concluded that the applicant's rights as guaranteed by Article 5 of the Convention had therefore not been violated.

66. The applicant replied that the Government's arguments were not convincing. As regards his alleged similarity to certain wanted criminals, he had never been told what those similar features were. He further stressed that his arrest had been unlawful as no record of the arrest had been drawn up, in violation of the legal requirements. As regards the Government's objection of non-exhaustion of the domestic remedies, the applicant noted that no administrative proceedings had been instituted and he had not been served with any procedural decision which could have been appealed against to a court. Furthermore, he had complained to a prosecutor about the

police officers' unlawful actions, including his unlawful arrest. However, his complaints had not produced any result.

B. The Court's assessment

1. Admissibility

67. The Government raised an objection of non-exhaustion of domestic remedies by the applicant. The Court reiterates that the decisive question in assessing the effectiveness of a remedy is whether the applicant could have raised that complaint in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 5 of the Convention. The remedy can be either preventive or compensatory in nature (see, among other authorities, *Koval v. Ukraine*, no. 65550/01, § 94, 19 October 2006). Turning to the facts of the present case, the Court notes that the Government suggested that the applicant should have applied to a court with his complaint about unlawful arrest. They did not make reference to any legal norm providing for the possibility of bringing such a complaint before a court. Nor did the Government supply any example from domestic practice showing that it was possible for the applicant to bring such a complaint. In this connection the Court considers it necessary to point out that section 246 of the Russian Administrative Code prescribed another avenue of appeal. It required the applicant to lodge such a complaint with a prosecutor or a high-ranking police officer (see paragraph 28 above). The Court reiterates that the applicant raised the issue of his unlawful arrest before the Koptevo district prosecutor (see paragraph 15 above), thus making use of an avenue prescribed by domestic law.

68. Furthermore, the Court is mindful of the fact, which was not disputed by the Government, that the applicant was not issued with the arrest record. In such circumstances, it is highly questionable whether he could have effectively brought his complaint before a court. The Court therefore dismisses the Government's objection as to the applicant's failure to exhaust domestic remedies.

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

2. Merits

70. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 of the Convention essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. They require in addition that any deprivation of liberty should be consistent with the

purpose of Article 5, namely to protect the individual against arbitrariness. The Court must moreover ascertain whether domestic law itself is in conformity with the Convention, including the general principles expressed or implied therein (see, among other authorities, *Grauslys v. Lithuania*, no. 36743/97, § 39, 10 October 2000). Furthermore, the list of exceptions to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see, *inter alia*, the *Giulia Manzoni v. Italy* judgment of 1 July 1997, *Reports* 1997-IV, p. 1191, § 25).

71. It was not disputed that the applicant was "deprived of his liberty" within the meaning of Article 5 § 1 of the Convention (see *Witold Litwa v. Poland*, no. 26629/95, ECHR 2000-III). Nor was it disputed that no record was drawn up of his arrest on 5 December 1999. The Government did not argue that an arrest record was not necessary in the framework of administrative proceedings. On the contrary, they submitted that the applicant's arrest had been effected for the purpose of an identity check or because he had committed a minor administrative offence. Both grounds were covered by section 239 of the Administrative Code and required a law-enforcement authority to draw up an arrest record in compliance with the requirements of section 240 of the Code.

72. In this connection the Court observes that the absence of an arrest record must in itself be considered a most serious failing, as it has been the Court's constant view that unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Fedotov v. Russia*, no. 5140/02, § 78, 25 October 2005; *Menesheva v. Russia*, no. 59261/00, § 87, ECHR 2006; and *Kurt v. Turkey*, judgment of 25 May 1998, *Reports* 1998-III, pp. 1185-86, § 125).

73. The lack of a proper record of the applicant's detention is therefore sufficient for the Court to find that his confinement for several hours on 5 December 1999 was in breach of domestic law and contrary to the requirements implicit in Article 5 of the Convention for the proper recording of deprivations of liberty (see *Anguelova v. Bulgaria*, no. 38361/97, § 157, ECHR 2002-IV, and *Menesheva*, cited above, §§ 87-89). There has therefore been a violation of Article 5 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant claimed 78,600 Russian roubles (RUB) in respect of pecuniary damage, without providing any further details. He also claimed 200,000 euros (EUR) in respect of non-pecuniary damage.

76. The Government submitted that the applicant's claims in respect of pecuniary damage were not supported with hard evidence and that his claims in respect of non-pecuniary damage were unfounded.

77. The Court observes that the applicant did not submit any evidence to substantiate his claims in respect of pecuniary damage. The Court therefore rejects those claims.

78. As regards the applicant's claims in respect of non-pecuniary damage, the Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage he sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court further observes that it has found a combination of torture with a particularly grievous violation of the right to liberty in the present case. The Court accepts that the applicant suffered humiliation and distress on account of his unlawful detention and the ill-treatment inflicted on him. In addition, he did not benefit from an adequate and effective investigation of his complaints about the ill-treatment. In these circumstances, it considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Nevertheless, the particular amount claimed appears excessive. Making its assessment on an equitable basis, and taking into account in particular the lasting consequences of ill-treatment on the applicant's health, it awards the applicant EUR 30,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

79. The applicant did not seek reimbursement of costs and expenses relating to the proceedings before the domestic courts or the Court and this is not a matter which the Court is required to examine of its own motion (see *Motière v. France*, no. 39615/98, § 26, 5 December 2000).

C. Default interest

80. 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 second limb of the Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint about the ill-treatment of 5 December 1999, and rejects it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 30,000 (thirty thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the settlement, plus any tax that may be chargeable on that amount;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring separate opinion of Judge Kalaydjieva is annexed to this judgment.

P.L.
C.W.

CONCURRING OPINION OF JUDGE KALAYDJIEVA

I voted with the majority in finding violations under Article 3 and Article 5 of the Convention - on account of the applicant's unacknowledged detention. A further scrutiny of the complaints in regard of the purpose, lawfulness, length and necessity of the applicant's detention could have offered the Court another - and maybe more important - ground for finding a violation of the applicant's personal liberty. The Court thus left open the question of the compatibility of the applicant's arrest with any of the exceptions listed restrictively in Article 5 § 1 of the Convention.