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

FIRST SECTION

CASE OF CHEMBER v. RUSSIA

(Application no. 7188/03)

JUDGMENT

STRASBOURG

3 July 2008

FINAL

01/12/2008

In the case of Chember v. Russia,

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

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

Having deliberated in private on 12 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 7188/03) 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 Yevgeniy Vitalyevich Chember ("the applicant"), on 3 February 2003.

2. The applicant, who had been granted legal aid, was represented before the Court by Ms O. Mikhaylova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained that he had been subjected to inhuman and degrading treatment and punishment during his military service.

4. On 14 January 2005 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.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1982 and lives in Shakhty in the Rostov Region.

A. The applicant's military service

7. On 19 and 23 December 2000 the applicant was examined by two medical commissions and found to be in good health and fully fit for military service.

8. On the basis of the medical reports, the decision was made to call the applicant up for two years of mandatory military service in the Ministry of Internal Affairs forces.

9. The applicant was assigned to serve in military unit no. 5464 in Kislovodsk. In the unit he was allegedly harassed and ill-treated by senior conscripts and the unit sergeant on account of his Moldovan ethnic origin.

10. According to the applicant, in late January 2001 he attended a drivers' training course. In the car park the commander told the applicant and three other conscripts to take the back axle of a ZIL lorry to another place. The applicant injured his spine and later on the same day he was also severely beaten and kicked by senior conscripts for failing to bring the axle close enough to the lorry. On the course the following morning he asked for medical assistance, but the commander refused his request. The applicant did not complain about these events to a prosecutor or any other official.

11. On 8 February 2001 the applicant was transferred to military unit no. 6794 in Astrakhan (later renumbered as no. 3025). According to the applicant, a medical officer noted his complaint of pains in his knees, but did not prescribe any treatment. It subsequently transpired during an inquiry that the applicant had complained about recurrent pains in his knees to his superior, Lieutenant D., who had exempted him from physical exercise (see paragraph 20 below).

12. In March 2001 Junior Sergeant Ch., the platoon commander, made the applicant and other servicemen do 350 knee bends outdoors as punishment for their failure to scrub the barracks spotless. Lieutenant D. was present but did not contradict the order. After several hundred knee bends, the applicant collapsed and other soldiers took him by the armpits and dragged him into the medical unit.

13. Between 6 and 26 March 2001 the applicant received emergency treatment in military unit no. 52218, and then in unit no. 3057 until 17 April 2001. He could not stand on his own and crawled out of bed propping himself up on the bedposts.

14. Between 17 April and 23 May 2001 the applicant was treated in the neurosurgery clinic of the Rostov-on-Don State Medical University. When he was discharged he was diagnosed with a "closed injury of the spine combined with an impairment of blood circulation at the level of the lower thoracic part of the spinal cord" and found unfit for work.

15. On 5 June 2001 the medical commission of military unit no. 3057 examined the applicant at the request of the commander of unit no. 6794 and diagnosed him with "consequences of an acute interruption to the blood flow to the spinal cord in the form of cicatrical-commissural epiduritis, arachnoiditis with a disturbance of the flow of cerebrospinal fluid and minor impairment of sensitivity in the lower extremities". It also established that the condition had been "acquired during military service" and discharged the applicant as "partially fit for military service".

16. On 28 June 2001 the applicant was discharged on account of his disability.

B. Criminal investigation

17. On an unspecified date the applicant's mother complained to the military prosecutor of Rostov-on-Don of an abuse of power committed by Lieutenant D. and Junior Sergeant Ch.

18. On 10 May 2001 her complaint was forwarded to the military prosecutor of the Astrakhan garrison who in turn sent it on 21 May 2001 to the military prosecutor of the Caspian Fleet.

19. In their observations on the admissibility and merits of the case, the Government enclosed copies of statements by Lieutenant D. and Junior Sergeant Ch., as well as by Privates A.L., A.Sh. and V.P., who had started their service on 1 February 2001.

20. On 22 May 2001 Lieutenant D. stated as follows:

> "In February 2001 Private Chember was transferred to our unit ... He was assigned to serve in my sub-unit, that is, in the first platoon of the seventh company. Since his transfer into our unit he has started complaining about recurrent pains in his knees. On that ground I exempted him from physical exercise; he stayed within the premises of the company and did not go anywhere. Some two weeks later Private Chember was sent for treatment to the sanitary unit because of acute pains in his knees; I cannot tell why it happened. Some time later he was transferred to a hospital in another town ... I have never applied any unlawful methods to Private Chember."

21. On the same date Junior Sergeant Ch. testified as follows:

> "I have known Private Chember since February 2001; he served in the seventh company of military unit 6794, in which I acted as the section commander. I point out that Chember often went to the medical unit. I do not know what he complained about. Every time I acted as the officer-on-duty in the platoon, Chember was usually in for treatment in the medical unit. I think he complained about pains in his legs. I did not know Chember very well because he was not from my platoon ..."

22. In their similarly worded statements, Privates A.L., A.Sh. and V.P. indicated that the applicant had complained about his “weak legs” since his arrival at military unit no. 6794, that for that reason he had been exempted from physical exercise and squad drill, and that he had often been treated in the medical unit for pains in his legs.

23. On 31 May 2001 Captain S., a senior investigator with the military prosecutor’s office of the Caspian Fleet, issued a decision not to initiate criminal proceedings. The reasoning read as follows, in full:

> “The inquiry established that the fact of abuse of power by Lieutenant D. and Junior Sergeant Ch. had not actually taken place in reality.
>
> It follows from the statement by Lieutenant D. that Private Chember serves under his command. Neither he nor Junior Sergeant Ch. ever abused their power over or used violence against Private Chember or any other military personnel of unit 6794.
>
> It follows from the statement by Junior Sergeant Ch. that neither he nor Lieutenant D. ever abused their power over or used violence against Private Chember or any other military personnel of unit 6794.
>
> All the servicemen of the seventh company of military unit 6794 – where Chember serves – have been questioned. They stated that no one had harassed Private Chember, and that neither Junior Sergeant Ch. nor Lieutenant D. had ever abused their power over him or any other military personnel of unit 6794.
>
> Thus, the inquiry has established that Junior Sergeant Ch. and Lieutenant D. did not abuse their power over Private Chember or any other military personnel of unit 6794, and accordingly no criminal case may be instituted against them because there was no criminal offence.”

The decision indicated that an appeal against it lay to a higher prosecutor or to a court.

24. On 30 September 2002 the applicant’s mother complained to a higher prosecutor. She wrote, in particular, that her son had never had pains in his knees. She also pointed out that the investigator had not heard the soldiers P., S., C. and Sh., who had been eyewitnesses to the ill-treatment.

25. On 8 October 2002 Colonel M., the military prosecutor of the Caspian Fleet, replied that her complaint could not be examined because the materials of the inquiry had been forwarded, on 8 August 2002, to the Shakhty Town Court. He indicated that the complaint would be considered upon the return of the materials. The applicant did not receive any further information concerning that complaint.

C. Civil proceedings

26. On 17 March 2002 the applicant lodged a civil action against military units nos. 3025 and 5464 and the North Caucasian Command of the Ministry of Internal Affairs forces for compensation for non-pecuniary damage. He submitted that the injury he had received during his military service caused him physical pain, restricted his day-to-day activities,

impaired his career and life plans, and brought feelings of frustration and injustice.

27. The applicant and his counsel asked the court to appoint a forensic medical examination with a view to determining the origin and nature of his injuries.

28. On 9 April 2003 the Shakhty Town Court of the Rostov-on-Don Region refused their request by an interim decision:

> "Having heard the parties and studied the case materials, the court finds that the request is unsubstantiated ... because the period when the injury was received is stated in the medical record and that is the period of military service. The establishment of the origin and nature of existing diseases will not help to find those responsible or [to elucidate] the circumstances. The case file contains the decision not to initiate criminal proceedings against Sergeant Ch. and Lieutenant D., dated 31 May 2001."

29. On the same day the Town Court delivered judgment, by which the applicant's claim was dismissed. The Town Court examined medical evidence produced by the applicant and interviewed his fellow serviceman P. who confirmed that Junior Sergeant Ch. had forced the applicant and other conscripts to do 350 or more knee bends and that the applicant had collapsed during that exercise. It found as follows:

> "Assessing the collected evidence as a whole, the court finds that the claim is unsubstantiated ... because the [applicant] did not show that the damage to his health had been caused by servicemen of the [Ministry of Internal Affairs]; according to his own statements, he fell ill because of excessive (in his opinion) physical activity (physical exercises, carrying the axle of a ZIL lorry in his hands) and because of ill-treatment by senior conscripts and by Sergeant Ch. However, the case materials contain the decision not to initiate criminal proceedings against Sergeant Ch. and Lieutenant D., dated 31 May 2001 ... because there was no indication of a criminal offence. Under the current laws, one of the mandatory conditions for tort liability for non-pecuniary damage is the fault of the tortfeasor ..."

30. The applicant appealed against the interim decision and judgment of 9 April 2003.

31. On 25 June 2003 the Rostov Regional Court dismissed his appeal:

> "The [first-instance] court dismissed the claim because it established that the defendants' liability for causing damage to the [applicant's] health had not been proven. The [regional] court finds this conclusion correct. On 31 May 2001 an investigator ... refused to initiate criminal proceedings ... The causal link between the defendants' actions and the [applicant's] disability is not established. Experts may not establish the causal link between the defendants' actions and consequences thereof, only a court is competent to do so."

D. Pension claims

32. Following the applicant's discharge, on 29 August 2001 he was diagnosed with a second-category disability and became entitled to a civilian disability pension.

33. The applicant unsuccessfully attempted to claim a military pension. On 21 May, 11 June, 29 July and 25 December 2002, his mother received negative responses from the Central Military Medical Commission of the Ministry of Internal Affairs. The claims were rejected because he had not produced documents showing that he had injured his spine during military service. According to these replies, the report of 5 June 2001 only established that the condition had been diagnosed during his military service and not that it had been acquired during his military service.

E. Experts' report submitted by the Government

34. In their observations on the admissibility and merits of the case, the Government submitted a report produced by two medical experts (one military and one civilian) on 10 March 2005. The report had been commissioned by the assistant to the Chief Military Prosecutor on 9 March 2005 with a view to determining the nature of the applicant's disability, its causes and origin. The experts made their findings on the basis of the criminal case file and the applicant's medical records of 2001. In particular, they found as follows:

> "It transpires from the available medical documents that Mr Chember's conditions were chronic. Having regard to Mr Chember's young age, his medical history (pains in the legs from the age of ten), and chronic development of the condition, the osteochondrosis of the lumbar spine was contracted in childhood as a result of a metabolic disturbance (dystrophy) ... The existing inflammatory processes in the spine (epiduritis and arachnoiditis) could have appeared ... as a complication of an infectious disease that Mr Chember may have contracted in childhood, such as influenza, tonsillitis, pharyngitis, and so on. These spinal conditions were also of a chronic and continued nature ... which is confirmed by the presence of cicatrical-commissural epiduritis and commissural arachnoiditis, and complaints of pains in the legs from the beginning of military service and before conscription.
>
> No objective confirmation that these conditions had been caused by trauma could be found in the available medical records or case-file materials.
>
> Mr Chember's diseases were chronic and continuing and could have been caused by hereditary factors (according to the materials, his uncle suffered from a similar condition) ..."

II. RELEVANT DOMESTIC LAW

A. Civil Code

35. The general provisions on liability for damage read as follows:

Article 1064 – General grounds giving rise to liability for damage

> "1. Damage inflicted on the person or property of an individual ... shall be reimbursed in full by the person who inflicted the damage ...

> 2. The person who inflicted the damage shall be liable for it unless he proves that the damage was inflicted through no fault of his own ...”

B. The Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic (in force until 1 July 2002)

36. Complaints about the acts or decisions of a prosecutor may be lodged with a higher prosecutor (Article 220). Within three days of receipt of a complaint, the prosecutor must examine it and give a response to the complainant (Article 219).

C. The Code of Criminal Procedure of the Russian Federation (in force after 1 July 2002)

37. If criminal proceedings are discontinued at the stage of the investigation, a victim or a civil party may lodge a separate civil claim unless the proceedings were discontinued on the ground that (a) the alleged offence had not been committed or (b) the suspect had not been involved in its commission (Article 213 § 4 and Articles 24 § 1 (1) and 27 § 1 (1)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

38. The applicant complained that he had been subjected to inhuman and degrading treatment and punishment while in military service in breach of 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. Admissibility

39. The Court observes that the ill-treatment in military unit no. 5464 in Kislovodsk allegedly took place in January 2001 and that the applicant did not ask for any inquiry to be carried out into these events at a later date. Since the application was lodged on 3 February 2003, the complaint concerning these events has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

40. The Court considers that the complaint concerning the alleged ill-treatment in military unit no. 6794 (3025) in Astrakhan is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Alleged ill-treatment during military service

(a) The parties' submissions

41. The Government denied that the applicant had been subjected to any form of ill-treatment in military unit no. 6794. Referring to the experts' report of 10 March 2005 (see paragraph 34 above), they maintained that the applicant's disability had been caused by a chronic condition which had existed before the conscription but had been diagnosed for the first time during military service. As regards the text of the certificate of 5 June 2001, the Government clarified that the description of a condition as "acquired during military service" also included situations, such as the applicant's, where a condition existed before the conscription but its aggravation or complication during military service rendered the serviceman unfit for further service. The applicant had not told the medical officers on the draft commission about his knee condition.

42. The applicant submitted that in the specific context of military service the Government had both positive and negative obligations under Article 3 of the Convention. The positive obligation consisted in ascertaining that individuals drafted for military service are sufficiently healthy and fit for such service. The superficial medical examination carried out by the drafting commission in his case had proved to be insufficient to diagnose the condition which had led to his discharge and disability. Furthermore, as regards the negative obligation under Article 3, the applicant pointed out that military servicemen were hierarchically subordinate to their commanders and under the full control of the State authorities. His superiors had forced him to do physical exercise for which there was no military requirement, namely 350 knee bends. That excessive exercise had brought about an aggravation of his condition and disability. His account of the facts had been corroborated by the testimony of his fellow serviceman P. before the domestic courts.

(b) Establishment of the facts

43. The Court observes that the facts relating to the applicant's service in military unit no. 6794 in Astrakhan are not in dispute between the parties.

44. The applicant arrived at that military unit in February 2001. It transpires from his own submissions, as well as from the statements by his

commanders and fellow servicemen, that he suffered from pains in his knees. On account of his knee condition, Lieutenant D., his immediate commander, exempted him from physical exercise and squad drill (see the written depositions by Lieutenant D. and other soldiers in paragraphs 20 and 22 above). It also appears that on several occasions the applicant was treated for the knee condition in the medical unit.

45. In March 2001 Junior Sergeant Ch., in the presence of Lieutenant D., ordered the applicant, among others, to do 350 knee bends as punishment for a failure to clean the barracks. The applicant collapsed during the exercise and was taken to a hospital for emergency treatment. Private P. who had been ordered to do the same, confirmed these events before the Town Court (see paragraph 29 above).

46. Following treatment in a civilian hospital, the applicant was diagnosed with a closed injury of the spine, discharged from military service on medical grounds and designated as having a second-degree disability.

(c) Assessment of the severity of ill-treatment

47. The Court's task is to establish whether the facts, as established above, disclose a violation of the guarantee against torture, inhuman and degrading treatment or punishment under Article 3 of the Convention.

48. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). 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 depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

49. 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 (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI). Mandatory military service often involves such an element, as do measures depriving a person of his liberty. However, many acts that would constitute degrading or inhuman treatment in respect of prisoners may not reach the threshold of ill-treatment when they occur in the armed forces, provided that they contribute to the specific mission of the armed forces in that they form part of, for example, training for battlefield conditions (see, *mutatis mutandis*, *Engel and Others v. the Netherlands*, 8 June 1976, § 57, Series A no. 22).

50. Nevertheless, the State has a duty to ensure that a person performs military service in conditions which are compatible with respect for his human dignity, that the procedures and methods of military training do not subject him to distress or suffering of an intensity exceeding the unavoidable level of hardship inherent in military discipline and that, given the practical demands of such service, his health and well-being are adequately secured by, among other things, providing him with the medical assistance he requires (see, *mutatis mutandis*, *Kılınç and Others v. Turkey*, no. 40145/98, § 41, 7 June 2005, and *Álvarez Ramón v. Spain* (dec.), no. 51192/99, 3 July 2001). The State has a primary duty to put in place rules geared to the level of risk to life or limb that may result not only from the nature of military activities and operations, but also from the human element that comes into play when a State decides to call up ordinary citizens to perform military service. Such rules must require the adoption of practical measures aimed at the effective protection of conscripts against the dangers inherent in military life and appropriate procedures for identifying shortcomings and errors liable to be committed in that regard by those in charge at different levels (see *Kılınç and Others*, cited above, § 41 *in fine*).

51. According to the Court's constant approach, treatment is considered "inhuman" if it is premeditated, applied for hours at a stretch and causes either actual bodily injury or intense physical or mental suffering (see, as a classic authority, *Denmark, Norway, Sweden and the Netherlands v. Greece* (the "*Greek case*"), nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission's report of 5 November 1969, Yearbook 12, and also *Kudła*, cited above, § 92). The question whether the purpose of the treatment was to make the victim suffer is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see the *Greek case*, cited above, and also *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

52. Even though challenging physical exercise may be part and parcel of military discipline, the Court reiterates that, to remain compatible with Article 3 of the Convention, it should not go beyond the level above which it would put in danger the health and well-being of conscripts or undermine their human dignity. In the present case the applicant – who was known to have painful knees – was ordered to do 350 knee bends which appears to be a particularly demanding workout. However, the Court sees no need to determine *in abstracto* whether that particular order was compatible with the requirements of Article 3, for it will have regard to the following elements of the case which it considers crucial for its assessment of compliance with Article 3.

53. The applicant was ordered to do knee bends as punishment for insufficiently thorough cleaning of the barracks. The order emanated from his acting commander Junior Sergeant Ch. It was tacitly endorsed by the higher commander Lieutenant D. who was present at the scene but did not

contradict the order. It follows that the treatment complained of was applied on the applicant deliberately.

54. It is obvious from the statements collected in the framework of the domestic inquiry that both Lieutenant D. and Junior Sergeant Ch. were well aware of the applicant's knee-related health problems from the moment of his arrival at the military base (see paragraphs 20 and 21 above). As noted above, Lieutenant D. had previously granted the applicant exemption on health grounds from physical exercise and squad drill. Notwithstanding their awareness of the applicant's specific health problems, the commanders forced the applicant to do precisely the kind of exercise that put great strain on his knees and spine. In these circumstances, the Court cannot but find that the treatment was both deliberate and calculated to cause the applicant physical suffering. The severity of the punishment cannot obviously be accounted for by any requirements of military service or discipline or said to have contributed to the specific mission of the armed forces (compare *Engel*, cited above, § 57).

55. As regards the consequences of the punishment at issue, the Court notes that the applicant collapsed on the spot and lost control of his legs. Despite the emergency treatment he received first in a military and then in a civilian hospital, the injury resulted in long-term damage to his health. The applicant was discharged from military service and assigned the second category of disability.

56. Assessing the above elements as a whole, the Court finds that in the present case the applicant was subjected to forced physical exercise to the point of physical collapse. This punishment was applied deliberately by his commanders, in full knowledge of the applicant's specific health problems and without there being any military necessity which might have called for that course of action. The Court is of the opinion that in these circumstances that punishment caused the applicant intense physical suffering and went beyond the threshold of a minimum level of severity.

57. Having regard to the above considerations, the Court finds that the applicant was subjected to inhuman punishment in breach of Article 3 of the Convention. There has therefore been a violation of that provision under its substantive limb.

2. *Alleged inadequacy of the investigation*

58. The Government submitted that the investigation into the applicant's complaints had been effective. Although the military prosecutor of the Caspian Fleet had not given a response to the applicant's mother's complaint, such a response was no longer needed after the Shakhty Town Court had issued its judgment on 9 April 2003.

59. The applicant pointed out that no criminal case had been instituted on his complaint. The statements obtained from servicemen had therefore no evidential value because the servicemen had not been formally heard as

witnesses or warned about liability for perjury. The investigator had not examined the applicant, his fellow serviceman P. or other soldiers who had been eyewitnesses to the ill-treatment. His mother had never received a response to her complaint to the military prosecutor of the Caspian Fleet.

60. In the present case the Court has found above that the applicant collapsed following strenuous exercise ordered by his immediate superior Junior Sergeant Ch. with the tacit approval of Lieutenant D. as punishment for his failure to clean the barracks. Irrespective of whether that sudden deterioration of the applicant's health was due to a trauma or a complication of a previously undiagnosed condition, the gravity of the injury gave rise to an "arguable claim" of ill-treatment.

61. 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 into serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. 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 v. Russia*, no. 77617/01, §§ 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports of Judgments and Decisions* 1998-VIII)

62. The Court notes at the outset that the investigation cannot be described as sufficiently thorough. The investigator did not commission a medical examination of the applicant or, for that matter, refer to any medical documents he could have obtained. The only named witnesses mentioned in the investigator's decision were Lieutenant D. and Junior Sergeant Ch., that is, the applicant's commanders against whom his complaint had been directed. It is impossible to establish the relevance of statements of other witnesses who had not been identified in the decision by their names or rank. Even their number is uncertain: the Government submitted three

statements by other servicemen, whereas the investigator's decision referred to "all the servicemen of the seventh company", that is, a hundred individuals. Furthermore, it transpires that the investigator had not questioned those soldiers who could have been eyewitnesses to the alleged ill-treatment, such as the applicant's fellow serviceman P.

63. The Court further finds that the applicant's right to participate effectively in the investigation was not secured. The investigator did not hear him in person; the applicant's version of events was not even mentioned in his decision. Since no criminal proceedings were instituted, the applicant was not able to claim formally the status of a victim or exercise the procedural rights attaching to that status.

64. Finally, the Court considers that the supervising prosecutor's failure to give a response on the substance of the complaint addressed to him was a breach of the rules of criminal procedure which eroded the adequacy of the investigation as a whole. Although such an appeal was not an "effective remedy" within the meaning of Article 35 of the Convention because it did not give the person employing it a personal right to the exercise by the State of its supervisory powers (see, for example, *Belevitskiy v. Russia*, no. 72967/01, § 59, 1 March 2007), in the Russian legal system it was an important procedural guarantee allowing the supervising prosecutor to redress the shortcomings in the initial inquiry carried out by subordinate investigators. The person lodging such an appeal could not take part in its examination but he was nevertheless entitled to obtain information on the decision taken on the appeal (see paragraph 36 above). The Government did not deny that the military prosecutor Colonel M. had not examined the merits of the applicant's mother's complaint relating to the decision not to institute criminal proceedings. They claimed that the response had no longer been necessary or required, following the Town Court's judgment in the proceedings for damages. To the Court, the fallaciousness of that argument is evident. First, the Town Court accepted the findings contained in the investigator's decision without any independent review of the matter, and later the supervising prosecutor declined to review the decision because it had already been endorsed by the Town Court. The applicant thus found himself in a vicious circle of shifted responsibility where no domestic authority was capable of reviewing and remedying the shortcomings of the inquiry carried out by the investigator Captain S.

65. Having regard to the above failings of the Russian authorities, the Court finds that the inquiry carried out into the applicant's allegations of ill-treatment was not thorough, adequate or efficient. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

66. The Court further decided to examine *proprio motu* whether in the circumstances of the case the applicant had an effective remedy in civil law for his complaint of ill-treatment during military service, as required by Article 13 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

68. The Government claimed that there had been no violation of the applicant's rights under Article 13 of the Convention.

69. The applicant submitted that in the Russian legal system there exists the possibility of seeking institution of criminal proceedings or lodging a civil claim for damages. He had made use of the latter remedy, which had proved to be ineffective because he had been required to prove the fault of State officials. Such a burden of proof is impossible to satisfy in the absence of an effective criminal investigation.

70. The Court reiterates that Article 13 of the Convention guarantees the availability, at the national level, of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law; in particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State. Thus, in cases of suspicious death or ill-treatment, given the fundamental importance of the rights protected by Articles 2 and 3, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of

those responsible for the acts of ill-treatment (see *Cobzaru v. Romania*, no. 48254/99, §§ 80-82, 26 July 2007; *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005).

71. The Court has already found that the State authorities were responsible for the inhuman punishment inflicted on the applicant by his commanders in March 2001. The applicant therefore had an "arguable claim" for the purposes of Article 13 and the authorities were under an obligation to carry out an effective investigation into his allegations against the military officials. For the reasons set out above no effective criminal investigation can be considered to have been carried out in accordance with Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 3 (see *Cobzaru*, cited above, § 83, and, *mutatis mutandis*, *Buldan v. Turkey*, no. 28298/95, § 105, 20 April 2004, and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 119, ECHR 1999-IV). Consequently, any other remedy available to the applicant, including a claim for damages, had limited chances of success and could be considered as theoretical and illusory, and not capable of affording redress to the applicant. While in theory the civil courts have the capacity to make an independent assessment of fact, in practice the weight attached to a preceding criminal inquiry is so important that even the most convincing evidence to the contrary furnished by a plaintiff would be discarded and such a remedy would prove to be only theoretical and illusory (see *Menesheva v. Russia*, no. 59261/00, § 76, ECHR 2006-III, and *Corsacov v. Moldova*, no. 18944/02, § 82, 4 April 2006). This is illustrated by the fact that the Town and Regional Courts in the instant case dismissed the applicant's claim for damages by reference to the lack of any finding of guilt in the investigator's decision (see paragraphs 29 and 31 above). The courts simply endorsed the investigator's opinion that the applicant's claim was unmeritorious, without assessing the facts of the case.

72. The Court further notes the peculiar feature of Russian criminal law which made the possibility of lodging a civil claim for damages against the putative tortfeasor conditional on the grounds on which the criminal proceedings were discontinued. A decision to discontinue proceedings on the ground that the alleged offence was not committed legally bars access to a civil court on the basis of a claim for damages arising out of the same event (see paragraph 37 above). By operation of those legal provisions, the decision not to institute criminal proceedings against the applicant's commanders on the ground that no offence had been committed (see paragraph 23 above) debarred the applicant from suing the military staff for damages in a civil court.

73. The Court therefore finds that the applicant has been denied an effective remedy in respect of his complaint of ill-treatment during military

service. Consequently, there has been a violation of Article 13 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."

75. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, "failing which the Chamber may reject the claim in whole or in part".

76. On 12 April 2005 the Court invited the applicant to submit a claim for just satisfaction by 31 May 2005. He did not submit any such claim.

77. In such circumstances the Court would usually make no award. In the present case, however, the Court has found a violation of the applicant's right not to be subjected to inhuman punishment. Since this right is of absolute character, the Court finds it exceptionally possible to award the applicant 10,000 euros in respect of non-pecuniary damage (compare *Igor Ivanov v. Russia*, no. 34000/02, § 50, 7 June 2007, and *Mayzit v. Russia*, no. 63378/00, §§ 87-88, 20 January 2005), plus any tax that may be chargeable.

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the ill-treatment in military unit no. 6794 (3025) in Astrakhan and the absence of a civil-law remedy admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the inhuman treatment of the applicant in military unit no. 6794 (3025) in Astrakhan;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of an ineffective investigation into the ill-treatment to which the applicant was subjected;

4. *Holds* that there has been a violation of Article 13 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten 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;

(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.

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

Søren Nielsen
Registrar

Christos Rozakis
President