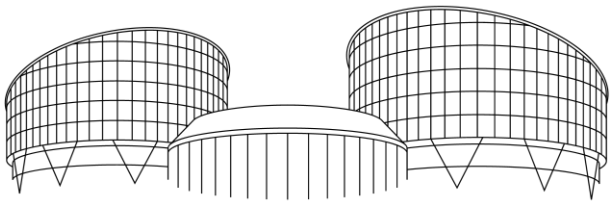

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DOLGOV v. RUSSIA

(Application no. 22475/05)

JUDGMENT

STRASBOURG

10 February 2011

FINAL

10/05/2011

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

In the case of Dolgov 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 18 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 22475/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Oleg Vladimirovich Dolgov ("the applicant"), on 11 May 2005.

2. The applicant, who had been granted legal aid, was represented by Ms O.V. Preobrazhenskaya, a lawyer practising in Strasbourg. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been ill-treated by the police and that part of his detention had been unlawful.

4. On 27 June 2007 the President of the First Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and is now serving his sentence in the Tula Region.

A. The applicant's arrest and alleged ill-treatment

6. At about 11.30 a.m. on 10 April 2003 the cashier desk of the Petelino psychiatric hospital in the Tula Region was robbed by three men armed with a submachine gun and a sawn-off shotgun. Two police patrols arrived at the scene less than five minutes later.

7. The police officers who apprehended the applicant described the events in the following manner. Officer B. stated, in particular (his statement to the investigator is dated 17 June 2003):

> "I saw three men cross the motorway and disappear behind the forest shelter belt... I started running across the forest to intercept the criminals. At that moment I heard a burst of submachine gun fire. As I emerged out of the forest, I saw two men in front of me who later turned out to be K. and [the applicant]. K. wore light-blue jeans and a dark jacket, and [the applicant] wore dark tracksuit bottoms. K. carried a Kalashnikov submachine gun with no butt, and [the applicant] had a sawn-off rifle ... I told the criminals to freeze, drop the guns and offer no resistance. K. and [the applicant] ... crossed the motorway. Then I shot a few rounds in burst mode in the direction of the criminals but above their heads and told them again to freeze. [The applicant] fell on the roadside, and the rifle flew out of his hands ... K. turned around, saw the police car and fired several shots in its direction. Then he slipped and fell. I ran up to him, pointed my gun at him and told him to stop resistance and drop the weapon. The muzzle of his submachine gun was pointed at my face, so I kicked the gun out of his hand and used physical force on him in accordance with section 12 of the Police Act ... During that time, [Officer M.] was trying to tie up [the applicant] because he was trying to get up and run away ... During the arrest we had to use physical force on K., [the applicant], and Sh. because they actively resisted us. As a result, they sustained injuries but I cannot say what injuries and where because they were covered in mud."

8. Officer M., in his statement to the investigator made on 11 April 2003, testified as follows:

> "Three men were running some seventy metres ahead of us... One of them – the one who was a bit taller, in light-blue jeans and black jacket – turned to us and fired a burst from his submachine gun in our direction ... [Officer B.] fired two shots at the running men ... The men had already crossed to the roadside in the direction of Novomoskovsk ... but the man in tracksuit bottoms fell on the roadside and covered his head with his hands. The man in blue jeans and black jacket fired a burst at the police car and started going down towards the forest but slipped and fell on his back ... He pointed his submachine gun at [Officer B.] who, in turned, pointed his gun at him and told him to drop the weapon. Meanwhile, I ran up to the second man who had fallen on the ground, covered his head with his hands and pushed away his sawn-off rifle ... and I told [Officer S.] to cuff his hands which he did. I ran up to [Officer B.] and told the man in blue jeans to throw the gun away. The man reclined on his back and put the gun aside. I kicked it away and, using martial arts, bent his arm behind his back, led him away and put him on the ground where handcuffs were applied to him ..."

9. On the same day Officer S. testified in the same vein:

> "... the man in tracksuit bottoms fell on the roadside and covered his head with his hands... [Officer M.] and I ran up to the second man who had fallen on the ground and covered his head; [Officer M.] kicked aside the sawn-off rifle and told me to use handcuffs on him which I did ..."

10. It appears from Officer Shch.'s statement of 15 July 2003 that he did not take part in the applicant's arrest:

> "... [Officers B., M., and S.] were running after them through the forest. [The applicant] fell on the roadside and [Officer S.] or someone else, I do not remember who, arrested him ..."

11. According to the applicant, he had fallen to the ground immediately after the police started firing, and covered his head with his arms. The applicant claimed that a police officer had approached him and kicked him in the head. His head had jerked and his face had hit gravel, chipping two teeth.

12. The applicant and two other men were brought to the Shatskoye police station in the Leninskiy district of the Tula Region.

13. The applicant submitted that he had been brought to an office on the second floor. Three riot-squad ("OMON") and two operational officers had entered the room. They had worn camouflage fatigues and woven hats. The OMON officers had made him kneel down with his hands cuffed behind his back. The officers had kicked and punched him, dealing blows all over his body, including his face and lips. One officer had hit him several times with a chair leg, another officer had straightened his right leg out and dealt a strong blow on his knee. He had been told to strip down and an officer had pushed the chair leg into his rectum.

14. At 8 p.m. the investigator Mr Bu. carried out a visual examination of the applicant's person in the presence of two attesting witnesses and a chemistry specialist. He noted that the applicant's face was covered with a "grey substance" and also with a "blood-like brown substance". One of his front teeth was chipped. There were no injuries on the anterior side of his body, but his other side was covered with bruises and haematomas. The applicant had a bruise on his right hip and abrasions on both knees.

15. On the following day, 11 April 2003, the applicant was placed in the temporary detention ward of the Leninskiy district police station. The applicant wrote a complaint to the prosecutor about the beatings.

16. On 13 April 2003 the investigator Mr Bu. refused to institute criminal proceedings into the applicant's allegations. Referring to the arresting officers Mr Shch. and Mr B. who claimed that the applicant had forcefully resisted the arrest, and to the statements by two operational officers who denied that the applicant had been beaten at the police station, the investigator adopted the view that the visible injuries had been caused during the arrest.

17. At 11.15 a.m. on 15 April 2003 a medical expert commissioned by the investigator of the Leninskiy district prosecutor's office Mr M. carried out a detailed examination of the applicant's injuries. The expert recorded multiple bruises and abrasions on the applicant's face, lips, left ear, right temple and cheek-bone, back, arms, wrists, right hip and shin, haemorrhage in the sclera of both eyes, and a broken tooth on the upper jaw. According to

the expert, those injuries had been caused by no fewer than thirteen blows of a hard blunt object and no earlier than seven days before the examination.

18. On 18 April 2003 the applicant was transferred from the Leninskiy district police station to remand centre no. IZ-71/1 in Tula. On arrival at the remand centre he was examined by a doctor. According to the medical certificate of the same date, the applicant had a bruise around his right eye, as well as an abrasion and an injury on his right hip. He told the doctor that he had been beaten at the police station.

19. On 19 June 2003 a deputy Leninskiy district prosecutor issued a new decision refusing to institute criminal proceedings into the applicant's allegations of ill-treatment. The text of the decision was identical, word by word, to that of the decision of 13 April 2003.

20. The applicant complained to a higher prosecutor. On 19 February 2004 the acting Leninskiy district prosecutor upheld the decisions of 13 April and 19 June 2003 as lawful and justified.

21. In November 2003, counsel for the applicant complained about the ill-treatment to the Uzlovaya town prosecutor, the Tula regional prosecutor, the Prosecutor General's Office, the Internal Security Department of the Tula Regional Police, the Federal Security Service, and other authorities. On 11 August and 22 December 2003 and 27 January 2004 the applicant also sent complaints about ill-treatment to the Tula regional prosecutor.

22. On 25 December 2003 a deputy Tula regional prosecutor replied to the applicant's lawyer that his complaints about ill-treatment had already been examined and that a decision refusing to institute criminal proceedings had been made.

23. On 18 June 2004 the applicant complained to the trial court about ill-treatment and the authorities' failure to investigate his allegations. It is unclear whether any formal response was received.

24. On 2 September 2004 Officers B., M., S., and Shch. and the investigator Mr Bu. were heard in the witness stand by the trial court. Officer Shch. stated that the defendants had not offered any resistance during the arrest and that they had been immediately handcuffed. He denied using any physical force during the arrest and pointed out that K. had been dirty but had had no visible injuries. Officer B. submitted that no force had been employed but he had bent K.'s arms and handcuffed him. Officer S. confirmed that, once on the ground, the defendants had no longer resisted the arrest and that there was no attempt to punish them after the arrest. Officer M. testified that one of the defendants had been handcuffed, and the other's hands had been tied with a belt. The investigator Mr Bu. said that he was unable to remember any injuries on the defendants.

25. On 10 January 2005 the applicant challenged the investigator's decision of 13 April 2003 before a court of general jurisdiction. He submitted that the inquiry had been incomplete because the investigator had never interviewed him about the alleged ill-treatment. The statements by the arresting officers had been contradictory: in the criminal proceedings they

had denied that he had offered any resistance, whereas the investigator had found that the injuries had been caused during the arrest. The applicant enclosed the medical certificates dated 10 April and 15 April 2003.

26. On 25 February 2005 the Leninskiy District Court of the Tula Region dismissed the applicant's complaint without taking cognisance of the merits. It held, firstly, that the contested decision did not restrict the applicant's constitutional rights or impede his access to justice and therefore was not amenable to review under Article 125 of the Code of Criminal Procedure. Secondly, it stated that an inquiry into the applicant's allegations of ill-treatment had been carried out in the framework of criminal proceedings against him and therefore concerned the evidence in the criminal case which was pending before the trial court. The District Court declared itself incompetent to examine the matters which were being examined by the trial court.

27. The applicant was not present or represented at the hearing before the Leninskiy District Court. He filed an appeal, in which he complained that the District Court had not ensured his representation at the hearing and failed to examine the evidence of ill-treatment he had submitted.

28. On 13 April 2005 the Tula Regional Court upheld, in summary fashion, the District Court's judgment. It noted that there had been no violation of the applicant's right to defence because both he and counsel for him had been informed of the hearing date but had not sought leave to appear.

B. Criminal proceedings against the applicant

29. On 12 April 2003 the Leninskiy District Court of the Tula Region remanded the applicant in custody for an initial two-month period.

30. On 16 April 2003 the applicant was charged with an armed robbery of the hospital.

31. On 9 June, 6 August, 14 October, and 29 December 2003 the Uzlovaya Town Court extended the applicant's detention until 15 February 2004. On 13 February 2004 it granted a further extension until 10 April 2004.

32. On 9 April 2004 the case against the applicant and his co-defendants was submitted to the Uzlovaya Town Court for trial.

33. On 16 April 2004 the applicant complained to the Tula regional prosecutor that, following the expiry of the last detention order on 10 April 2004, there was no legal basis for his continued detention. He did not receive a reply.

34. On 23 April 2004 the Uzlovaya Town Court gave a decision fixing the date of the preliminary hearing. The decision did not mention the question of the applicant's detention.

35. At the preliminary hearing on 13 May 2004 the Town Court ruled that the bill of indictment was procedurally defective in that it contained

incorrect information about the applicant's personal details. The court decided to return the case to the prosecutor for five days so that he could remedy these defects. It also rejected applications for release by the applicant and his co-defendants, noting that the preventive measure had been imposed lawfully and that there were no grounds for varying it.

36. On 17 May 2004 the prosecutor again sent the case for trial. On 31 May 2004 the Uzlovaya Town Court set the opening date for the trial and held that all the defendants should remain in custody, without citing any grounds for the continuation of their detention on remand or setting a time-limit for it.

37. On 4 November 2004 the Uzlovaya Town Court heard the prosecutor's application for a further extension of the applicant's detention. The applicant and his co-defendants applied for release, maintaining that the initial six-month period of their detention pending trial had expired on 9 October 2004.

38. The Town Court held that the six-month period of detention should be calculated from the date when the case had been sent for trial again, that is, from 17 May 2004. It extended all the co-defendants' detention by three months, citing as the ground the complexity of the case and the large number of victims and witnesses who had not yet been examined. The applicant filed an appeal. He submitted that, if the six-month period were to be calculated from 17 May 2004, his detention from 9 April to 17 May 2004 must have been unlawful. On 17 December 2004 the Tula Regional Court rejected his appeal in summary fashion, endorsing the reasoning of the Town Court.

39. On 10 February 2005 the Uzlovaya Town Court granted a further extension of the defendants' detention until 17 May 2005. On 15 April 2005 the Tula Regional Court upheld that decision on an appeal by the applicant.

40. On 19 July 2005 the Uzlovaya Town Court convicted the defendants of four robberies and sentenced the applicant to ten years' imprisonment in a high-security institution. On 25 January 2006 the Tula Regional Court upheld the conviction on appeal.

41. The applicant submitted copies of three articles published in the regional press in 2004. The articles described the robbery of the hospital and two other robberies imputed to the applicant and his co-defendants. The perpetrators were described as “jackals from Petelino”, “robbers” or a “gang”. The same photograph accompanied all three articles; the face and upper body of the person on the photograph were covered with a jacket.

II. RELEVANT DOMESTIC LAW

42. The investigator's or prosecutor's decision refusing institution of criminal proceedings or discontinuing criminal proceedings, as well as any other acts capable of impairing the constitutional rights or freedoms of parties to criminal proceedings or impeding citizens' access to justice, are

amenable to judicial review by the court located at the place where the pre-trial investigation is being carried out (Article 125 § 1 of the Code of Criminal Procedure).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

43. The applicant complained under Article 3 of the Convention that he was beaten and ill-treated after the arrest. Article 3 reads as follows:

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

A. Submissions by the parties

44. The Government submitted that the physical force and special means, such as handcuffs, which had been used on the applicant during his arrest fell outside the scope of Article 3 for two reasons. Firstly, the injuries did not result in a deterioration of his health or cause any lasting consequences. Secondly, the police officers did not use physical force to cause suffering to the applicant or to humiliate him; they merely fulfilled their duties, whereas the applicant resisted them. The use of force did not pursue any other goals, such as, for instance, obtaining a confession. The Government emphasised that the applicant had disobeyed the lawful demands of the police officers and that they had used lawful and reasonable measures for putting an end to his unlawful conduct. Finally, the Government submitted that the applicant's allegations of ill-treatment had been carefully reviewed by the domestic authorities in compliance with Article 3 of the Convention.

45. The applicant submitted that he had offered no resistance during his arrest. He fell to the ground and covered his head with his hands. The police officers did not claim that they had used any physical force on him and, in those circumstances, a recourse to physical force would have been gratuitous and excessive. The Government had not indicated what kind of physical force had been used and, in any event, their assertions were contradicted by the testimony of police officers before the trial court. The applicant maintained that he had been severely beaten in the police station. Finally, he pointed out that an inquiry into his allegations of ill-treatment had been superficial and incomplete: his statement had not been taken down and the statements by the police officers made in the course of the pre-trial investigation had been disregarded. The courts had not examined his complaint.

B. Admissibility

46. 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.

C. Merits

1. Compliance with Article 3 as regards the alleged ill-treatment by police

47. 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). Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch*, § 34, and *Salman*, § 100, both cited above).

48. The Government advanced the lawful use of physical force during the applicant's arrest as the only version of how his injuries had been caused. To assess the credibility of the Government's version, the Court will note the following facts relating to the circumstances of his apprehension on 10 April 2003 as indicated by the documents in the case-file.

49. The applicant was running away holding a sawn-off gun in his hand after having committed an armed robbery. Several armed police officers pursued him and his accomplices, in a car and on foot. After Officer B. had fired a round from his submachine gun in the direction of the suspected robbers and told them to freeze, the applicant fell to the ground at the side of

the road, dropped his weapon and covered his head with his hands. On the orders of Officer M., Officer S. ran up to the applicant, kicked the weapon away and immobilised his hands with handcuffs.

50. The only mention that any physical force had been used to immobilise the applicant can be found in the statement of Officer B. who claimed that the suspected robbers had offered active resistance (see paragraph 7 above). His statement is, however, contradicted by his subsequent testimony before the trial court and also by those of Officers M. and S. who had not witnessed any resistance on the part of the applicant. It is also important to note that at the time when Officer S. was applying handcuffs to the applicant, Officer B.'s attention was diverted to disarming Mr K. and he could hardly follow in detail the events around him. The statement of Officer S. who had actually immobilised the applicant does not refer to any use of physical force against him. Before the trial court, all three officers – B., M., and S., as well as Officer Shch. who had been an eye-witness to the applicant's arrest, denied having had recourse to any physical force against the applicant. In the absence of any credible evidence in support of the Government's version that the applicant had been injured as a result of lawful recourse to physical force during his apprehension, the Court finds it unsubstantiated.

51. On 15 and 18 April 2003 the applicant underwent two medical examinations, first by a forensic expert and later by a prison doctor. Both medical specialists noted multiple bodily injuries on his person, including bruises and abrasions on his face, back and extremities, as well as a chipped tooth. The Court cannot exclude the possibility that some of those injuries, including the chipped tooth and abrasions on the knees, might have been caused when the applicant suddenly fell to the ground with his face down during his arrest. However, the remaining injuries, which, in the opinion of the forensic expert, had been the product of "no fewer than thirteen blows of a hard blunt object" cannot reasonably be accounted for in that manner. The Government did not put forward any explanation of how those injuries might have occurred.

52. The applicant, on the other hand, maintained that they were a result of ill-treatment inflicted on him by police and riot-squad officers at Shatskoye district police station in the Leninskiy district of the Tula Region. He described in detail how the officers had kicked and punched him and had hit him with a chair leg. His allegation of ill-treatment coincides with the findings of the forensic expert who determined that the injuries had been caused no earlier than seven days before the examination on 15 April 2003, that is on or around the day of the applicant's arrest. It has not been claimed that the applicant had been injured before his arrest and since he remained thereafter in custody within the exclusive control of the Russian police, strong presumptions of fact arise in respect of the injuries that occurred during his detention.

53. On the basis of all the material placed before it, the Court concludes that the Government have not satisfactorily established that the applicant's injuries were caused otherwise than – entirely, mainly, or partly – by ill-treatment he underwent while in police custody.

54. 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 *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports of Judgments and Decisions* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83-84 and 86, *Reports of Judgments and Decisions* 1997-VI; *Selmouni v. France* [GC], no. 25803/94, § 105, ECHR 1999-V; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; and, among recent authorities, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-IV (extracts)).

55. In the instant case the Court finds that the existence of physical pain or suffering is attested by the medical report and the applicant's statements regarding his ill-treatment in the police station. The Court considers that the extent of the applicant's injuries attests to the severity of the ill-treatment to which he was subjected. In these circumstances, the Court concludes that, taken as a whole and having regard to its purpose and severity, the ill-treatment at issue amounted to inhuman treatment within the meaning of Article 3 of the Convention.

56. Accordingly, there has been a violation of Article 3 under its substantive aspect.

2. Compliance with Article 3 as regards the effectiveness of the investigation

57. 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 requires by implication that there should be an effective official investigation. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The investigation into serious allegations of ill-treatment must be thorough. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 103 et seq., *Reports of Judgments and Decisions* 1998-VIII). They must take the 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, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov*, cited above, § 102 et seq.). Further, the investigation must be expeditious. 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). It has also given consideration to the promptness in opening investigations, delays in taking statements and to the length of time taken for the initial inquiry (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

58. The Court considers that medical evidence of damage to the applicant's health, together with his allegations of having been beaten by the police, amounted to an "arguable claim" of ill-treatment. Accordingly, the authorities had an obligation to carry out an effective investigation into the circumstances of the alleged ill-treatment.

59. In the Court's view, the manner in which the inquiry was conducted reveals the investigative authorities' determination to dispose of the matter in a hasty and perfunctory fashion (compare *Denis Vasilyev v. Russia*, no. 32704/04, § 155, 17 December 2009). The first decision refusing the institution of criminal proceedings was issued just three days after the applicant's arrest, even before the forensic examination had been completed. A second decision was given two months later, on 19 June 2003, but its text repeated verbatim the text of the first one, without taking account of the newly available medical evidence and the statements by the police officer who denied having used any physical force on the applicant during the arrest. Neither decision mentioned the applicant's version of the events. It does not appear that the investigator heard him in person or arranged a confrontation between him and the police officers from the Shatskoye police station who had been allegedly involved in the ill-treatment. These failures alone, for which no explanation has been provided to the Court, suffice to render the investigation ineffective.

60. It is further apparent that the applicant was unable to obtain an effective review of the investigator's decisions refusing to institute criminal proceedings. Higher prosecutors rejected his complaints on several occasions in summary fashion and the courts of the Tula Region declared them inadmissible on the ground that the refusal of an inquiry into his allegations of ill-treatment had not impaired his constitutional rights. Their refusal to rule on the merits of his complaints was obviously at variance with the explicit guarantee against torture and inhuman or degrading treatment in Article 21 of the Russian Constitution and also with the established practice of other Russian courts. The Court has already found that in the Russian legal system, the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Belevitskiy*

v. Russia, no. 72967/01, § 61, 1 March 2007, and *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). Although in these proceedings the court of general jurisdiction is not competent to pursue an independent investigation or make any findings of fact, judicial review of a complaint has the benefit of providing a forum guaranteeing the due process of law. In public and adversarial proceedings an independent tribunal is called upon to assess whether the applicant has a prima facie case of ill-treatment and, if he has, to reverse the prosecutor's decision and order a criminal investigation (*idem.*). In the instant case the judicial avenue was foreclosed to the applicant. It cannot therefore be said that the applicant's right to participate effectively in the investigation was secured (compare *Denis Vasilyev*, cited above, § 126).

61. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment. Accordingly, there has also been a violation of Article 3 under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

62. The applicant complained that his detention had not been compatible with the requirements of domestic law and Article 5 § 1 the Convention, the relevant part of which reads 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:
>
> ...
>
> (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. Admissibility

63. The Court observes that, starting from 12 April 2003, the applicant's detention was authorised and extended at regular intervals by the Leninskiy District Court and the Uzlovaya Town Court of the Tula Region. The last detention order issued by the Town Court expired on 10 April 2004. It does not appear that during that period there were deviations from the domestic procedure that were incompatible with the requirements of the Convention. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

64. Following the expiry of the detention order on 10 April 2004, a new extension order setting a specific time-limit for the applicant's detention was

not made until 4 November 2004. The applicant's position in the intervening period was arguably at variance with the requirements of the Convention. Accordingly, the Court considers that this part of the 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.

65. Finally, the Court notes that from 4 November 2004 to 19 July 2005, when the applicant was convicted, the applicant's detention was extended by successive decisions of the trial court. The trial court acted within its powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law or incompatible with the Convention requirements. It follows that this part of the complaint is also manifestly ill-founded and must be rejected.

B. Merits

66. The applicant submitted that from 10 April to 13 May 2004 he had been held in custody without judicial authorisation. On 13 May 2004 the trial court had returned the criminal case to the prosecutor but it had not given any reasons for extending the detention or limited it in time; this was arbitrary and incompatible with the requirements of the Convention (here the applicant referred to *Nakhmanovich v. Russia*, no. 55669/00, §§ 70-71, 2 March 2006). From 17 to 31 May 2004 the applicant had once again remained in custody without judicial authorisation. Lastly, the applicant pointed out that on 9 October 2004 the initial six-month period of his detention "during the trial" had expired and from that date onwards his detention had been unlawful.

67. The Government submitted that at the time when the applicant's case was under consideration the domestic courts had interpreted Article 255 of the Code of Criminal Procedure as permitting the detention of an accused without a court order for up to six months from the date of receipt of the case file by the trial court. Even though in 2005 the Constitutional Court had found that that practice was tainted with arbitrariness and therefore incompatible with the Constitution, at the material time such interpretation of Article 255 had been valid and endorsed by all Russian courts, including the Supreme Court. For that reason, the applicant's detention after the date on which the case file had been referred to the trial court (10 April 2004) was lawful in domestic terms. The decision of 13 May 2004 did not breach the requirements of legal certainty and the protection from arbitrariness because it had established that the prosecutor was to return the case within five days. After the case had been returned to the trial court on 17 May 2004, the applicant's detention had again been governed by the same interpretation of Article 255 of the Code of Criminal Procedure. Finally, the Government claimed that the return of a case to the prosecutor interrupted the running of the six-month period.

68. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion (see, among many other authorities, *Khudoyorov v. Russia*, no. 6847/02, § 124, ECHR 2005-X).

69. On the facts, the Court observes that on 10 April 2004, that is, one day after the trial court received the case file from the prosecutor, the period of the applicant's detention authorised by the decision of 13 February 2004 expired. However, no further decision on his detention was taken.

70. The Court has already found a violation of Article 5 § 1 of the Convention in many cases against Russia concerning the practice of holding defendants in custody solely on the strength of the fact that their case had been referred to the trial court. It has held that the practice of keeping defendants in detention without judicial authorisation or clear rules governing their situation was incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see *Isayev v. Russia*, no. 20756/04, §§ 131-133, 22 October 2009; *Yudayev v. Russia*, no. 40258/03, §§ 59-61, 15 January 2009; *Belov v. Russia*, no. 22053/02, §§ 90-91, 3 July 2008; *Lebedev v. Russia*, no. 4493/04, §§ 55-58, 25 October 2007; *Shukhardin v. Russia*, no. 65734/01, §§ 84-85, 28 June 2007; *Belevitskiy v. Russia*, no. 72967/01, §§ 88-90, 1 March 2007; *Korchuganova v. Russia*, no. 75039/01, § 57, 8 June 2006; *Nakhmanovich*, cited above; and *Khudoyorov*, cited above, §§ 147-151).

71. Further, the Court has recently examined a similar complaint and found a violation of Article 5 § 1 of the Convention in the case of Mr Shulenkov who was the applicant's co-defendant in the same criminal proceedings (see *Shulenkov v. Russia*, no. 38031/04, §§ 34-45, 17 June 2010). The Court's findings in the above cases are applicable in the instant case, as the Government did not advance any argument warranting a departure from the established case-law. Following the expiry of the detention order on 10 April 2004, the applicant's detention was not covered by a judicial authorisation. The Town Court's decision of 23 April 2004 did not mention the applicant's detention and its subsequent decision of 13 May 2004 merely rejected an application for release rather than constituting a formal detention order required under the domestic law. As the Court has emphasised on many occasions, applications for release filed by a defendant in custody do not exempt the domestic authorities from the obligation to authorise his or her detention "in accordance with a procedure prescribed by law" by issuing a formal detention order, as provided by Article 5 § 1.

Finding otherwise would place on the defendant, rather than on the authorities, the burden of ensuring a lawful basis for his or her continued detention (see, e.g., *Melnikova v. Russia*, no. 24552/02, § 61, 21 June 2007).

72. It is further noted that on 31 May 2004 the Town Court set the opening date for the trial and held that the defendants "should remain in custody". It did not, however, give any grounds for maintaining the custodial measure or fix a time-limit for the extended detention. This situation has also been examined in many cases against Russia, including that of the applicant's co-defendant Mr Shulenkov, in which the Court found that the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time was incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1. Permitting a prisoner to languish in detention without a judicial decision based on concrete grounds and without setting a specific time-limit would be tantamount to overriding Article 5, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Avdeyev and Veryayev v. Russia*, no. 2737/04, §§ 45-47, 9 July 2009; *Bakhmutskiy v. Russia*, no. 36932/02, §§ 112-114, 25 June 2009; *Gubkin v. Russia*, no. 36941/02, §§ 112-114, 23 April 2009; *Shukhardin*, cited above, §§ 65-70; *Ignatov v. Russia*, no. 27193/02, §§ 79-81, 24 May 2007; *Solovyev v. Russia*, no. 2708/02, §§ 97-98, 24 May 2007; *Nakhmanovich*, cited above, §§ 70-71; and *Khudoyorov*, cited above, §§ 134 and 142). The Court sees no reason to reach a different conclusion in the present case. It considers that the decision of 31 May 2004 did not comply with the requirements of clarity, foreseeability and protection from arbitrariness and that the ensuing period of the applicant's detention was not "lawful" within the meaning of Article 5 § 1. This finding makes it unnecessary to examine whether the applicant's detention was also unlawful after 9 October 2004 on account of its being in excess of the maximum six-month period of detention "during the trial".

73. In the light of the foregoing considerations, the Court finds that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 10 April to 4 November 2004.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

74. Lastly, the applicant complained under Article 6 § 2 of the Convention that he was portrayed as a criminal in newspaper publications. The Court, however, observes that the newspaper publications did not mention the applicant by name or reveal his photograph and did not contain any statements by a public official as to his guilt (see *Shulenkov*, cited above, § 54, and *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II). Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

75. 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

76. The applicant claimed 240,000 euros (EUR) in respect of non-pecuniary damage.

77. The Government submitted that the sum was excessive.

78. The Court likewise considers that the applicant's claims in respect of non-pecuniary damage are excessive. Making its assessment on an equitable basis, it awards the applicant EUR 20,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

79. The applicant claimed EUR 1,680 for twenty-eight hours of work by his representative, Ms Preborazhenskaya, at the rate of EUR 60 an hour.

80. The Government submitted that the amount claimed was excessive and unreasonable.

81. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the amount of EUR 850 has already been paid to the applicant by way of legal aid. In such circumstances, the Court does not consider it necessary to make an award under this head.

C. Default interest

82. 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. *Declares* admissible the complaints concerning the applicant's alleged ill-treatment and the effectiveness of the ensuing investigation and the lawfulness of his detention from 10 April to 4 November 2004, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 10 April to 4 November 2004;

4. *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 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 10 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President