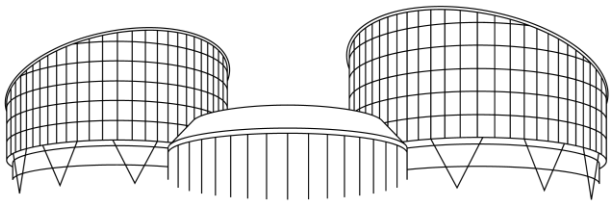

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GEORGIY BYKOV v. RUSSIA

(Application no. 24271/03)

JUDGMENT

STRASBOURG

14 October 2010

FINAL

21/02/2011

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

In the case of Georgiy Bykov 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,
Dean Spielmann,
Sverre Erik Jebens, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 23 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 24271/03) 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 Georgiy Alekseyevich Bykov ("the applicant"), on 20 May 2003.

2. The applicant was represented by Mr A. Manov and Mr I. Sivoldayev, lawyers practising in Moscow and Voronezh. The Russian Government ("the Government") were represented 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 subjected to ill-treatment by the police after his arrest and that there had been no effective investigation into the events.

4. On 13 June 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lived in Voronezh until his arrest. He is now serving his sentence in the correctional colony in the town of Semiluki, Voronezh Region. The applicant is a former military officer.

A. Applicant's arrest and alleged beatings by the police

6. On 12 July 2001 the bodies of two military officers were found at the checkpoint of a military unit. The officers had been brutally killed with an axe. The service gun of one of the officers had been stolen.

7. Four days later, on 16 July 2001, the applicant was arrested on suspicion of two counts of murder. He was taken to the Sovetskiy District police department in Voronezh where police officers allegedly spent several hours beating him up. According to the applicant, policemen offered him contaminated alcohol. While under the influence of alcohol he signed a statement confessing to the murder of the military officers.

8. Later on 16 July 2001 the applicant was placed in the Police department temporary detention centre. As follows from a letter sent by the head of the detention centre to the applicant's lawyer on 21 November 2001, on admission to the centre the applicant was examined by a doctor, who recorded bruises on his nose and under both eyes. The doctor also noted that the injuries had been acquired prior to the applicant's admission to the centre and that the applicant had not requested any medical assistance.

9. On the same day the applicant, questioned as a suspect in the murder investigation, complained to a military prosecutor that he had written the confession statement under violent duress by the police officers. The applicant, supported by his lawyer, Ms Bautina, requested the investigator to authorise a medical examination for him.

10. On 20 July 2001 a senior military prosecution investigator and a doctor examined the applicant in the presence of two attesting witnesses. According to the applicant, a police officer who had taken part in the beatings on 16 July 2001 escorted him to that medical examination and observed it. The senior investigator drew up a report, which in the relevant part read as follows:

> "The examination established:
>
> ... fading bruises on the skin of the median third of the both shoulders, a fading bruise on the left infrascapular region, ([the bruise] was inflicted three to seven days

ago). There is a subconjunctival haemorrhage in the pericorneal zone of the right eye ...”

B. Conviction

11. On 19 December 2001 the case was committed for trial to the Military Court of the Fourth Circuit.

12. At the hearing on 4 July 2002 the applicant complained to the Military Court that he had been beaten up after his arrest and that the confession had been extracted from him under torture. In particular, the applicant stated that on 16 July 2001 he had been taken to the police department where three policemen had struck him and kicked him in the face and stomach. They had also thrown him against a wall several times. He had had no choice but to write that confession. After he had signed the statement, he had been given some vodka. A military prosecutor had questioned him in the presence of his lawyer and he had renounced the confession, alleging that it had been extracted under duress. On 20 July 2001 he had written another confession statement. The applicant stressed that he had not been beaten up, but he had been afraid that torture would have been applied if he had not confessed.

13. On 16 July 2002 the Military Court of the Fourth Circuit found the applicant guilty of two counts of manslaughter and theft of a weapon and sentenced him to fifteen years’ imprisonment. The Military Court excluded the applicant’s confession made on 16 July 2001. In particular, it held as follows:

“Having examined [the applicant’s] complaints that between 16 and 25 July 2001 he was beaten up by police officers of the Sovetskiy District police department of Voronezh, who allegedly kicked and hit him on the head, face and body, and threw him against a wall, the court finds as follows.

Witnesses, Mr B., Mr N., Mr P., Mr Y., Mr V., Mr S., [and] Mr O., testified that they had not used physical force or psychological pressure against [the applicant] when he had been kept in the Sovetskiy District police department in Voronezh and no one had beaten [the applicant] up in their presence.

An official investigation carried out by the Internal Security Division of the Voronezh Regional police department did not establish as fact that the applicant had been beaten up by police officers of the Sovetskiy District police department of Voronezh.

However, as it follows from the statement of the head of the temporary detention centre of the police department in Voronezh, on 16 July 2001, on admission to the centre [the applicant] was diagnosed with haematomas on his nose and under his left and right eyes.

> In such circumstances, the court accepts that before his admission to the temporary detention centre physical force was used against [the applicant], but it was not applied to the extent described by [the applicant] at the court hearings.
>
> Having regard to the above-mentioned matters and taking into account that on 16 July 2001, after writing the confession, [the applicant] was offered some vodka, the court excludes the confession statement from the evidence which confirms [the applicant] as guilty of the murder of [the victims].
>
> As regards the confession statement and the interviews conducted on 20, 21 and 23 July 2001, [the applicant] stated at a court hearing that he had written that confession voluntarily, had answered the investigator's questions and had described his actions during an investigation experiment in the presence of his lawyer, Ms Bautina; physical and psychological pressure had not been applied to him. The applicant and his lawyer did not make any complaints or representations about any unlawful methods of criminal investigation. The court did not establish any data showing that on 20, 21 and 23 July 2001 [the applicant] had been pressurised, either physically or psychologically, by the investigating authorities into making those statements."

14. The applicant appealed against the conviction, arguing, *inter alia*, that the trial court had not properly addressed his complaints of ill-treatment. He also asked the appeal court to ensure his presence at the appeal hearing.

15. On 10 January 2003 the Military Section of the Supreme Court of the Russian Federation upheld the judgment of 16 July 2002. Having addressed the applicant's argument as regards the beatings by the police officers after his arrest, the Supreme Court held as follows:

> "At the same time the [Military] Court made the correct assessment that there had been a violation of procedural norms by the police officers when they received a confession statement from [the applicant] on 16 July 2001; [the Military Court] rightly excluded [the confession statement] from evidence in the case.
>
> Moreover, [the police officers V., K. and A.], who had seen [the applicant] directly after his arrest, stated in open court that the applicant had no injuries on the face and no police officers had hit the applicant...
>
> A [police officer], Mr Sh. who had participated as a specialist during an investigating experiment on 23 July 2001, ... had not noticed any injuries on the applicant's face."

The applicant's lawyer attended the appeal hearing; however, the applicant was not summoned to it.

C. Proceedings in connection with the complaints of ill-treatment

16. In the meantime, as follows from documents submitted by the applicant, on an unspecified date his father, acting in the applicant's interest, complained to various prosecution, police and military authorities that the applicant had been severely beaten up by the police officers after the arrest.

17. The Internal Security Division of the Voronezh Regional police department opened an internal inquiry into the complaints, which resulted in a finding of no criminal conduct in the officers' actions. In May 2002 the applicant's father was informed of the results of the inquiry. At the same time he was notified of the transfer of his complaints to the Military Court, which was to examine the criminal case against the applicant. The police authorities reasoned that under Russian law, after the applicant had been committed to stand trial, the trial court had exclusive jurisdiction over any complaints related to the case. The applicant's father received a similar response from the Prosecutor General's office.

18. The Government argued that the first complaint of ill-treatment had only been lodged by the applicant's father with the Internal Security Division of the Ministry of Internal Affairs a month after the judgment of 16 July 2002. The Government did not support their assertion with any evidence. They also did not produce any document from the file of the investigation into the applicant's alleged ill-treatment, despite the Court's direct request to that effect.

19. On 8 August 2002 an investigator of the Sovetskiy District Prosecutor's office refused to institute criminal proceedings in connection with the applicant's complaints of ill-treatment. Having examined the results of the internal police inquiry, the investigator found that on 15 July 2001, while preventing the applicant's attempt to commit suicide, his fellow officer had hit the applicant on the ear. Having studied a record of the medical examination of the applicant on his admission to the temporary detention centre on 16 July 2001 (see paragraph 8 above), the investigator concluded that the injuries on the applicant's face "could have been caused by the applicant's fellow officers" during the prevention of the attempted suicide. The reasoning of the two-page decision was founded on statements by the police officers who had questioned the applicant on 16 July 2001 and had disputed any use of violence against him, and the applicant's father, who had insisted that the applicant had been beaten up at the police department. All these statements were received during the internal police inquiry.

20. The applicant appealed against the decision of 8 August 2002. On 27 March 2003 a deputy prosecutor of the Sovetskiy District in Voronezh dismissed the complaint, noting that the investigator had carried out a full inquiry and that his conclusions had been based on "the objective analysis of sufficient and corroborating evidence".

21. On 28 April 2003 the Sovetskiy District Court of Voronezh quashed the decision of 27 March 2003 on the ground that the investigator's inquiry had been incomplete. It noted that the investigator had not questioned the applicant's fellow officers and thus his conclusion that the applicant's injuries had been caused by them had not been based on any evidence.

22. A deputy prosecutor of the Sovetskiy District annulled the decision of 8 August 2002 and sent the case for an additional inquiry.

23. On 17 November 2003 the prosecutor's office once again dismissed the applicant's complaint, having found no prima facie case of ill-treatment. That decision was quashed on 4 February 2004 and the case was sent for an additional inquiry.

24. On 6 February 2004 the senior investigator of the Sovetskiy District Prosecutor's office refused to institute criminal proceedings against the police officers. The decision was based on the same evidence as the decision of 8 August 2002 and on a statement by the applicant's fellow officer, Mr L., who had admitted hitting the applicant on the ear. The senior investigator also noted that "the applicant was serving his sentence and was attempting to call into question the trial court's findings."

25. Having found that the previous inquiry into the applicant's ill-treatment complaints was incomplete, on 24 August 2007 the Voronezh Regional Prosecutor's Office reopened an investigation into the events of 16 July 2001. The new round of inquiry was closed on 3 September 2007 in the absence of any evidence of criminal conduct on the part of the police officers. However, the decision of 3 September 2007 was quashed by a higher-ranking prosecutor and a new round of investigation commenced. That round resulted in the decision of 17 October 2007, by which the complaints of ill-treatment were found to be unsubstantiated.

26. On 13 December 2007 the acting deputy head of the Investigating Department of the Sovetskiy District Prosecutor's office quashed the decision of 17 October 2007. The deputy head noted that that decision was unlawful and the inquiry was incomplete. The new round of investigation was, among other things, to lead to identification and questioning of military officers who had allegedly prevented the applicant's attempted suicide on 15 July 2001. It appears that the investigation is now pending.

II. RELEVANT DOMESTIC LAW

A. Investigation into criminal offences

27. The Code of Criminal Procedure of the Russian Federation (in force since 1 July 2002, "the CCrP") establishes that a criminal investigation can be initiated by an investigator or a prosecutor on a complaint by an individual or on the investigative authorities' own initiative, where there are reasons to believe that a crime was committed (Articles 146 and 147). A prosecutor is responsible for overall supervision of the investigation (Article 37). He/she can order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. If there are no grounds to initiate a criminal investigation, the prosecutor or

investigator issues a reasoned decision to that effect, which has to be notified to the interested party. The decision is amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction within a procedure established by Article 125 of the CCrP (Article 148). Article 125 of the CCrP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

B. Medical examinations of arrestees on their admission to police temporary detention centres

28. Russian law sets out detailed guidelines for detention of individuals in police department temporary detention centres. These guidelines are found in the Decree of the Ministry of Internal Affairs no. 950 on Internal Regulations of Police Temporary Detention Centres ("the Decree"), enacted on 22 November 2005, and the joint Decree of the Ministry of Internal Affairs and the Ministry of Health no. 1115/475 on Instruction on Medical and Sanitary Assistance to Individuals Detained in Police Temporary Detention Centres ("the Instruction"), enacted on 31 December 1999. In particular, Section II of the Decree sets out the procedure for initial steps to be taken by the staff of a detention centre on admission of a detainee. If, on a detainee's arrival in a temporary detention centre an accepting officer discovers injuries on his body, the officer should draw up a detailed record of the injuries. The record should be signed by the accepting officer, the official who brought the detainee into the centre and the detainee himself. The latter should be served with a copy of that record.

29. Section XIV of the Decree and Section III of the Instruction establish that all detainees should be subjected to preliminary medical examination within twenty-four hours of their admission to a temporary detention centre. The examination should be performed by medical personnel and the results of the examination should be recorded in a medical log. The Decree states that the primary purpose of the medical examination is, *inter alia*, identification of individuals with physical injuries. If physical injuries are discovered, the detainee should immediately be subjected to a more thorough medical examination by the detention centre's medical staff, or, if the ward does not employ medical staff, by civilian hospital doctors. The results of the medical examination should be properly recorded.

30. An inquiry should be carried out into the circumstances in which the detainee sustained injuries. As a result of the inquiry a decision on institution or refusal to institute criminal proceedings should be issued in compliance with the requirements of the Russian Code of Criminal Procedure (paragraph 129 of Section XIV of the Decree).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained that immediately after his arrest 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 the incident. The Court will examine this complaint from the standpoint of the State's 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

32. The Government submitted that the applicant had failed to exhaust the domestic remedies available to him under the Russian Code of Criminal Procedure. In particular, while admitting that the decision of 6 February 2004 was no longer in force, having been quashed by the Voronezh Regional Prosecutor's office on 24 August 2007, the Government stressed that the applicant had not appealed against the decision of 6 February 2004 either to a higher-ranking prosecutor or to a court. They further noted that the applicant's complaint was premature as the investigation had been reopened and was still pending.

33. As an alternative, the Government argued that the applicant's complaint of ill-treatment was manifestly ill-founded as he had not been subjected to treatment in violation of the Article 3 guarantees. They insisted that the applicant had sustained his injuries during a fight with someone who became a murder victim. They further observed that the applicant had not complained of ill-treatment during his medical examination on 20 July 2001, although the examination had been carried out in the presence of the prosecution investigator. The Government stressed that it had only been after the applicant's conviction that he had for the first time sought institution of criminal proceedings against the police officers.

34. In response to the Court's request for provision of the complete investigation file in respect of the events of 16 July 2001 the Government stated that the investigation into the events was still pending, precluding them from lodging the necessary documents with the Court.

35. The applicant averred that his father had promptly informed the domestic authorities that the police officers had subjected him to severe beatings. In the applicant's opinion, the prosecutors' and police officials' refusals to open a criminal investigation into the events in view of the ongoing trial proceedings and the subsequent trial court judgment of 16 July

2002, containing information about the internal police inquiry into the alleged beatings, supported his assertion that the ill-treatment complaint had been raised before the appropriate domestic authorities without undue delay. Moreover, the Government's assertion that the ill-treatment complaint had been raised for the first time a month after the conviction, that is not earlier than 16 August 2002, was contradicted by the fact that by 8 August 2002 the prosecution authorities had already issued a decision, having refused to institute criminal proceedings against the police officers.

36. The applicant also stressed that his medical examination of 20 July 2001, performed in the presence of the prosecution investigator, had been carried out precisely in response to his complaints of ill-treatment at the hands of the police. At the same time he had not made any complaints at the time of the examination itself as he had been escorted to that examination by the same police officer who had participated in the beatings. That police officer had also attended the medical examination.

37. The applicant further argued that the Government had not provided any explanation for his injuries, which had been discovered during the examination on 16 July 2001, on his admission to the temporary detention centre, and then to additional injuries which had been recorded during the medical examination on 20 July 2001. He stressed that his version of events had been partly supported by the trial court's decision to exclude his confession of 16 July 2001 from evidence. Having doubted the extent of the force used against the applicant, the trial court had not doubted that the force had in fact been used. The applicant argued that the Government's submission that he had received the injuries during a fight with one of the victims would not stand up to criticism and was not supported by any evidence.

B. The Court's assessment

1. Admissibility

38. The Court notes that the Government raised two major objections against the admissibility of the applicant's complaint. In particular, they listed two possible forms of remedy which the applicant had failed to employ: a complaint against the investigator's decision of 6 February 2004 to a higher-ranking prosecutor or a court. In addition, they submitted that the ill-treatment complaint was premature as the investigation into the alleged beatings was still pending.

(a) General principles

39. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring

their case against the State before the Court to use first the remedies provided by the national legal system. Consequently, States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. The rule is based on the assumption, reflected in Article 13 of the Convention - with which it has close affinity -, that there is an effective remedy available in respect of the alleged breach in the domestic system, whether or not the provisions of the Convention are incorporated in national law. In this way, it is an important aspect of the principle that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (see *Handyside v. the United Kingdom*, 7 December 1976, § 48, Series A no. 24).

40. Under Article 35 of the Convention, recourse should normally be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, *inter alia*, *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198, and *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112). Article 35 also requires that complaints made before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Cardot v. France*, 19 March 1991, § 34, Series A no. 200).

41. Furthermore, in the area of the exhaustion of domestic remedies, there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been used, or was for some reason inadequate or ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement.

42. The Court would emphasise that the application of the rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that the rule of domestic remedies must be applied with some degree of flexibility and without excessive formalism (see *Cardot*, cited above, § 34). It has further recognised that the rule of exhaustion is neither absolute nor capable of

being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Van Oosterwijck v. Belgium*, 6 November 1980, § 35, Series A no. 40). This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate, as well as the personal circumstances of the applicants (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-68, *Reports of Judgments and Decisions* 1996-IV).

(b) Application of the general principles to the present case

(i) Alleged failure to appeal against the investigator's decision of 6 February 2004

43. The Court reiterates that, apart from the police internal inquiry and the criminal courts' assessment of the ill-treatment issue, the applicant's allegations of ill-treatment were also examined by the prosecuting authorities. In particular, in a decision of 8 August 2002 the investigator of the Sovetskiy District Prosecutor's office decided not to institute criminal proceedings. Following the applicant's complaint to the Sovetskiy District Court that decision was quashed by a deputy prosecutor and a new round of inquiry was authorised. The inquiry was again closed and reopened, eventually leading to the investigator's decision of 6 February 2004, by which the institution of criminal proceedings was refused. Under Articles 125 and 148 of the Russian Code of Criminal Procedure that decision was amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction (see paragraph 27 above).

44. As regards an appeal to a higher-ranking prosecutor, the Court has previously held that such an appeal does not constitute an effective remedy within the meaning of Article 35 of the Convention (see *Belevitskiy v. Russia*, no. 72967/01, § 60, 1 March 2007).

45. The position is, however, different with regard to the possibility of challenging before a court of general jurisdiction a prosecutor's decision not to investigate complaints of ill-treatment. The Court has previously 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 *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003, and *Belevitskiy*, cited above, § 61).

46. The Court observes that in the present case the applicant did not make use of the judicial appeal, in the formal sense, as laid down by Article 125 of the Russian Code of Criminal Procedure, by instituting judicial proceedings against the investigator's decision of 6 February 2004. However, the Court is unable to accept the Government's objection that the

applicant's failure to appeal against that decision to a court rendered his Article 3 complaint inadmissible. Apart from the fact that the decision of 6 February 2004 is no longer in force, having been quashed on 24 August 2007 by a decision of the Voronezh Regional Prosecutor's office authorising a new round of inquiry into the applicant's ill-treatment complaint, the Court observes that the decision of 6 February 2004 was preceded by at least two investigators' decisions with the same content and leading to the same outcome (see paragraphs 19 and 23 above). The applicant successfully challenged those decisions, obtaining their quashing and securing the reopening of the inquiry. The Court considers that in these circumstances, in order to exhaust domestic remedies the applicant could not have been required to lodge, over and over again, new appeals against each subsequent decision by which the prosecution authorities had closed the investigation. As the Court has found in a similar case, a requirement to introduce further appeals against successive decisions refusing the institution of criminal proceedings would be over-formalistic and place an excessive burden on the applicant (see *Samoylov v. Russia*, no. 64398/01, § 45, 2 October 2008). Moreover, the applicant has invoked before the Court essentially the same arguments as were considered by the domestic courts during the criminal proceedings against him and within the internal police and subsequent prosecution inquiries into the events of 16 July 2001, thus affording the domestic authorities the ample opportunity to remedy the alleged violation of his rights. It follows that the applicant must be considered to have exhausted the domestic remedies, in so far as he did not lodge a separate judicial complaint against the investigator's decision of 6 February 2004 (see, *mutatis mutandis*, *C.M. v. Sweden*, no. 20809/92, Commission decision of 15 February 1993, and, most recently, *Akulinin and Babich v. Russia*, no. 5742/02, § 33, 2 October 2008, and *Vladimir Fedorov v. Russia*, no. 19223/04, § 50, 30 July 2009), and that this part of the Government's objection as to non-exhaustion of domestic remedies should be dismissed.

(ii) Failure to await the outcome of the reopened proceedings

47. The Court further reiterates the Government's objection that the applicant's complaints under Article 3 are premature, as the criminal proceedings were reopened in August 2007 and are still pending. In this regard the Court first notes that if an individual raises an arguable claim that he has been seriously ill-treated by the police, a criminal complaint may be regarded as an adequate remedy within the meaning of Article 35 § 1 of the Convention (see *Vladimir Fedorov v. Russia*, cited above, § 58). 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 *Akdivar and Others v. Turkey*, 30 August 1996, § 68, *Reports* 1996-IV). 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 pursue it (see *Mikheyev v. Russia*, no. 77617/01, § 86, 26 January 2006).

48. The Court notes that in the present case the inquiry into the alleged ill-treatment of the applicant by the police officers was reopened more than six years after the events in question. 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 complaint under Article 3 of the Convention. The Court therefore decides to join this issue to the merits.

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

49. 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

50. 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*, 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 under 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).

51. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of the domestic courts, in normal circumstances it requires cogent elements to lead it to

depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336).

52. In the present case it was not disputed between the parties and the Court finds it established that on 16 July 2001 the applicant was arrested and taken to the Sovetskiy District police department in Voronezh. Later that day he was admitted to the temporary detention centre in the police department. Following a medical examination of the applicant on his admission to the centre, a prison doctor drew up a report listing bruises on the applicant's nose and under both eyes (see paragraph 8 above). Another medical examination of the applicant performed on 20 July 2001 in the presence of the senior military prosecution investigator and two attesting witnesses produced an additional list of injuries, including bruises on both shoulders and below the left shoulder-blade (see paragraph 10 above).

53. The Court observes that in response to the findings in the medical reports the Government put forward one version of events, which could have led to the applicant sustaining at least some of his injuries.

54. In particular, citing materials of the prosecution inquiry into the applicant's ill-treatment complaints which they did not submit to the Court, the Government argued that the applicant had sustained injuries during a fight with one of the victims. However, the Court is not convinced by that explanation. As it appears from the materials of the police and prosecution inquiries produced by the applicant and the judgments of the criminal courts which had heard the applicant's case, that version of events was never considered by any domestic authority which had dealt with the applicant's complaints of ill-treatment. At the same time, having heard statements by the police officers who had insisted that the applicant had no visible injuries immediately after his arrest and having examined the record of the applicant's medical examination drawn up in the detention centre, the Military Court concluded that "physical force [had] been used against [the applicant]", although the court doubted the applicant's description of the extent of the force used against him (see paragraph 13 above). That finding prompted the Military Court to exclude from evidence the applicant's confession made on 16 July 2001, a pointless procedural action should the trial court have believed that the confession was voluntary and the applicant's injuries had resulted from the actions of a private individual.

55. The Court also does not lose sight of another version of events which was adduced by the prosecution authorities in their attempt to provide an explanation for the applicant's injuries. In particular, the Court finds it striking that despite the criminal courts' finding supporting, save for the extent of the violence, the applicant's account of the events of 16 July 2001, in a number of decisions the investigating authorities declared that the

applicant's injuries had been caused by his fellow officer on 15 July 2001 when the latter had hit the applicant on the ear in an attempt to stop him from committing suicide (see paragraphs 19 and 24 above). Without prejudice to the examination of the question of the effectiveness of the investigation into the applicant's complaints of ill-treatment which the Court is about to carry out, the Court considers it worth noting that, even assuming that the incident had in fact taken place, the investigator's explanation sits ill with the nature of the applicant's injuries as recorded in the medical reports on 16 and 20 July 2001 (see paragraphs 8 and 10 above). The Court is appalled by the fact that in the absence of any statements by the applicant or his fellow officer confirming that the latter had administered blows to the applicant's face or shoulders and in disregard of the police officers' statements that they had not observed any injuries on the applicant's face at the time of his arrest, the investigators concluded that the injuries could have resulted from the encounter between the applicant and the military officer.

56. At the same time the Court observes that the applicant provided a detailed description of the ill-treatment to which he had allegedly been subjected and indicated its place, time and duration. It notes the consistency of the allegations made by the applicant that he had been ill-treated by police officers while in custody, and the fact that he maintained his allegations whenever he was able to make statements freely before the investigating authorities or the domestic courts. The Court reiterates the Government's argument that the applicant did not make any complaints to the military prosecutor during the medical examination on 20 July 2001. However, it is not surprising that the applicant did not raise his grievances while still in the presence of the alleged offender. The Court cannot rule out the possibility that the applicant felt intimidated by the persons he had accused of having ill-treated him (see *Colibaba v. Moldova*, no. 29089/06, § 49, 23 October 2007, and *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 100, ECHR 2004-IV (extracts).

57. To sum up, if the Government considered the applicant's allegations to be 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. Indeed, the Government did not provide any satisfactory and convincing explanation as to how the applicant had acquired the injuries. The Court further notes that it was open to the respondent Government to submit a copy of the complete investigation file relating to the applicant's ill-treatment complaints. The Government, citing the ongoing investigation into the events of 16 July 2001, failed to provide the Court with any materials.

58. In these circumstances, bearing in mind the authorities' obligation to account for injuries caused to persons under 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*, cited above, §§ 104-105; and *Dedovskiy and Others v. Russia*, no. 7178/03, §§ 78-79, 15 May 2008). The Court shall therefore proceed to an 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

59. In paragraph 48 above, the Court found that the question as to whether the applicant's complaints under Article 3 of the Convention were premature in view of the ongoing investigation at national level was closely linked to the question as to whether the investigation into the events at issue was effective. It thus decided to join that 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.

60. 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 those responsible for them 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 expeditious. In

cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV). Consideration was given to the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV) and to the length of time taken for the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

61. Turning to the facts of the present case, the Court observes that the applicant was entirely reliant on the prosecuting authorities to assemble the evidence necessary to corroborate 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 the purpose of establishing the veracity of the applicant's account. The prosecutor's 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 27 above). The Court notes that the prosecution authorities, who had been made aware of the applicant's alleged beating, initiated an investigation which has not yet resulted in criminal proceedings against the perpetrators of the beating. The investigation was closed and reopened 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".

62. 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 Court considers it established that the applicant brought the allegations of ill-treatment to the attention of the authorities during an interview on 16 July 2001, complaining to the military prosecutor of the use of violence by the police and submitting a successful request for a medical examination (see paragraphs 9 and 10 above). Having attended the applicant's medical examination on 20 July 2001, the military prosecutor observed the physical sequelae which, according to the applicant, resulted from the beatings by the police. In this respect, the Court does not lose sight of the Russian law which imposes an obligation on domestic authorities to investigate cases when injuries to detainees are discovered (see paragraph 30 above). There is no indication in the law that the obligation only comes into play if a complaint of ill-treatment is lodged by a detainee himself. It appears that by

not linking the obligation to investigate to the presence of a complaint from a detainee, that legal provision has been designated to protect the interests of detainees, individuals in a vulnerable situation who due to intimidation and fear of reprisal are not inclined to complain of unlawful actions on the part of State agents.

63. However, in the present case the prosecuting authorities did not launch an investigation after having been apprised of the alleged beatings. They also disregarded the applicant's father's complaints that violence had been used against the applicant, citing a temporary lack of jurisdiction while the trial proceedings against the applicant were pending (see paragraph 16 above). Surprisingly, the applicant's father's complaint was addressed by the Voronezh Regional Police Department, a State authority whose employees were implicated in the events which were to be looked into (see paragraph 17 above). While the Court acknowledges the need for there to be internal inquiries by the police with a view to possible disciplinary sanctions in cases of alleged police abuse, it finds it striking that in the present case the initial investigative steps, which usually prove to be crucial for the establishment of the truth in cases of police brutality, were conducted by the police force itself (see, for similar reasoning, *Vladimir Fedorov*, cited above, § 69, and *Maksimov v. Russia*, no. 43233/02, § 87, 18 March 2010). In this connection the Court reiterates its finding made on a number of occasions that the investigation should be carried out by competent, qualified and impartial experts who are independent of the suspected perpetrators and the agency they serve (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 325, ECHR 2007-..., and *Oğur v. Turkey* [GC], no. 21594/93, §§ 91-92, ECHR 1999-III). Furthermore, although the thoroughness of the investigation will be examined below, the Court would already stress at this juncture that it is struck by the fact that, despite relying on the police officers' statements in the decision of 8 August 2002 and subsequent decisions, the investigator had not heard evidence from them in person. It appears that she merely recounted the officers' statements made during the internal inquiry. The Court, however, is mindful of the important role which investigative interviews play in obtaining accurate and reliable information from suspects, witnesses and victims and, in the end, the discovery of the truth about the matter under investigation. Observing the suspects', witnesses' and victims' demeanour during questioning and assessing the probative value of their testimony forms a substantial part of the investigative process.

64. In addition, no attempt was ever made to conduct a forensic medical 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 have a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118,

ECHR 2000-X). When a doctor writes a report after a medical examination of a person who alleges ill-treatment, it is extremely important that the doctor states the degree of consistency with the allegations of ill-treatment. A conclusion indicating the degree of support to the allegations of ill-treatment should be based on a discussion of possible differential diagnoses (non-ill-treatment-related injuries, including self-inflicted injuries, and diseases) (see *Barabanshchikov v. Russia*, no. 36220/02, § 59, 8 January 2009).

65. That was not done in the present case. Neither the applicant's medical examination on admission to the detention centre, nor his examination on 20 July 2001, complied with the above-mentioned requirements. The sole purpose of those examinations was to identify and make a record of possible injuries on the applicant's body. The medical specialists who had examined the applicant were not in a position to identify the nature and origin of his injuries or even to determine the period within which they could have occurred. The Court notes that a failure to request an expert opinion led, among other things, to the loss of opportunity to collect evidence of the alleged ill-treatment.

66. The Court further observes that, having been opened a year after the alleged incident of ill-treatment, the prosecution inquiry became protracted. The Court finds it striking that for a period of over three years between February 2004 and August 2007 there were no further developments. Since it was reopened in August 2007 the inquiry has been closed and reopened on a number of occasions; it is now pending and the police officers have not yet been committed to stand 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; *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, ECHR 2007-IX; and *Vladimir Fedorov*, cited above, § 70).

67. With regard to the thoroughness of the investigation, the Court notes a number of significant omissions capable of undermining its reliability and effectiveness. Firstly, the Court has already stressed that no evaluation was carried out with respect to the quantity and nature of the applicant's injuries. In issuing their decisions the investigators confined themselves to a restatement of the medical certificates which listed the injuries sustained by the applicant. The Court finds it striking that the investigator failed to order a forensic examination of the applicant or at least to take statements from the doctors attending the applicant.

68. Secondly, the Court observes that there was 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

statements made by the police officers involved in the incident. It appears from the presented materials that it was not until the reopening of the inquiry in 2007 that the investigating authorities heard the applicant in person for the first time. In addition, although excerpts from the applicant's and his father's complaints were included in the decisions on the refusals to institute criminal proceedings, the investigators did not consider their description of events to be credible, apparently because they reflected personal opinions and constituted an accusatory tactic by the applicant. However, the investigators did accept the police officers' statements 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 statements, as those made by the applicant and his father were deemed to be subjective but not those made by the police officers. The credibility of the latter statements 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).

69. The Court further observes that it was not until 2004 that the investigator questioned Mr L., who had allegedly hit the applicant while preventing the latter's attempt to commit suicide on 15 July 2001. The excerpts from Mr L.'s testimony were included in the decision of 6 February 2004 for the first time (see paragraph 24 above). The Court also finds it inexplicable that in disregard of direct orders from the Sovetskiy District Court and higher-ranking prosecutors, the investigator did not make any attempt to question other military officers who had observed the events on 15 July 2001 (see paragraph 21 above). In this connection, the Court notes that while the investigating authorities may not have been provided with the names of individuals who could have seen the applicant before his arrest or later at the police department or might have witnessed his alleged beatings, they were expected to take steps on their own initiative to identify possible eyewitnesses.

70. 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*, 25 September 1997, § 106, *Reports* 1997-VI). The Court would also like to stress that it is struck by the fact that having learned that violence had been used against the applicant in the police department, the domestic courts which had heard his criminal case remained completely indifferent to the situation and did not take any steps to put right that violation, in particular by calling the Russian prosecuting authorities to conduct an effective and prompt investigation into the events in question.

71. 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, expeditious 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 bringing his complaint to the Court (see *Angelova and Iliev*, cited above, § 103; *Mikheyev*, cited above, § 121; *Samoylov v. Russia*, no. 64398/01, § 45, 2 October 2008; and *Belousov v. Russia*, no. 1748/02, § 57, 2 October 2008). Furthermore the Court does not lose sight of the fact that the applicant lodged his application before the Court on 20 May 2003, after the inquiry into his complaints of ill-treatment was closed for the first time. The Court is mindful of the fact that after 20 May 2003 the prosecution closed the inquiry on two other occasions. Having been closed for the third time on 6 February 2004, the investigation was only reopened in August 2007, after the present case was communicated to the Government. Accordingly, the Court dismisses the Government's objection as to non-exhaustion of domestic remedies, in so far as it concerns the applicant's failure to await the outcome of the domestic criminal proceedings, 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: assessment of the severity of ill-treatment

(i) General principles

72. 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*, cited above, § 119, and *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports* 1996-V). 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*, cited above, § 93).

73. 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).

74. 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-XV (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*, 4 December 1995, § 38, A no 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

(ii) Application of the above principles in the present case

75. 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 a number of injuries (see paragraphs 57 and 58 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 department 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). It appears that the use of force was retaliatory in nature and aimed at debasing the applicant and forcing him into submission, most probably to obtain a statement from the applicant confessing to the murder. In addition, the treatment to which the applicant was subjected must have caused him mental and physical suffering.

76. Accordingly, having regard to the nature and extent of the applicant's injuries, the Court concludes that the State is responsible under Article 3 of the Convention on account of the inhuman and degrading treatment to which the applicant was subjected by the police and that there has thus been a violation of that provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

77. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that

they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. 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

79. The applicant claimed 53,556.96 euros (EUR) in respect of pecuniary damage, representing losses which he had incurred due to his conviction for murder. He further claimed EUR 132,261.82 in compensation for non-pecuniary damage.

80. The Government submitted that the damage claimed did not have any causal link to the violation alleged and the claims were, in any event, excessive and manifestly ill-founded.

81. The Court shares the Government's view that there has been no causal link between the violation found and the pecuniary damage claimed (see *Stašaitis v. Lithuania*, no. 47679/99, § 96, 21 March 2002; *Khudoyorov v. Russia*, no. 6847/02, § 221, ECHR 2005-X (extracts); and *Isayev v. Russia*, no. 20756/04, § 172, 22 October 2009).

82. 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 particularly grievous violation in the present case. The Court accepts that the applicant suffered humiliation and distress on account of 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, it awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

83. The applicant, relying on copies of vouchers, certificates and invoices confirming payments, also claimed EUR 1,166.71 for postal, travel and legal costs and expenses he incurred before the domestic courts and the Court.

84. The Government stressed that those expenses were unnecessary and unreasonable.

85. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum claimed in full, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

86. 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 Government's objection as to the exhaustion of domestic remedies in respect of the applicant's complaint about ill-treatment in July 2001, in so far as that objection concerns the fact that the criminal proceedings pertaining to his ill-treatment complaints are still pending, and *rejects* them;

2. *Declares* the complaint concerning the ill-treatment of the applicant by police officers and the ineffectiveness of the investigation into the incident admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the inhuman and degrading treatment to which the applicant was subjected on 16 July 2001 by the police officers;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the applicant's complaint about the inhuman and degrading treatment to which he was subjected on 16 July 2001 by the police officers;

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, the following amounts, to be converted into Russian roubles at the rate applicable on the date of settlement:

(i) EUR 15,000 (fifteen thousand euros) in respect of non-pecuniary damage;

(ii) EUR 1,166.71 (one thousand one hundred and sixty-six euros and seventy-one cents) in respect of costs and expenses incurred in the domestic proceedings and before the Court;

(iii) any tax that may be chargeable to the applicant on the above amounts;

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

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

Done in English, and notified in writing on 14 October 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President