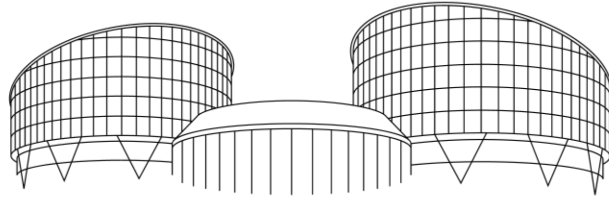

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF TIGRAN AYRAPETYAN v. RUSSIA

(Application no. 75472/01)

JUDGMENT

STRASBOURG

16 September 2010

FINAL

16/12/2010

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

In the case of Tigran Ayrapetyan 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 26 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 75472/01) 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 Tigran Khorenovich Ayrapetyan (“the applicant”), on 19 September 2001.

2. The applicant, who had been granted legal aid, was represented by Ms E. Liptser, a lawyer at the International Protection Centre in Moscow. The Russian Government (“the Government”) were represented by Mr P. Laptev, 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 police officers of the Otradnoe District Police Station of Moscow during his detention on 10 February 2001 and that there had been no effective investigation into his allegations of ill-treatment.

4. By a decision of 5 March 2009, the Court declared the application partly admissible.

5. The applicant and the Government both submitted further written observations (Rule 59 § 1), the Court having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1983 and lives in Moscow.

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

7. On 10 February 2001 at about 11 a.m. the applicant, who at the material time was a student, was arrested in a yard of school no. 970 by police officers while receiving a sum of money from another student.

8. The applicant was suspected of extortion and was taken to Moscow police station no. 184 ("the Otradnoe District Police Station of Moscow") where he was locked in an office.

9. The applicant submits that one of the police officers who had arrested him periodically entered the office, asked him questions and beat him.

10. The applicant was then taken to another office where two more police officers were present. The officers explained to him that he had the right not to give evidence against himself.

11. According to the applicant, they then started to ask him questions, which he refused to answer. All three officers started to beat him. One of them forced the applicant to stay in a half-squatting position while holding a metallic plate in his hands. The officer warned the applicant that if he failed to maintain the position, he would "get a kick in his chest".

12. Allegedly, when the applicant dropped the plate, he was kicked in the chest and the beatings resumed. At one point the applicant was kicked in the face. On the verge of losing consciousness, the applicant agreed to "sign all the papers", after which he was placed in a cell.

B. Medical examination at polyclinic no. 218

13. On the same day at about 10.10 p.m. the applicant was taken by a police officer to the casualty department of polyclinic no. 218 where he was examined by a doctor. The doctor concluded that the applicant's lower jaw was fractured and that he needed an urgent in-patient examination by a surgeon.

14. Following the doctor's examination, the applicant was taken back to the police station where he was once again placed in a cell. About an hour later the applicant was taken to another police station, no. 141, where his fingerprints were taken.

15. On 11 February 2001 at about 2 a.m. the applicant was released.

C. In-patient treatment in Moscow City Hospital no. 1

16. On the day of his release, the applicant was taken to Moscow City Hospital no. 1 (*Городская клиническая больница № 1 г. Москвы*) for in-patient treatment. The applicant was diagnosed as having a "fracture of the lower jaw in the area of the right condylar process accompanied by a dislocation of the articular head". The medical report further stated that "the lower jaw was abnormally mobile and the configuration of the face had changed due to a post-traumatic oedema in the right parotid area". In the course of his treatment the applicant underwent surgery to replant the articular head.

17. The applicant was discharged from hospital on 2 March 2001.

D. Criminal proceedings against the applicant

18. On an unspecified date criminal proceedings were instituted against the applicant, who was charged with extortion.

19. On 18 December 2001 the Butyrskiy Inter-Municipal Court of Moscow (*Бутырский межмуниципальный суд северо-восточного административного округа г. Москвы*) decided, on a request by the applicant, to terminate the criminal proceedings against him on the basis of an Amnesty Act in respect of minors and women passed by the State Duma on 30 November 2001.

20. On an unspecified date the applicant's defence counsel lodged an appeal against the decision of the Inter-Municipal Court claiming that the applicant was not guilty and that he should have been acquitted. The outcome of that appeal is unclear.

E. The investigation of the applicant's alleged ill-treatment

1. The applicant's complaints to various authorities

21. On 15 February 2001 the applicant lodged a complaint with the Head of the Internal Affairs Department of the Ministry of the Interior (*начальник Управления собственной безопасности МВД России*) stating that he had been subjected to ill-treatment by police officers. His complaint contained a detailed description of the events and of all three police officers involved. He also stated that one of them had participated in his earlier arrest and that another was called V.

22. It appears that on 19 February 2001 the applicant's mother lodged similar complaints with the Butyrskiy Inter-District Prosecutor's Office of Moscow (*Бутырская межрайонная прокуратура г. Москвы*) and the Moscow City Prosecutor's Office (*прокуратура г. Москвы*). The case was

assigned to Investigator G. of the Butyrskiy Inter-District Prosecutor's Office of Moscow.

23. On 16 April 2001 the applicant lodged a complaint with the Prosecutor of the Butyrskiy Inter-District Prosecutor's Office of Moscow. In his complaint the applicant submitted that no decision, whether to institute or refuse to institute criminal proceedings, had been taken so far on the basis of his allegations of ill-treatment. He further submitted that pressure had been exerted by the investigators of police station no. 184 on the witnesses in the criminal case against him and that his family had received threatening phone calls because they had complained that the applicant had been ill-treated.

24. On 21 May 2001 the applicant's mother lodged a complaint with the Prosecutor General's Office (*Генеральная прокуратура РФ*). In her complaint she once again raised the issue of the applicant's ill-treatment by the police officers. She further submitted that since 19 February 2001 no effective investigation had been carried out. The case had been transferred from one investigator to another and no forensic medical examination had yet been ordered. She also alleged that their family had received threatening phone calls.

2. Decision to open a criminal case in respect of the applicant's complaints

25. By a letter of 21 May 2001 Investigator G. informed the applicant's mother that:

> "... on 21 May 2001 criminal proceedings no. 5649 have been instituted under Article 286 § 3 of the Criminal Code [(*Уголовный кодекс РФ*)] on the basis of your complaint about the physical injuries caused to [the applicant]".

3. Forensic medical examination of the applicant

26. On 29 May 2001 Investigator G. ordered a forensic medical examination to be carried out. The investigator found that:

> "On 10 February 2001 [the applicant] was arrested on suspicion of having committed an offence by police officers of Otradnoe District Police Station of Moscow [(*Отделение внутренних дел района Отрадное г. Москвы*)]. On 11 February 2001 [the applicant] was placed in Moscow City Hospital no. 1 as a result of physical injuries which, according to [him], had been inflicted by police officers."

27. A number of questions were put to the forensic expert. The latter was also provided with the applicant's medical file.

4. The applicant's complaints in respect of alleged irregularities of the investigation and request for access to the case file

28. On 8 June 2001 the applicant's mother lodged a complaint with Investigator G. In her complaint she submitted that during the medical

examination carried out on 6 June 2001 she had discovered that certain vital documents were missing from the applicant's medical file. In particular, she drew attention to the doctor's conclusion, in which, besides the diagnosis and need for urgent hospitalisation, it was also allegedly stated that the applicant had been brought to the casualty department by a police officer. The applicant's mother alleged that this document had been deliberately destroyed in order to substantiate the version of events put forward by the police, according to which the applicant had been released from the police station at 10.10 p.m. on 10 February 2001.

29. On 13 and 14 June 2001 the applicant's mother lodged similar complaints with the prosecutor of the Butyrskiy Inter-District Prosecutor's Office of Moscow and the Moscow City Prosecutor's Office respectively, requesting an inquiry to be carried out. In addition, she requested permission to familiarise herself with the materials in case no. 5649 in the presence of a public official.

30. By letter of 14 June 2001 Investigator G. informed the applicant's mother that access to the case file could not be granted as, in accordance with the relevant rules of procedure, the victim, the accused, the civil plaintiff and the defendant could familiarise themselves with the case file only after the investigation had been completed.

31. On an unspecified date before 5 July 2001, the head of a local human rights NGO, the Committee for Civil Rights (*Комитет за гражданские права*), acting as the applicant's defence counsel, sent a letter to the Moscow City Prosecutor complaining of the ineffective nature of the investigation into the applicant's allegations of ill-treatment. In his letter the defence counsel alleged that police officers B. (last name) and V. (first name) had participated in the beating of the applicant. He further alleged that police officer B. had been exerting pressure on witnesses in the criminal case against the applicant. As a result, the witnesses had confirmed B.'s version of events, according to which the applicant fell and injured his jaw during his arrest.

32. By letter of 7 August 2001 the acting head of the Department for Supervision of Investigation at the Moscow City Prosecutor's Office (*и.о. начальника Управления по надзору за следствием при прокуратуре г. Москвы*) informed the applicant's defence counsel that the criminal case against police officers of Otradnoe Police Station was being examined by the Butyrskiy Inter-District Prosecutor's Office. The letter stated that “a medical examination had been carried out and a number of witnesses had been questioned”. It was further stated that “the investigation was being supervised”.

5. Decision to stay the investigation

33. On 23 August 2001 Investigator G. decided to stay the preliminary investigation of criminal case no. 5649 on the grounds that “the person against whom charges should be brought had not been identified”.

34. On 18 September 2001 the applicant's mother applied to Investigator G. seeking to obtain a copy of the decision to stay the preliminary investigation.

6. Decision to resume the investigation

35. By letter of 28 September 2001 the Deputy to the Butyrskiy Inter-District Prosecutor (*заместитель Бутырского межрайонного прокурора г. Москвы*) informed the applicant's mother that the decision to stay the preliminary investigation had been set aside and that the investigation had been resumed and assigned to Investigator Ye. of the Butyrskiy Inter-District Prosecutor's Office of Moscow (*следователь Бутырской межрайонной прокуратуры г. Москвы Е.*). A letter along similar lines dated 1 October 2001 was received by the applicant's father from Investigator Ye.

36. By letter of 23 October 2001 the Moscow City Prosecutor's Office informed the applicant's defence counsel, in reply to his complaint about the ineffective nature of the investigation, that “the preliminary investigation had been resumed and the necessary investigative measures were being taken”. The letter also stated that “no evidence of pressure by the police officers of Otradnoe Police Station on witnesses or on the applicant's family had been found”. It was further stated that “the investigation was being supervised”.

7. Decision to terminate the investigation

37. By letter of 28 October 2001 Investigator Ye. informed the applicant and his parents that:

> “criminal proceedings no. 5649 ... have been terminated on 28 October 2001 ... owing to the lack of evidence of any crime having been committed.”

38. It appears that the applicant's mother lodged an appeal against that decision with the Moscow City Prosecutor's Office.

8. Replies of the authorities to the applicant's complaints and requests for access to the case file

39. On 9 November 2001 she also requested permission to familiarise herself with the materials in criminal case no. 5649.

40. By letter of 19 November 2001 she was informed by Investigator Ye. that:

> “... The legislation does not permit the parties to criminal proceedings to obtain copies of the case-file materials.
>
> According to the law, only the accused, the victim and their counsel have the right to familiarise themselves with the materials in the case file. Your status, as well as the status of [the applicant] and [his father], is that of a WITNESS. Therefore, you do not have the right to familiarise yourself with the materials in the case file.
>
> Since the termination of the present criminal case affects the lawful interests of [the applicant], only he, after lodging a relevant request, will be allowed to familiarise himself with the decision, and only the decision, to terminate the criminal proceedings.”

41. By letter of 11 January 2002 the Moscow City Prosecutor's Office informed the applicant's mother and defence counsel that the decision of 28 October 2001 “had been found to be lawful and substantiated”. The City Prosecutor's Office also forwarded to the Butyrskiy Inter-District Prosecutor's Office the complaint of the applicant's mother and his defence counsel about the lack of access to the case file.

42. By letter of 21 January 2002 the Deputy to the Butyrskiy Inter-District Prosecutor informed the applicant's mother that as witnesses neither she, nor the applicant or his father, had the right to have full access to case file no. 5649. They could, however, familiarise themselves with the relevant decision to terminate the criminal proceedings by coming to the Butyrskiy Inter-District Prosecutor's Office at a convenient time. The letter further stated that “there were no grounds for transferring criminal case no. 5649 to another prosecutor's office in Moscow for a further investigation, or for imposing criminal liability on police officer B. and other persons, or for imposing disciplinary sanctions on Investigator Ye”.

43. By letter of 28 February 2002 the acting head of the Department for Supervision of Investigation at the Moscow City Prosecutor's Office informed the applicant's mother, in reply to her complaint about the ineffective nature of the investigation, that “the allegations of ill-treatment by police officers are not corroborated by the materials in the case”. In the letter it was further stated that “there was no evidence that the investigation was not being carried out in an objective way or that Investigator Ye. had threatened witnesses”.

44. By letter of 7 March 2002 the acting head of the Department for Supervision of Investigation at the Prosecutor General's Office (*и.о. начальника Управления по надзору за расследованием преступлений органами прокуратуры при Генеральной прокуратуре РФ*) informed the applicant's counsel, in reply to his complaint, that the General Prosecutor's Office had examined the applicant's case and the relevant materials. It had been found that the applicant had attempted to flee during his arrest on 10 February 2001. Therefore, the police officers had had to apply force, as a result of which the applicant had fallen and fractured his jaw. There was no criminal element in the actions of the police officers and,

therefore, there were no grounds for reversing the decision to terminate the criminal proceedings.

9. Decision to resume the investigation

45. According to the Government, on 11 June 2002 the investigation was reopened and transferred to the Moscow City Prosecutor's Office. Some time later, police officer B. was charged with abuse of office under Article 286 of the Criminal Code. The investigation established that on 10 February 2001 at around 12 midnight. the police officer B. escorted the applicant to Moscow police station no. 184 on suspicion of extortion. In office 5 of the station he inflicted blows to the applicant's jaw with his right fist with a view to forcing the applicant to confess.

46. On 2 July 2003 the investigation in this case was completed and the case file was sent for examination to a trial court.

47. According to a judgment dated 10 February 2006, the Butyrskiy District Court of the city of Moscow had examined police officer B.'s alleged actions and acquitted him in respect of the episode involving the applicant. The court, having questioned a number of witnesses, including the applicant, his family members as well as the doctors and police officers, found that the statements and other evidence collected by the investigation had been too confusing and contradictory to enable the court to conclude with sufficient certainty that the injuries in question had indeed been inflicted by officer B.

48. In particular, in respect of the statements given by the applicant during the trial, the court stated as follows:

> "... The court is critical in respect of the statements made by [the applicant during the trial] and does not trust them, since they are self-contradictory as well as incompatible with the objective information contained in the case file. From his statements it is clear that he believes that the blows were inflicted on him by B., and not anyone else, and that it is his presumption. At the same time, under [domestic law] all doubts concerning the guilt of the accused which cannot be eliminated in accordance with the Code of Criminal Procedure are interpreted in favour of the accused. Also, the court considers that by giving these statements, the applicant is trying to defend himself and the extortion committed by him by showing that his initial confessions were motivated by police coercion. Later, however, [the criminal case against the applicant] was discontinued owing to an Amnesty Act, that is, on the basis of non-rehabilitative grounds ..."

49. Having examined some further witnesses, including the family of the applicant and the medical personnel who carried out the medical examination of the applicant, the court noted that:

> "... All the statements by witnesses ... to which the prosecution is referring, do not prove the guilt of B. in connection with [the crime], since they only indirectly confirm the fact that injuries were inflicted on [the applicant],on the basis of the descriptions made by [the applicant himself]."

50. The court noted that the police officers who had been on duty on 10 February 2001 had consistently stated that no coercion or violence had been used in respect of the applicant.

51. The court further noted that it had examined the two medical examination reports submitted in the prosecution case file, both confirming the existence of the injuries on the applicant's body. The court accepted one of them as evidence in the case and rejected the other on the grounds that the prosecution had failed to comply with legal requirements concerning the use of copies of documents and the methodology of the examination.

52. The court did not elaborate on other possible causes of the applicant's injuries, having limited the analysis to the issue of B.'s involvement in the incident. At the same time, the court stated that:

> "... [it] takes note of the fact that the bodies involved in the preliminary investigation, by bringing criminal proceedings in respect of B. on a request by [the applicant], took the decision not to initiate criminal proceedings in respect of N., Ch., Sh. [other police officers], even though [the applicant himself] had sought a finding of liability in respect of all of the persons mentioned, and thus accepted [the applicant's] application only in part..."

53. The judgment of 10 February 2006 was upheld on appeal by the Moscow City Court on 29 March 2006.

54. In particular, the City Court agreed with the District Court's conclusion concerning the assessment of admissibility of the medical examinations of the applicant. The City Court specifically noted that in a decision of 30 July 2002 the investigator in charge of the case had acknowledged that:

> "... medical documents and x-rays of [the applicant] from polyclinic no. 218 and Moscow City Hospital no. 1 could not be submitted for expert examination because they had been lost by an investigator of [the local prosecutor's office] ..."

55. The court further noted that:

> "As can be seen from the case file, the court was unable to locate the original medical documents in question confirming [the applicant's injuries], as attested by the reply of 12 December 2005 no. 34 15 2002 066057 from the Moscow City Prosecutor's Office ..."

II. RELEVANT DOMESTIC LAW

A. Applicable criminal offences

56. Article 21 § 2 of the Constitution provides that no one may be subjected to torture, violence or any other cruel or degrading treatment or punishment.

57. Article 286 § 3 (a) of the Criminal Code provides that actions of a public official which clearly exceed his authority and entail a substantial violation of the rights and lawful interests of citizens, committed with violence or the threat of violence, shall be punishable by three to ten years' imprisonment with a prohibition on occupying certain posts or engaging in certain activities for a period of three years.

B. Official investigation of crimes

58. Article 109 of the Code of Criminal Procedure of 1961 (*Уголовно-процессуальный кодекс РСФСР*), as in force at the relevant time, provided that a prosecutor, investigator, inquiry body or judge were obliged to consider applications and information about any crime committed, and to take a decision on that information within three days. In exceptional cases, this time-limit could be extended to ten days. The decision should be either a) to institute criminal proceedings, or b) to refuse to institute criminal proceedings, or c) to transmit the information to another competent authority.

59. Article 209 of the Code provides that in order to terminate the proceedings the investigator should adopt a reasoned decision with a statement of the substance of the case and the reasons for its termination. A copy of the decision to terminate the proceedings should be forwarded by the investigator to the prosecutor. The investigator should also notify the victim and the complainant in writing of the termination of the proceedings and the reasons for that, and explain how they could appeal against that decision. An appeal against the decision to terminate proceedings could be lodged with the prosecutor or a court within five days of the date of notification of the decision.

60. Under Article 210 of the Code, the prosecutor could reverse the above decision of the investigator and reopen the proceedings.

61. Under Article 211 of the Code, the prosecutor was responsible for the general supervision of the investigation. In particular, the prosecutor could order that specific investigative activities be carried out, transfer the case from one investigator to another, or reverse unlawful and unsubstantiated decisions taken by investigators and inquiry bodies.

THE LAW

I. COMPLIANCE WITH ARTICLE 38 § 1 (a) OF THE CONVENTION

62. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (see *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 70, ECHR 1999-IV). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. Failure on a Government's part to submit such information which is in their hands, without a satisfactory explanation, may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention (see *Timurtaş v. Turkey*, no. 3531/94, § 66, ECHR 2000-VI). In a case where the application raises issues of the effectiveness of the investigation, the documents of the criminal investigation are fundamental to the establishment of facts and their absence may prejudice the Court's proper examination of the complaint both at the admissibility stage and at the merits stage (see *Tanrıkulu*, cited above, § 70).

63. The Court observes that on 10 March 2009 it requested the Government to submit a copy of the file of the investigation opened into the events of 10 February 2001. The evidence contained in that file was regarded by the Court as crucial to the establishment of the facts in the present case. The Government failed to reply to this request.

64. The Court notes that the Government did not provide any explanation to justify withholding the key information requested by the Court.

65. Having regard to the importance of cooperation by the respondent Government in Convention proceedings and the difficulties associated with the establishment of the facts in cases such as the present one, the Court finds that the Russian Government fell short of their obligations under Article 38 § 1 (a) of the Convention on account of their failure to submit copies of the documents requested in respect of the events of 10 February 2001.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

66. Under Articles 3 and 13 of the Convention the applicant complained that he had been ill-treated by the police officers on 10 February 2001. He

also complained that the authorities had failed to carry out a proper investigation in this connection. The Court finds it appropriate to examine these grievances under Article 3 of the Convention which provides as follows:

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

A. The parties' submissions

67. The Government disagreed with the applicant's complaints and allegations, having relied on the judgment of the Butyrskiy District Court of 10 February 2006. They argued that in the course of the domestic proceedings the applicant's allegations of ill-treatment had been thoroughly investigated and had been found to have been unproven. Accordingly, the application should be rejected as unsubstantiated.

68. The applicant maintained his complaints. In particular, he claimed that the case file contained sufficient evidence of ill-treatment and that the ensuing investigation had fallen short of the requirements of Article 3 under its procedural head.

B. The Court's assessment

1. *Alleged ill-treatment by State officials*

(a) General principles

69. The Court has observed on many occasions that Article 3 of the Convention enshrines one of the fundamental values of democratic societies and as such prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see, for example, *Aksoy v. Turkey*, 18 December 1996, § 62, *Reports of Judgments and Decisions* 1996-VI, and *Aydın v. Turkey*, 25 September 1997, § 81, *Reports* 1997-VI). The Court further indicates, as it has held on many occasions, that the authorities have an obligation to protect the physical integrity of persons in detention and that in assessing evidence it has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). 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.

70. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). The Court further reiterates that, being sensitive to the subsidiary nature of its role and cautious in taking on the role of a first-instance tribunal of fact, it is nevertheless not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case (see, by contrast, *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B; see also *Matyar v. Turkey*, no. 23423/94, § 108, 21 February 2002, and *Vidal v. Belgium*, 22 April 1992, §§ 33 and 34, Series A no. 235-B).

(b) Assessment of the evidence

71. In the present case it is undisputed between the parties that on the evening of 10 February 2001 the applicant was examined by a doctor at polyclinic no. 218 who concluded that the applicant's lower jaw had been fractured and recommended in-patient treatment (see paragraph 13). Between 11 February and 2 March 2001 the applicant underwent surgery and in-patient treatment in Moscow City Hospital no. 1 in this connection (see paragraphs 16 and 17). The existence of the injuries strongly supported the applicant's account of events. Indeed, regard being had to the fact that the prosecution case against officer B. was based on, among other things, medical reports confirming the above injuries (see paragraph 51), it can be said that the authorities conceded that the allegations had been credible.

72. The Court also takes note of its conclusions made in respect of the procedural aspect of Article 3 of the Convention (see paragraphs 83 and 84 below) and in particular the findings concerning the authorities' failure to react swiftly to the applicant's complaints as well as the irretrievable loss of the original documents of the applicant's medical files from polyclinic no. 218 and Moscow City Hospital no. 1.

73. The Court reiterates its established case-law that strong presumptions of fact will arise in respect of proven injuries occurring during detention and that the burden of proof is reversed and may be regarded as resting on the authorities to provide a satisfactory and convincing explanation for the injuries in question (see *Ribitsch* and *Salman*, both cited above). The Court considers that, likewise, in situations such as that in the present case, it is for the respondent Government to discharge the burden of proof and to provide a satisfactory and convincing explanation for the origin of those injuries on pain of recognition that the applicant's allegations of ill-treatment are truthful and correct.

74. In respect of the facts, the Court notes that even though at a certain stage of the investigation attempts had been made to explain the applicant's fractured jaw by his possible fall during the arrest (see paragraphs 31 and

44), this version was ultimately rejected by the prosecution in favour of the applicant's account of the events (see paragraph 45) and in any case was not adopted by the Government in the Strasbourg proceedings. Since the Government did not provide the Court with copies of the decisions analysing that version, as well as copies of documents and evidence on which it may have been based, the Court does not find it possible to speculate on its well-foundedness and concludes that no satisfactory and convincing explanation for the origin of the applicant's injuries has been obtained or advanced either at the domestic level, or in the proceedings before this Court. Without prejudice to the question of the personal criminal liability of the alleged perpetrators of the acts in question, the Court concludes therefore that the Government failed to discharge its burden and that it was not satisfactorily established that the applicant's account of events had been inaccurate or otherwise erroneous.

75. Accordingly, the Court accepts the description of the events of 10 February 2001 as submitted by the applicant.

(c) Assessment of the severity of ill-treatment

76. The Court notes that it has accepted the facts as presented by the applicant, namely, that he was detained by State officials and, while in custody, severely beaten (see paragraph 75 above and paragraphs 8-12 in the Facts section).

77. The Court notes that at the time of the incident the applicant had just turned eighteen years old and that the ill-treatment inflicted on the applicant caused severe physical and mental suffering which required almost three weeks of in-patient treatment in a hospital. Given these considerations and in view of the Convention case-law in this respect and in particular the criteria of severity and the purpose of the ill-treatment (see, among other authorities, *İlhan v. Turkey* [GC], no. 22277/93, § 85, ECHR 2000-VII), the Court is satisfied that the accumulation of the acts of physical violence inflicted on the applicant amounted to torture in breach of Article 3 of the Convention.

2. Alleged inadequacy of the investigation

78. The Court will now turn to the question whether the respondent Government have complied with its procedural obligations under Article 3 of the Convention in relation to the episode in question.

(a) Existence of an arguable claim of ill-treatment

79. In view of the applicant's injuries confirmed by medical personnel of polyclinic no. 218 and Moscow City Hospital no. 1 (see paragraphs 13 and 16), the body of evidence referred to by the trial court in its judgment of 10 February 2006 and the fact that the domestic authorities had considered

these items of evidence to be sufficiently serious to lay the basis of criminal charges against police officer B. and to refer the case for trial (see paragraph 45), the Court finds that the applicant had an arguable claim that he was seriously ill-treated by the State officials.

(b) General principles relating to the effectiveness of the investigation

80. The Court reiterates that where an individual raises an arguable claim that he or she has been seriously ill-treated by the police 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. The effective official investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others*, 28 October 1998, § 102, *Reports* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny and that the competent authorities must act with exemplary diligence and promptness (see, for example, *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005).

(c) Application of those principles

81. The issue thus arises as to whether the authorities complied with their obligation to carry out an effective official investigation into the matter.

82. At the outset the Court notes that, despite the Government's failure to provide a copy of the investigation file in respect of the events of 10 February 2001, and even from the fragmented information made available to the Court by the parties, it is clear that the investigation into the events fell short of the requirements of the procedural aspect of Article 3. The competent authorities failed to act with diligence and promptness and, more generally, given the omissions and shortcomings in the investigation process, it is questionable whether the investigation was in any way capable of leading to the identification and punishment of those responsible.

83. In this connection, the Court observes that the investigation into the events commenced only three months after the relevant requests by the applicant and his family (see paragraphs 21-25). Given that the applicant had a fractured jaw (see paragraphs 13 and 16) and made very specific allegations against easily identifiable persons about the events which took place at known and accessible locations (see paragraphs 8-12), the Court finds that a prompt reaction by the investigation authorities, including examining the applicant, the locations at issue, all persons allegedly

involved as well as identifying possible witnesses and securing any evidence which could have otherwise been lost due to the lapse of time, was crucial. It is clear that the authorities failed to react with the requisite promptness and that this failure had a serious negative impact on the quality and effectiveness of the investigation.

84. The Court also deplores the loss by the investigative authorities of the applicant's original medical documents and x-rays from polyclinic no. 218 and Moscow City Hospital no. 1, acknowledged by the investigator in a decision of 30 July 2002 (see paragraph 54). The Court is of the view that given the late reaction by the authorities to the applicant's initial complaints (see paragraph 83 above), the existence and continued presence of such evidence in the case file was crucial to further investigation of the applicant's claims and its loss resulted in irreparable damage to the authorities' ability properly to investigate the cause of the applicant's injuries and to present the case for trial.

85. Lastly, from the documents available to the Court it seems that between February 2001 and June 2002, at least, the applicant did not enjoy the status of a victim in the criminal proceedings at issue, had limited access to information about the investigation, could not obtain copies of the decisions to stay, terminate and resume the proceedings, and was unable to contest the relevant actions of the investigative authorities in court, most of his complaints and inquiries having been replied to by letters phrased in general terms (see paragraphs 30, 35, 40, 42 and 45 above).

86. Given those shortcomings, the Court does not find it surprising that the investigation was stayed (see paragraph 33) and on at least one occasion terminated with reference to the “lack of evidence of any crime having been committed” (see paragraph 37), that the criminal charges, largely based on witness statements and not on any material evidence, were brought only against one of four allegedly implicated officers and that they were not accepted by the domestic courts and resulted in an acquittal (see paragraphs 45-55).

87. In the absence of any plausible explanation by the Government for these mistakes, the Court finds that the principal reason for these errors lay in the manifest negligence of the investigative authorities in charge of the case between February 2001, when the applicant brought his complaints to their attention, and July 2002, when it became clear that crucial evidence in the case had been irretrievably lost.

88. Accordingly, the Court finds that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's allegations of ill-treatment.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

90. The applicant claimed compensation of 50,000 euros (EUR) in respect of non-pecuniary damage.

91. The Government argued that the finding of a violation in the case would constitute sufficient compensation.

92. The Court observes that it has found above that the authorities subjected the applicant to torture, in breach of Article 3 of the Convention. Under this provision it has also found that there was no effective investigation in respect of the events of 10 February 2001. Having regard to the applicant's young age, the seriousness of the violations of the Convention as well as to its established case-law (see *Mikheyev v. Russia*, no. 77617/01, § 163, 26 January 2006, and *Selmouni v. France* [GC], no. 25803/94, § 123, ECHR 1999-V), the Court awards the applicant EUR 35,000 for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

93. The applicants did not submit any claims under this head and the Court accordingly makes no award in respect of costs and expenses.

C. Default interest

94. 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. *Holds* that there has been a failure to comply with Article 38 § 1 (a) of the Convention in that the Government did not submit the documents requested by the Court;

2. *Holds* that there has been a violation of both the substantive and procedural aspects of Article 3 of the Convention;

3. *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 35,000 (thirty five thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant on this amount, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 16 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen — Registrar

Christos Rozakis — President