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

FIFTH SECTION

CASE OF AKULININ AND BABICH v. RUSSIA

(Application no. 5742/02)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

02/01/2009

This judgment may be subject to editorial revision.

In the case of Akulinin and Babich v. Russia,

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

Peer Lorenzen, *President,*
Rait Maruste,
Volodymyr Butkevych,
Anatoly Kovler,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 September 2008,

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

PROCEDURE

1. The case originated in an application (no. 5742/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Russian nationals, Mr Semen Yuryevich Akulinin and Mr Vladimir Aleksandrovich Babich ("the applicants"), on 15 January 2002.

2. The applicants were represented by Ms O. Mikhaylova and Ms K. Moskalenko, lawyers from the International Protection Centre in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that they had been severely beaten by police officers and that there had been no effective investigation of their complaints of ill-treatment.

4. On 4 March 2006 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1983 and 1981 respectively and live in Moscow.

7. On 14 September 2000 the first applicant was arrested on suspicion of having hijacked a car together with the second applicant and a Mr F., and was brought to Fili-Davydkovo police station. According to the first applicant, three police officers beat him severely, kicking him in the head and back, to force him to confess to twenty-five hijacking incidents which had occurred in that district of Moscow. After his resistance had worn down, the first applicant wrote a statement, prompted by the police officers, confessing to a car theft. The record of his arrest was drawn up at 3 p.m.

8. On the same day police officers arrested the second applicant. The second applicant submitted that on his arrest he had been placed in the boot of a car and had been brought to Fili-Davydkovo police station, where police officers had beaten him up and had forced him to confess to a car theft.

9. On 15 September 2000 the acting Kuntsevo district prosecutor questioned the applicants about their participation in hijacking incidents and authorised their release on their own recognisance. According to the Government, the applicants did not complain to the prosecutor about any police brutality.

10. On 16 and 18 September 2000 the applicants were examined in hospital no. 79 in Moscow. The first applicant was diagnosed with a compression fracture of the bodies of the 1st and 2nd vertebrae and the second applicant was diagnosed with injuries to the right side of the chest and neck. The first applicant was suffering from severe back pain, for which he was prescribed treatment and given a medical corset. For approximately four months he wore the corset and underwent medical treatment.

11. The applicants complained to the Kuntsevo district prosecutor that they had been ill-treated in the police station after their arrest. In November 2000 the Kuntsevo district prosecutor's office initiated an inquiry into the applicants' complaints.

12. On 22 January 2001 a senior assistant of the Kuntsevo district prosecutor declined to institute criminal proceedings against the police officers, finding no criminal conduct in their actions (Article 5 § 2 of the Code of Criminal Procedure). The decision read as follows:

> "On 16 and 18 September 2000 the Fili-Davydkovo [police department] was informed by hospital no. 79 in Moscow that on those dates Mr F., [the second applicant] and [the first applicant] had on their own initiative requested medical assistance at hospital no. 79, where Mr F.... was diagnosed with..., [the second

applicant] was diagnosed with an injury to the neck and the right side of the chest and [the first applicant] was diagnosed with a compression fracture of the 1st and 2nd vertebrae. Mr F., [the second applicant] and [the first applicant] explained that on 14 September 2000 they had been beaten up by police officers in Fili-Davydkovo police station.

...

[The first applicant], a minor, questioned in the presence of his mother, stated that on the night on 14 September 2000 he, Mr F. and [the second applicant] had hijacked two cars...; he had been arrested by police officers and brought to the duty unit of Fili-Davydkovo police station; after his arrest, on 14 September 2000 at approximately 8.30 a.m. a police officer, whom [the first applicant] could not name, had entered the duty unit of Fili-Davydkovo police station and had taken [the first applicant] to his office on the second floor. In the course of the interview the police officer had urged [the first applicant] to confess to having committed a crime, kicked him several times in the small of the back and at the same time demanded that [the first applicant] confess to several other hijackings which he had not committed. Other police officers in plain clothes had entered the office where [the first applicant] was being questioned; they had hit [the first applicant] in different parts of his body and had demanded that he name the persons with whom he had committed criminal offences on 14 September 2000 and indicate their addresses. After his written confession ... had been obtained, he had been brought back to the duty unit of Fili-Davydkovo police station. On 15 September 2000, after a measure of restraint in the form of a written undertaking had been imposed, [the first applicant] had been sent home. On 18 September 2000 he had sought medical assistance at hospital no. 79, where he had been diagnosed with a compression fracture of the 1st and 2nd vertebrae and had undergone treatment until 19 December 2000.

According to forensic medical report no. 7867/17801 of the Bureau of Forensic Medicine, when [the first applicant] requested a medical examination no injuries were recorded on his body and the diagnosis of ‘an injury of the lumbar spine’ was not confirmed by objective clinical data and could not be subjected to forensic medical identification.

When questioned on 15 September 2000 by the acting Kuntsevo district prosecutor, [the first applicant] stated that on 14 September 2000 he had been arrested by police officers on suspicion of having stolen cars in the district under the jurisdiction of the Fili-Davydkovo police department. He did not complain about the conduct of the police officers, stating that the police officers had not used force or any other pressure against him.

The mother of the minor, [the first applicant], Ms A., who was questioned in the presence of Ms L., a lawyer from no. 10 Bar Association, stated that on 14 September 2000 at approximately 6 p.m. she had received a phone call from Fili-Davydkovo police station and had been informed that her son had been arrested on suspicion of a crime and had been kept in Fili-Davydkovo police station. On 14 September 2000 at approximately 7.30 p.m., Ms A. arrived at Fili-Davydkovo police station. From a conversation with an investigator she learned that her son had been arrested for having committed a hijacking in the district under the jurisdiction of the Fili-Davydkovo police department. The investigator allowed her to see and give food to her son. During a conversation in Fili-Davydkovo police station on 14 September 2000 her son did not complain about the state of his health and did not say anything about being

beaten by police officers. On 15 September 2000 at 5.50 p.m. Ms A. took her son home... On 16 September 2000 her son complained to her of pain in his back and claimed that he had been beaten up by police officers in Fili-Davydkovo police station. Ms A. did not attribute sufficient weight to her son's complaints and decided to treat him herself. On 18 September 2000 she and her son sought medical assistance at hospital no. 79, where he was diagnosed with a compression fracture of the 1st and 2nd vertebrae. Her son underwent treatment and was on sick leave from 18 September to 19 December 2000.

...

[The second applicant] gave similar explanations, asserting that on 16 September 2000 he had sought medical assistance at hospital no. 79, where he had been diagnosed with an injury to the neck and [an injury] to the right side of the chest; he had not requested sick leave. He did not make any claims in respect of the police officers.

An investigator from the Fili-Davydkovo police department, ... Mr E., stated that on 14 September 2000, ... [the first applicant] had been arrested at 3 p.m. ... and [the second applicant] at 9 p.m.; they had been questioned as suspects in relation to criminal case no. 6533 ... in the presence of a lawyer, Mr M. In the course of the interview the arrested persons did not make any complaints in respect of the police officers and did not complain about the state of their health; after a measure of restraint in the form of a written undertaking had been imposed, they were released on 15 September 2000.

Mr L., a police officer at Fili-Davydkovo police station, explained during questioning that ... he had not questioned [the first and second applicants], the arrested persons, and had not obtained any written statements from them; he had not used any physical or psychological pressure against them.

Another police officer, Mr Sh., stated during questioning that on 15 September 2000 he had been in his office, no. 23. An arrested person ([the first applicant], as it transpired later) suspected of having committed a hijacking had been there. The police officers, whose last names he did not know because he had worked in the police station for only about two months, had questioned [the first applicant]. The police officers asked [the first applicant] questions pertaining to car thefts; they had not used any physical, psychological or other pressure against [the first applicant].

A junior police officer of the Fili-Davydkovo police department, Mr Ma., gave a similar statement, asserting at the same time that when [the second applicant] had been brought from [his] place of residence he had not put him under any physical, psychological or other pressure. The arrestees had voluntarily, without duress, given statements pertaining to hijackings committed in the district under the jurisdiction of the Fili-Davydkovo police department.

Another police officer, Mr A., stated when questioned that on 14 September 2000 he had had a conversation with [the first applicant], who had informed him that he, Mr F. and [the second applicant] had stolen cars in the district covered by the police department. When he had talked to [the first applicant], he had not used any physical or other pressure against [him]. Moreover, he, Mr A., had been involved in [the second applicant's] transfer [to the police station]. During the transfer Mr A. and the other police officers had not used any force or other pressure against the arrestees.

> After [the second applicant] and Mr F. had been brought to the police station, Mr A. had talked to them in his office about car thefts committed by them. Mr F. and [the second applicant] had voluntarily, without duress, confessed to two hijackings in the district of the police department. Mr A. had not used physical, psychological or other pressure against the arrestees.
>
> Hence, no objective data and evidence confirming the use of physical or other pressure by the police officers against [the first and second applicants] ...was gathered during the inquiry.
>
> In view of the above, [I] conclude that there is no indication of a criminal offence ... in the police officers' actions.
>
> However, the inquiry established that a minor, [the first applicant], had been held for a protracted period in Fili-Davydkovo police station before an investigator took the decision to detain [the applicants] ... Following [the first applicant's arrest] at 3 p.m.... and [the second applicant's] arrest at 9 p.m., they were held in the duty unit of Fili-Davydkovo police station and were not transferred to the detention unit at Krylatskoye police station. On discovering these violations of the law the prosecutor's office issued a decision addressed to the head of the Fili-Davydkovo police department."

The decision of 22 January 2001 was not served on the applicants.

13. The applicants were committed to stand trial before the Kuntsevo District Court of Moscow ("the District Court"). On 9 February 2001 the District Court, composed of the presiding judge B. and two lay assessors P. and F., remitted the criminal case for additional investigation and dismissed the request for release of the second applicant, who had been remanded in custody on 22 November 2000. The District Court held that "the defendants had committed serious criminal offences" and that there were no grounds for releasing the second applicant. The lawyer for the first applicant, Ms Moskalenko, appealed against that decision, but later withdrew her statement of appeal.

14. On 24 May 2001 the applicants' lawyers complained to the Kuntsevo District Court about the beating in the police station. They noted that a similar complaint about police brutality had been raised before the Kuntsevo district prosecutor's office. The lawyers insisted that the results of the prosecutor's inquiry were unknown to them and their clients and asked the District Court to request the materials from the inquiry.

15. On 25 May 2001 the trial began. The District Court was composed of the presiding judge B. and two lay assessors, B. and G. The applicants' lawyers, relying on Articles 59 § 3 and 61 of the Code of Criminal Procedure, unsuccessfully sought the removal of the presiding judge, alleging her personal bias against the applicants. The applicants and their lawyers, referring to the hospital reports recording the applicants' injuries, further complained to the District Court about the ill-treatment occurring in the police station on 14 September 2000.

16. On 28 May 2001 the Kuntsevo District Court found the applicants guilty of aggravated car theft and sentenced them to three years'

imprisonment. As regards the allegations of police brutality, the District Court noted that the investigating authority had conducted an inquiry into the applicants' complaints about the beatings and had decided not to institute criminal proceedings because the allegations had not been proven.

17. The applicants and their lawyers appealed. In their statements of appeal they complained, *inter alia*, that the applicants' conviction contravened the principle of the presumption of innocence, as the presiding judge B. had already found them guilty in her decision of 9 February 2001, that the District Court had not examined their ill-treatment complaints thoroughly, that it had not asked the investigating authorities to produce the case file relating to the inquiry into the allegations of police brutality, and that they had learnt about the prosecutor's decision of 22 January 2001 only during the trial proceedings.

18. On 17 July 2001 the Moscow City Court upheld the conviction, reduced the applicants' sentence to two years' imprisonment and ordered the first applicant's conditional release, noting that his injury, namely a compression fracture of the 1st and 2nd vertebrae, warranted his release. The City Court held that the applicants' complaints about the beatings had been "unfounded because these allegations were examined by the prosecutor's office and then by the [District] Court, and were correctly dismissed because they had not been proven". It further stated that the District Court had not committed any violations of criminal procedural law.

II. RELEVANT DOMESTIC LAW

A. Investigation of criminal offences

19. The RSFSR Code of Criminal Procedure (in force until 1 July 2002, "the CCrP") established that a criminal investigation could be initiated by an investigator on a complaint by an individual or on the investigative authorities' own initiative, where there were reasons to believe that a crime had been committed (Articles 108 and 125). A prosecutor was responsible for overall supervision of the investigation (Articles 210 and 211). He could order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. If there were no grounds to initiate a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect which had to be notified to the interested party. The decision was amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction (Article 113).

B. Appeal against detention orders and decisions of a first-instance court

20. An appeal against a decision of a first-instance court (including an order authorising or extending pre-trial detention) lies to a higher court. It must be lodged within ten days and examined within the same time-limit as an appeal against a judgment on the merits (Article 331 of the CCrP).

C. Motion to challenge a judge

21. Under Article 59 § 3 of the CCrP a judge should not sit in a case if there are any grounds to conclude that he/she has a direct or indirect personal interest in the case. In such circumstances the judge should withdraw from the case; failing this, a party has the right to lodge a motion to challenge the judge (Article 60).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

22. The applicants complained that on 14 September 2000 they had been subjected to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation of the incident. The Court will examine this complaint from the standpoint of the State's negative and positive obligations flowing from Article 3, which reads as follows:

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

A. Submissions by the parties

23. The Government, referring to the investigator's decision of 22 January 2001, argued that between November 2000 and January 2001 the Kuntsevo district prosecutor's office had carried out an inquiry into the applicants' allegations of police brutality and had found them to be untrue. The Government insisted that the circumstances of the case had not attested to the application of unlawful investigating measures. They submitted that they could not examine and produce the prosecutor's investigation file because it had been destroyed in May 2005. They further noted that the applicants' complaints had been examined by the Kuntsevo District Court,

which had studied the investigator's decision of 22 January 2001. The District Court had considered that the applicants' ill-treatment complaints were manifestly ill-founded. In conclusion, the Government stressed that the applicants had not appealed against the decision of 22 January 2001 either to a higher-ranking prosecutor or to a court of general jurisdiction as required by Article 113 of the Code of Criminal Procedure at the time.

24. The applicants stood by their version of events. They pointed out that they had been detained in Fili-Davydkovo police station for several hours. Their relatives had not been promptly informed of their arrest and records of their arrest had not been drawn up in good time. That period of unacknowledged detention had allowed the police officers to torture them with perfect impunity for the purpose of extracting confessions from them. The applicants further stated that they had never been provided with an opportunity to study the prosecutor's investigation file despite their persistent requests to that effect. Furthermore, they had not even been notified of the decision of 22 January 2001 and had only learnt about it during the trial. After having learnt about that decision, they had not appealed against it because the Kuntsevo District Court had already examined their ill-treatment complaints and had dismissed them, relying on the prosecutor's decision of 22 January 2001. The applicants did not expect their appeal against that decision to the same court to be any more effective.

B. The Court's assessment

1. Admissibility

25. The Court notes the Government's argument that the applicants did not exhaust domestic remedies as they failed to appeal against the senior assistant prosecutor's decision of 22 January 2001 to a higher-ranking prosecutor or a court. In this connection the Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52, and *Akdıvar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

26. The applicants' allegations of ill-treatment were examined by the senior assistant prosecutor who, in a decision of 22 January 2001, decided

not to institute criminal proceedings. Under Article 113 of the RSFSR Code of Criminal Procedure, which was in force at the material time, that decision was amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction (see paragraph 19 above). The parties did not dispute that the applicants had not appealed to a higher-ranking prosecutor. However, the applicants argued that they had made use of the judicial avenue of exhaustion by raising the ill-treatment complaint before the Kuntsevo District Court and then on appeal before the Moscow City Court. The Government supported that assertion to some extent, noting that the applicants had availed themselves of judicial protection against ill-treatment by complaining about the police brutality in the course of their trial.

27. As regards an appeal to a higher-ranking prosecutor, the Court has already held that such an appeal does not constitute an effective remedy within the meaning of Article 35 of the Convention (see *Slyusarev v. Russia* (dec.), no. 60333/00, 9 November 2006).

28. 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 already found that in the Russian legal system the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003).

29. The Court considers that, contrary to the Government's assertion, a criminal complaint before a court seeking annulment of the decision of 22 January 2001 and the reopening of the inquiry would not have been effective in the circumstances of the present case. The Court observes that the Government cited the decision of 22 January 2001 as a pre-condition for the applicants' complaint before a court. However, the applicants were not notified of that decision in good time and no copy of the decision was served on them. They only learned about it during the trial proceedings. This fact was not disputed by the Government. In the Court's view, against this background the applicants would have had no realistic opportunity of applying effectively to a court as suggested by the Government (see *Kantyrev v. Russia*, no. 37213/02, § 43, 21 June 2007).

30. At the same time, the Court is mindful of the fact that in these circumstances the applicants still tried to avail themselves of judicial protection. They complained to the trial court about the police brutality and the prosecutor's indifference to their claims. In this connection, the Court observes that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. The Court has already held on a number of occasions that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to

the circumstances of the individual case (see *Akdivar and Others*, cited above, p. 1211, § 69, and *Aksoy*, cited above, p. 2276, §§ 53-54).

31. The Court notes that the domestic courts accepted the applicants' complaint alleging ill-treatment and the inadequacy of the prosecutor's investigation of the events in question. Both the District and City Courts took cognisance of the merits of the applicants' claims, inquired of the prosecutor's office about the progress of the investigation, examined the reasonableness of the assistant prosecutor's decision of 22 January 2001 and based their conclusions on the findings made in that decision, taking the view that the assistant prosecutor's assessment could not be said to be wrong. The courts' reasoning was not confined to the compatibility of the applicants' complaint with the formal requirements (see paragraphs

16 and 18 above).

32. The Court observes that the Government did not argue that, in pursuing this avenue of judicial review, the applicants had removed from the courts the option of examining the relevant issues. The Court reiterates that the applicants learned about the decision of 22 January 2001 during the trial. The Court does not find it unreasonable that after having learned about that decision, in a situation where the trial court had embarked on analysis of the applicants' ill-treatment complaint and the assistant prosecutor's decision, the applicant's lawyers did not lodge a parallel complaint with the same court following the formal procedure as was required by the RSFSR Code of Criminal Procedure (see paragraph 19 above). In circumstances where the domestic courts at two levels of jurisdiction examined and dismissed the applicants' ill-treatment complaints, basing their conclusions on the assistant prosecutor's findings, it is not apparent that a challenge to the assistant prosecutor's decision through the avenue of a separate criminal procedure before the same courts would have been any more successful, or would have been decided on the basis of any other issues. By raising, before the trial and appeal courts, a complaint about the ill-treatment and the authorities' failure to investigate, the applicants provided the domestic authorities with the opportunity to put right the alleged violation.

33. The Court reiterates that non-exhaustion of domestic remedies cannot be held against the applicant if, in spite of the latter's failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the claim (see, *mutatis mutandis*, *Dzhavadov v. Russia*, no. 30160/04, § 27, 27 September 2007; *Skałka v. Poland* (dec.), no. 43425/98, 3 October 2002; *Metropolitan Church of Bessarabia and Others v. Moldova* (dec.), no. 45701/99, 7 June 2001; and *Edelmayer v. Austria* (dec.), no. 33979/96, 21 March 2000). The Court finds that in the particular circumstances of the present case, since the same domestic courts, to which a formal criminal complaint laid, examined the substance of the applicants' complaints about the ill-treatment in the police station and the prosecutor's inactivity, the applicants cannot be said to have

failed to exhaust domestic remedies. It follows that the complaint cannot be declared inadmissible for non-exhaustion of domestic remedies.

34. 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) General principles

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

36. 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).

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

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

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

i. Establishment of the facts and assessment of the severity of the ill-treatment

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

39. 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*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). 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*, cited above, p. 24, § 32).

40. In the present case it was not disputed between the parties and the Court finds it established that on 14 September 2000 the applicants were arrested and brought to Fili-Davydkovo police station, where they were detained until their release on the following day. On 16 and 18 September 2000 the second and first applicants requested medical assistance at hospital no. 79 in Moscow. According to medical records drawn up in the hospital, the first applicant was diagnosed with a compression fracture of the bodies of the 1st and 2nd vertebrae and the second applicant had injuries to the right side of the chest and neck (see paragraph

10 above). The first applicant suffered from severe back pain and underwent four months' treatment for the injuries sustained.

41. In the first place, the Court observes that the Government did not claim that the applicants' injuries could have dated from a period prior to their being arrested or could have been sustained in the period between their

release from the police station and their admittance to hospital no. 79. In response to the findings of the hospital reports the Government, relying on the assistant prosecutor's decision of 22 January 2001, merely stated that the "circumstances of the present case [did] not attest to the application of unlawful investigating measures against the applicants". The Court observes that the applicants provided detailed descriptions of the ill-treatment to which they had allegedly been subjected and indicated its place, time and duration. It notes the consistency of the allegations made by the applicants that they had been ill-treated by police officers while in custody, and the fact that they maintained their allegations whenever they were able to make statements freely before the investigating authorities or the domestic courts. If the Government considered the applicants' 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 explanation as to how the applicants had acquired the injuries. Furthermore, although the effectiveness of the investigation into the applicants' ill-treatment complaints will be examined below, the Court would already stress at this juncture that it is struck by the fact that, despite the seriousness of the applicants' allegations, the investigating authority did not advance any version of events, while declining to institute criminal proceedings against the police officers. It apparently did not occur to either the investigators or the trial and appeal courts that the applicants' injuries should be accounted for. The Court further notes that it was open to the respondent Government to submit a copy of the complete investigation file relating to the applicants' ill-treatment complaints. The Government, citing the destruction of the documents, failed to provide the Court with the materials, limiting themselves to submitting a copy of the assistant prosecutor's decision of 22 January 2001.

42. In these circumstances, bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody, and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court considers that it can draw inferences from the Government's conduct and finds it established to the standard of proof required in the Convention proceedings that the injuries sustained by the applicants were the result of the treatment of which they complained and for which the Government bore responsibility (see *Selmouni v. France* [GC], no. 25803/94, § 88, ECHR 1999-V; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004; *Mikheyev v. Russia*, no. 77617/01, §§ 104-105, 26 January 2006; and *Dedovskiy and Others v. Russia*, no. 7178/03, §§ 78-79, 15 May 2008). The Court, therefore, shall proceed to an examination of the severity of the treatment to which the applicants were subjected, on the basis of their submissions and the existing elements in the file.

ii. Assessment of the severity of the ill-treatment

43. In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. The Court has already noted in previous cases that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see *Selmouni v. France* [GC], no. 25803/94, § 96, ECHR 1999-V). In addition to the severity of the treatment, there is a purposive element which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see *Salman v. Turkey* [GC], no. 21986/93, § 114, ECHR 2000-VII). According to the Court's consistent approach, treatment is considered "inhuman" if it is premeditated, applied for hours at a stretch and causes either actual bodily injury or intense physical or mental suffering. It is deemed to be "degrading" if it is such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92). The question whether the purpose of the treatment was to humiliate or debase the victim is a factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see, for example, *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III, and *Kalashnikov v. Russia*, no. 47095/99, § 101, ECHR 2002-VI).

44. The Court reiterates that it has found it established that the applicants were beaten up by the police officers and that as a result of those beatings they sustained serious injuries. The Court does not discern any circumstance which might have necessitated the use of violence against the applicants. It has never been argued that the applicants had resisted arrest, had attempted to escape or had not complied with lawful orders from the police officers. Furthermore, there is no indication that at any point during their arrest or subsequent detention at the police station they 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 *Berliÿski v. Poland*, nos. 27715/95 and 30209/96, § 62, 20 June 2002). It thus appears that the use of force was intentional, retaliatory in nature and aimed at debasing the applicants and forcing them into submission. In addition, the treatment to which the applicants were subjected must have caused them mental and physical suffering. An important element to be taken into consideration is the consequences which the ill-treatment had on the applicants' health (see paragraph

10 above). The Court also attaches great importance to the applicants' young age (the first applicant was seventeen and the second applicant was nineteen years old at the time of the events), which made them particularly vulnerable at the hands of their aggressors. In these circumstances, having

regard to the nature and degree of the ill-treatment and to the strong inferences that can be drawn from the evidence that it was applied during questioning with the purpose of extracting confessions from the applicants, the Court finds that the applicants were subjected to treatment which can be characterised as torture.

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

(b) Alleged inadequacy of the investigation

46. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev*, cited above, §§ 107 et seq., and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, §§ 102 et seq.).

47. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 for the ill-treatment of the applicants (see paragraph 45 above). The applicants' complaint in this regard is therefore "arguable". The authorities thus had an obligation to carry out an effective investigation into the circumstances in which the applicants sustained their injuries (see *Krastanov v. Bulgaria*, no. 50222/99, § 58, 30 September 2004).

48. In this connection, the Court notes that the prosecution authorities who were made aware of the applicants' beating carried out a preliminary inquiry which did not result in criminal prosecutions against the perpetrators of the beating. The applicants' ill-treatment complaints were also the subject

of examination by the domestic courts at two levels of jurisdiction. In the Court's opinion, the issue is consequently not so much whether there was an inquiry, since the parties do not dispute that there was one, as whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the inquiry was "effective".

49. The Court reiterates that the applicants were entirely reliant on the prosecutor to assemble the evidence necessary to corroborate their complaint. The prosecutor had the legal powers to interview the police officers, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for establishing the truth of the applicants' account. His role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offences but also to the pursuit by the applicants of other remedies to redress the harm they had suffered (see paragraph 19 above).

50. 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 applicants' ill-treatment (see *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V). In the present case on 16 and 18 September 2000 the hospital administration notified the authorities that the applicants had applied for medical assistance (see paragraph 12 above) alleging ill-treatment by the police. The applicants subsequently brought their allegations of ill-treatment to the attention of the authorities by filing a complaint with the Kuntsevo district prosecutor (see paragraph 11 above). According to the Government, the Kuntsevo district prosecutor's office launched its inquiry in November 2000, that is, almost two months after the alleged beating. The Court notes with regret that this delay may have resulted in the loss of opportunities for collecting evidence of the alleged ill-treatment. For instance, in the period immediately following the events in question no attempts were made to conduct an expert medical examination of the applicants. The Court reiterates in this connection that proper medical examinations are an essential safeguard against ill-treatment. The forensic doctor must enjoy formal and *de facto* independence, have been provided with specialised training and been allocated a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). In the instant case, the Court observes that a delay in requesting an expert opinion led, among other things, to inconclusive findings by the forensic medical expert (see paragraph 12 above).

51. Furthermore, with regard to the thoroughness of the inquiry, the Court notes some discrepancies capable of undermining its reliability and effectiveness. Firstly, no evaluation was carried out with respect to the quantity and nature of the applicants' injuries. In delivering his decision the assistant prosecutor limited himself to a restatement of the hospital reports

which listed the injuries sustained by the applicants and to a selective reiteration of the expert findings in respect of the first applicant. The Court finds it striking that the assistant prosecutor omitted to order a forensic examination of the second applicant or at least to take statements from the hospital doctors attending the applicants (see paragraph 12 above). The Court also considers it extraordinary that the assistant prosecutor did not attempt to examine the medical evidence before him and to draw conclusions on that basis. In this connection the Court is concerned that the lack of any "objective" evidence – which medical reports could have provided – was subsequently relied on by the assistant prosecutor as a ground for his decision not to institute criminal proceedings against the police officers (see paragraph 12 above).

52. Secondly, the Court observes a selective and somewhat inconsistent approach to the assessment of evidence by the investigating authorities. It is apparent from the decision submitted to the Court that the investigator based his conclusions mainly on the testimonies given by the police officers involved in the incident. Although excerpts from the applicants' testimonies were included in the decision not to institute criminal proceedings, the investigator did not consider those testimonies to be credible, apparently because they reflected personal opinions and constituted an accusatory tactic by the applicants. However, the investigator did accept the police officers' testimonies as credible, despite the fact that their statements could have constituted defence tactics and have been aimed at damaging the applicants' credibility. In the Court's view, the prosecution inquiry applied different standards when assessing the testimonies, as those given by the applicants were deemed to be subjective but not those given by the police officers. The credibility of the latter testimonies should also have been questioned, as the prosecution investigation was supposed to establish whether the officers were liable on the basis of disciplinary or criminal charges (see *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 99, 23 February 2006).

53. Further, the Court finds that the applicants' right to participate effectively in the investigation was not secured. It transpires from the assistant prosecutor's decision of 22 January 2001 that the applicants were not given an opportunity to identify and confront the police officers who had allegedly taken part in the beatings. It is apparent from the decision of 22 January 2001 that the assistant prosecutor based his conclusions solely on the testimonies given by certain police officers who had been assigned to the applicants' criminal case or who had taken part in the applicants' arrest. The assistant prosecutor accepted too readily their denial that force had been used against the applicants. The Court further considers that while the assistant prosecutor may not have been provided with the names of individuals who could have seen the applicants at the police station, he could have been expected to take steps of his own initiative to identify

possible eyewitnesses. Furthermore, he took no meaningful steps to determine the identity of other police officers who had been involved in questioning the applicants in the police station or to search the premises where the applicants had allegedly been ill-treated. The Court therefore finds that the assistant prosecutor's failure to look for corroborating evidence and his deferential attitude to the police officers must be considered to be a particularly serious shortcoming in the investigation (see *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, § 106).

54. As regards the judicial proceedings, the Court considers it noteworthy that in dealing with the applicants' ill-treatment complaints the domestic courts considered it unnecessary to request and study the case file pertaining to the prosecutor's inquiry into the applicants' ill-treatment complaints (see paragraphs

16 and 18 above). They concluded that the applicants' allegations were "unfounded" by endorsing the findings made in the assistant prosecutor's decision of 22 January 2001. Neither the District Court nor the City Court manifested any interest in thoroughly examining the applicants' ill-treatment complaints or remitting the complaint to the prosecution authorities to rectify shortcomings in the investigation. In fact, it appears that the domestic authorities did not make any meaningful attempt to bring those responsible for the ill-treatment to account.

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

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

56. The applicants further complained under Article 5 § 1 of the Convention that there had been no grounds for their arrest and subsequent detention and that the records of their arrest had been drawn up with a delay and in breach of the domestic law requirements. Article 5, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so."

57. The Court observes that it is not required to decide whether or not the applicants' complaints concerning their detention disclose an appearance of a violation of Article 5 of the Convention. It reiterates that, according to Article 35 of the Convention, the Court may deal with the matter only within a period of six months from the date on which the final decision was taken. It observes that the pre-trial detention of the first applicant ended on 15 September 2000, when he was released on his own recognisance, and the second applicant's pre-trial detention came to an end on 28 May 2001, when the Kuntsevo District Court convicted the applicants (see *Labita v. Italy* [GC], no. 26772/95, § 147, ECHR 2000-IV). After that date their detention no longer fell within the ambit of Article 5 § 1 (c), but within the scope of Article 5 § 1 (a) of the Convention (see, for instance, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39). The applicants lodged their application with the Court on 15 January 2002, that is, more than six months after their pre-trial detention had ended.

58. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

59. The applicants further complained that in a judicial decision relating to their remand in custody, in particular in the District Court's decision of 9 February 2001, it had been taken as established that they had committed the offence imputed to them. As this conclusion had been reached before they had been proven guilty according to law, the applicants alleged a violation of their right to be presumed innocent. They relied on Article 6 § 2 of the Convention, which reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Submissions by the parties

60. The Government argued that the applicants had not exhausted domestic remedies. Firstly, the Government pointed out that the lawyer for the first applicant had withdrawn her appeal against the decision of 9 February 2001. Relying on the submissions by the Supreme Court of the Russian Federation, the Government stressed that the situation could have been remedied if the lawyer had pursued the appeal. The Government further submitted that the decision of 9 February 2001 had not applied to the first applicant because it had dealt with an extension of the second applicant's detention and the second applicant had not appealed at all.

61. The applicants averred that the lawyer for the first applicant had decided not to proceed with her appeal against the decision of 9 February 2001 as she had wanted to expedite the criminal proceedings against the applicants. Furthermore, the applicants insisted that they had made use of domestic remedies as they had challenged Judge B. at the trial and had complained about her decision of 9 February 2001 in their grounds of appeal against the judgment of 28 May 2001.

B. The Court's assessment

62. The Court notes the applicants' complaint that the content of the decision of 9 February 2001, by which the District Court extended the second applicant's detention, raises an issue under Article 6 § 2 of the Convention. In this connection the Court observes that the Code of Criminal Procedure in force at the time provided for a procedure by which such a decision could be challenged before a higher court (see paragraph 20 above). The Government submitted, and the applicants did not dispute, that a higher court could have remedied an alleged violation by amending or quashing the impugned decision. The applicants did not contest that the procedure for lodging such an appeal had been explained to them. They also did not argue that they had been precluded from exercising their right of appeal. However, the second applicant did not appeal against that decision and the lawyer for the first applicant withdrew her statement of appeal. In this connection the Court is mindful of the fact that the applicants were represented, from the pre-trial stage, by lawyers of considerable professional experience. No explanation has been offered for their failure to lodge, or advise the second applicant to lodge, a judicial appeal against the decision of 9 February 2001 and for the decision of the first applicant's lawyer to withdraw her statement of appeal, which had been allowed by the appeal court. The Court therefore concludes that the applicants failed to exhaust domestic remedies.

63. This conclusion is not altered by the fact that the applicants unsuccessfully challenged Judge B. during the trial proceedings and subsequently raised a complaint about the content of the decision of 9 February 2001 in their grounds of appeal against their conviction (see paragraphs
15 and
17 above). The Court is not convinced that the applicants' motion for Judge B. to stand down, lodged under Article 59 § 3 of the CCrP due to her alleged personal bias, was related to their complaints under Article 6 § 2 of the Convention as raised in their application to the Court (see paragraph 21 above). As regards the appeal against the conviction, the Court notes that the scope of the review exercised by the Moscow City Court was limited to the merits of the criminal charge against the applicants. In those proceedings

the City Court had no competence to examine, or to afford redress for, alleged breaches of the Convention provisions which had occurred at the stage of the determination of detention matters (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004).

64. It follows that this part of the complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

65. Lastly, the applicants complained under Article 6 § 1 of the Convention that they had been detained after the trial, that the domestic courts had incorrectly applied the criminal law and had forced them to give detailed testimonies describing the police brutality, and that they had been interrupted during their submissions.

66. Having regard to all the materials in its possession, the Court 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.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The first and second applicants claimed 20,000 and 10,000 euros (EUR) respectively as compensation for non-pecuniary damage.

69. The Government submitted that the applicants' claims were not supported by any documents and therefore were manifestly ill-founded.

70. The Court reiterates, firstly, that the applicants cannot be required to furnish any proof of the non-pecuniary damage they sustained (see *Mishketkul and Others v. Russia*, no. 36911/02, § 78, 24 May 2007). The Court further observes that it has found particularly grievous violations in the present case. The Court accepts that the applicants suffered humiliation and distress on account of the torture inflicted on them. In addition, they did not benefit from an adequate and effective investigation of their complaints about the ill-treatment. In these circumstances, it considers that the

applicants' suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, it awards the applicants the sums claimed in respect of non-pecuniary damage in full, plus any tax that may be chargeable on that amount.

B. Costs and expenses

71. The first applicant, relying on contracts with his lawyers and receipts showing that the money had been paid, claimed 4,800 Russian roubles (RUB) for legal fees incurred during the domestic proceedings. The applicants, who were represented before the Court by two lawyers from the International Protection Centre in Moscow, further claimed EUR 4,370 for fees and costs involved in bringing the application to the Court. In particular, their counsel claimed to have spent more than seventy hours on the case. They submitted an itemised schedule of costs and expenses that included the research and drafting of legal documents submitted to the Court, at a rate of EUR 60 per hour.

72. In respect of the first applicant's claim for compensation in respect of the expenses incurred in the domestic proceedings, the Government noted that the documents submitted did not make it possible to determine that the costs and expenses indicated had in fact been incurred with a view to preventing or compensating the breach of the Convention provisions. They further submitted that the applicants had not produced any document showing that they had had to pay EUR 4,370 to their *pro bono* counsel.

73. The Court reiterates that only such costs and expenses as were actually and necessarily incurred in connection with the violation or violations found, and are reasonable as to quantum, are recoverable under Article 41 of the Convention (see, for example, *Sahin v. Germany* [GC], no. 30943/96, § 105, ECHR 2003-VIII). The Court is mindful of the fact that the first applicant was represented by a lawyer in the domestic proceedings, which involved complex issues, *inter alia* the complaint about the police brutality, and required qualified legal advice. The Court further observes that in 2002 the applicants issued the lawyers from the International Protection Centre in Moscow with authority to represent their interests in the proceedings before the European Court of Human Rights. The counsel acted as the applicants' representatives throughout the procedure. It is clear from the length and detail of the pleadings submitted by the applicants that a great deal of work was carried out on their behalf. Having regard to the documents submitted and the rates for the lawyers' work, the Court is satisfied that these rates are reasonable. However, the Court considers that a reduction should be applied to the amount claimed in respect of legal fees on account of the fact that some of the applicants' complaints were declared inadmissible. Having regard to the materials in its possession, the Court awards EUR 140 to the first applicant for his legal

representation in the domestic proceedings and EUR 3,500 to the two applicants jointly in respect of costs and expenses incurred before the Court, together with any tax that may be chargeable to them.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the ill-treatment of the applicants by police officers and the ineffectiveness of the investigation into the incidents admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the torture to which the applicants were subjected on 14 September 2000 in Fili-Davydkovo police station;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the applicants' complaints about the torture to which they were subjected in Fili-Davydkovo police station;

4. *Holds*

(a) that the respondent State is to pay the applicants, 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 at the date of settlement:

(i) EUR 20,000 (twenty thousand euros) to the first applicant in respect of non-pecuniary damage;

(ii) EUR 10,000 (ten thousand euros) to the second applicant in respect of non-pecuniary damage;

(iii) EUR 140 (one hundred and forty euros) to the first applicant in respect of legal representation in the domestic proceedings;

(iv) EUR 3,500 (three thousand and five hundred euros) to the two applicants jointly in respect of costs and expenses incurred before the Court;

(v) any tax that may be chargeable to the applicants 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;

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

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

Claudia Westerdiek Registrar	Peer Lorenzen President