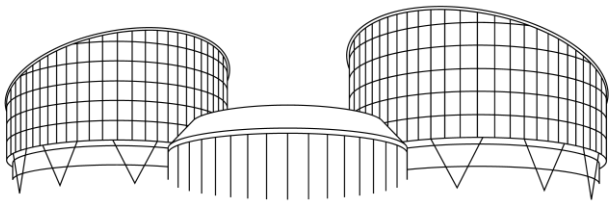

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KAPANADZE v. RUSSIA

(Application no. 19120/05)

JUDGMENT

STRASBOURG

10 February 2011

FINAL

10/05/2011

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

In the case of Kapanadze v. Russia**,**

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

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

Having deliberated in private on 18 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 19120/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Anzor Anzorovich Kapanadze ("the applicant"), on 20 April 2005.

2. The applicant was represented by Mr M. Rachkovskiy, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been ill-treated by the police.

4. On 2 July 2007 the President of the First Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and is now serving his sentence in the Tula Region.

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

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

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

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

> "Three men were running some seventy metres ahead of us ... One of them – the one who was a bit taller, in light-blue jeans and black jacket – turned to us and fired a burst from his submachine gun in our direction ... [Officer B.] fired two shots at the running men ... The men had already crossed to the roadside in the direction of Novomoskovsk ... The man in blue jeans and black jacket fired a burst at the police car and started going down towards the forest but slipped and fell on his back. He held the submachine gun in front of his chest and pointed it at [Officer M.] who had also pointed his submachine gun at him and told him to drop his weapon ... I ran up to [Officer B.] and told the man in blue jeans to throw the gun away. The man reclined on his back and put the gun aside. I kicked it away and, using martial arts, bent his arm behind his back, led him away and put him on the ground where handcuffs were applied to him. [Officer Shch.] and I stayed next to the detained men ... [The third man] was also detained but I did not see him because he was brought directly to the Shatskoye police station where the other men were also taken ..."

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

> "... one of the men who were running ahead of us – the one who was taller and wore blue jeans and black jacket – turned around and fired a shot in our direction. Then I realised that the men were armed ... The men had already crossed to the roadside in the direction of Novomoskovsk ... The man in blue jeans and black jacket fired a burst at the police car and started going down towards the forest but slipped and fell on his back. He held the submachine gun in front of his chest and pointed it at [Officer M.] who had also pointed his submachine gun at him and told him to drop his weapon ..."

10. It appears from Officer Shch.'s statement of 15 July 2003 that he had also taken part in the applicant's arrest:

> "... As we arrived at the Tula-Novomoskovsk motorway, I saw one of the criminals – Kapanadze, as I learnt later – point a submachine gun wrapped in something blue at the patrol car and fire a burst in the direction of our car. I jumped out of the car and began shooting at Kapanadze and D. who was running after Kapanadze. They were crossing the motorway... Kapanadze ran to the forest and I attempted to cut him off, [Officer B.] was following me. [Officer B.] and I ran up to Kapanadze at the same moment, he pointed his gun at my boss, while continuing to run but slipped and we arrested him. Then we dragged him to the motorway and I stayed with the criminals ... During the arrest it was necessary to use physical force on Kapanadze, D. and Sh., in accordance with section 13 of the Police Act because they offered resistance ..."

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

12. The applicant submitted that he had been brought to an office on the first floor. Two riot-squad (OMON) and operational officers (Mr G.) had been present in the room. They had accused the applicant of having shot a police officer while trying to get away. After Mr G. had left the room, the riot-squad officers had begun punching and kicking the applicant who had had his hands cuffed behind his back. Mr G. had later come back to the office and dealt the applicant several blows with a chair leg.

13. At 8 p.m. on 10 April 2003 the investigator carried out a visual examination of the applicant's person in the presence of two attesting witnesses and a chemistry specialist. It was observed that the applicant's face was covered with a "grey and black substance". There was a swelling on his left cheek and some thick substance similar to clotted blood on one leg. The anterior side of the applicant's body showed no visible injuries, but the upper right region and centre of his back were covered with bruises. Other bruises were located on his left thigh and right shin.

14. Later on that day the officers took the applicant by car to the temporary detention ward of the Leninskiy district police station. According to him, the beatings continued in the car and the policemen stamped on his bare hands and kicked him in the face. They also insulted him and ridiculed his Georgian name.

15. It appears that, further to the applicant's complaints about ill-treatment at the police station, the investigator Mr M. commissioned a further medical examination of the applicant.

16. On 15 April 2003 the forensic expert recorded multiple abrasions and bruises on the applicant's face, including his right and left eyelids, nose, left cheek, left temple, left ear, the front of his thorax, his shoulders and shoulder-blades, left thigh, right knee and shin, and a swelling in the right occipital region of his head (report no. 1140). The expert determined that the injuries had been caused by the impact of hard blunt objects no earlier than seven days before the examination.

17. On 18 April 2003 the applicant was transferred from the Leninskiy district police station to remand centre no. IZ-71/1 in Tula. On arrival at the remand centre he was examined by a doctor. According to the medical certificate of the same date, the applicant had a bruised right eye and right thigh. He asked the director of the remand centre to forward his complaint about ill-treatment by the police to the Tula regional prosecutor.

18. On 2 May 2003 the investigator Mr Bu. of the Leninskiy district prosecutor's office issued a decision refusing to institute criminal proceedings in respect of the alleged ill-treatment. The decision referred to the statements by the arresting officers Mr B. and Mr Shch., who claimed that the applicant had actively resisted arrest and that they had used physical force on him. The operational officers Mr L. and Mr A. from the Shatskoye police station stated that upon their arrival at the station the detainees had not presented any visible injuries because they had been covered in dirt and dust. The officers denied that they had exerted any physical or mental pressure on the detainees. On the basis of that evidence, the investigator concluded that the applicant's injuries must have been lawfully caused during his arrest.

19. It appears that the decision of 2 May 2003 was set aside by the supervising prosecutor who ordered an additional inquiry.

20. On 28 July 2003 the investigator Mr Bu. issued a new decision refusing to institute criminal proceedings. The text of the decision was identical, word for word, to that of the decision of 2 May 2003.

21. The applicant complained to the Leninskiy district prosecutor that Mr Bu. was not able to carry out an independent inquiry because he had been present at the police station on 10 April 2003 and witnessed the beatings. On 13 and 18 September 2003 the deputy Leninskiy district prosecutor informed him that his allegations had already been examined by the investigator Mr Bu. and found to have been unsubstantiated.

22. The applicant also complained to the Prosecutor General and the Tula regional prosecutor. On 4 March 2004 the regional prosecutor asked the Leninskiy district prosecutor to examine the matter.

23. On the following day the deputy Leninskiy district prosecutor issued a decision refusing to institute criminal proceedings in respect of the applicant's allegations of ill-treatment. The deputy prosecutor referred to the statements by the investigator Mr Bu., another investigator Ms I., and the operational officers Mr Shch. and Mr M. from the Shatskoye police station. They denied having exerted, or having seen anyone exert, any mental or physical pressure on the detainees. The deputy prosecutor concluded that the injuries had been caused during the arrest and that the applicant's allegations of ill-treatment had been made “for the purpose of avoiding criminal responsibility for the crimes”.

24. In the meantime, the trial court called Officers B., M., S., and Shch. and the investigator Mr Bu. to the witness stand and asked them to describe

the circumstances of the co-defendants' arrest. At the hearing on 2 September 2004 Officer Shch. stated that the defendants had not offered any resistance during the arrest and that they had been immediately handcuffed. He denied using any physical force during the arrest and pointed out that the applicant had been dirty but had had no visible injuries. Officer B. submitted that no physical force had been employed by himself or by his subordinates. He had merely twisted the applicant's arms and handcuffed him. Officer S. confirmed that, once on the ground, the defendants had ceased to resist arrest and that there was no attempt to punish them after the arrest. Officer M. testified that one of the defendants had been handcuffed, and the others' hands had been tied with belts. The investigator Mr Bu. said he was unable to remember any injuries on the defendants. At the hearing on 4 November 2004 Officers A. and Z. testified that the applicant had borne no visible injuries on his arrival to the police station.

25. The applicant complained to a court that the prosecutor's decision of 5 March 2004 had not been notified to him. He also submitted that the decision was unlawful because the existing medical evidence convincingly showed that he had been a victim of ill-treatment. He sought leave to appear in person before the court. By an interim decision of 20 October 2004, the Leninskiy District Court of the Tula Region refused the applicant leave to appear, finding that the applicant's written submissions were sufficiently detailed.

26. On 15 November 2004 the Leninskiy District Court dismissed the applicant's complaint. It found that a copy of the decision of 5 March 2004 had been sent to the correspondence department of the remand centre and that the contested decision was lawful and justified because it had been "founded on the findings of a complete, comprehensive and objective inquiry into the accused's allegations". The District Court did not refer to the applicant's factual submissions or medical evidence.

27. The applicant filed an appeal. He asked the Regional Court to obtain the attendance of his counsel Mr R. during the examination of the appeal.

28. On 26 January 2005 the Tula Regional Court upheld, in summary fashion, the District Court's judgment. The applicant was neither present nor represented at the appeal hearing.

29. On 19 July 2005 the Uzlovaya Town Court convicted the applicant and his co-defendants of four robberies and sentenced him to ten years' imprisonment. On 25 January 2006 the Tula Regional Court upheld the conviction on appeal.

II. RELEVANT DOMESTIC LAW

30. The investigator's or prosecutor's decision refusing institution of criminal proceedings or discontinuing criminal proceedings, as well as any

other acts capable of impairing the constitutional rights or freedoms of parties to criminal proceedings or impeding citizens' access to justice, are amenable to judicial review by the court located at the place where the pre-trial investigation is being carried out (Article 125 § 1 of the Code of Criminal Procedure).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

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

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

A. Submissions by the parties

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

33. The applicant submitted that the statements by the police officers made during the pre-trial investigation and their testimony at trial conclusively demonstrated that no physical force had been used on him or on his co-defendants during their arrest and that the use of handcuffs had been the only preventive measure applied to him. The forensic experts had established that the injuries on his body had been caused by multiple impacts of hard and blunt objects. The experts' findings further undermined the Government's version that he had been injured during the arrest. The absence of any plausible and convincing explanation from the authorities as

to the origin of his injuries corroborated his version of ill-treatment at the police station. Finally, the applicant pointed out that the inquiry into his allegations of ill-treatment had been superficial and incomplete: his statement had not been taken down and the statements by the police officer made in the course of the pre-trial investigation had been disregarded. The investigator Bu. was not independent because he had been present during the beatings and had a vested interest in hiding the truth. The District Court had not allowed him to appear in person and had not examined his factual submissions. The applicant concluded that the investigation had not been effective.

B. Admissibility

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

C. Merits

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

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

detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch*, § 34, and *Salman*, § 100, both cited above).

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

37. The applicant was running away holding a submachine gun in his hand after having committed an armed robbery. Several armed police officers pursued him and his accomplices, in a car and on foot. After Officer B. had fired a round from his submachine gun in the direction of the suspected robbers and told them to freeze, the applicant continued to run away but then slipped and fell on his back at the side of the road. He raised the submachine gun and pointed it at Officer B. who, in turn, targeted him with his own weapon. Officer B. and Officer M. gave contradicting statements as to whether the applicant had dropped the submachine gun on his own or whether it had been kicked out of his hand by Officer B. Likewise, they diverged on the issue of who had twisted the applicant's arm behind his back and cuffed his hands.

38. The only mention that any physical force had been used on the applicant can be found in the pre-trial statement of Officer B. who claimed that the suspected robbers had offered active resistance (see paragraph 7 above). He did not, however, specify whether the use of force had merely consisted in twisting the applicant's arm or whether it included other forceful actions which might have occasioned such injuries as those that had been subsequently noted by the forensic expert (see paragraph 16 above). Before the trial court he clarified that neither he nor his subordinates had resorted to any physical force, apart from twisting the applicant's arms and immobilising him with handcuffs (see paragraph 24 above). The other police officers – M., S. and Shch. – consistently denied, both during the pre-trial inquiry and before the trial court, that there had been any recourse to physical force against the applicant. It is also relevant that Officers A. and Z. stated to the trial court that the applicant had had no visible injuries on his arrival at the police station (ibid.). In the absence of any credible evidence in support of the Government's version that the applicant had been injured as a result of lawful recourse to physical force during his apprehension, the Court finds it unsubstantiated.

39. On 15 and 18 April 2003 the applicant underwent two medical examinations, first by a forensic expert and later by a prison doctor. Both medical specialists noted multiple bodily injuries on his person, including bruises and abrasions on his face, back and extremities. The Court cannot exclude the possibility that some of those injuries, including bruises on his shoulders and thighs, might have been caused when the applicant suddenly

fell on his back during his arrest. However, the remaining injuries, in particular, bruises on his eyelids, nose, ears, chest and knees, which, in the opinion of the forensic expert, had been the result of "impacts of a hard blunt object" cannot reasonably be accounted for in that manner. The Government did not put forward any explanation of how those injuries might have occurred.

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

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

42. As to the seriousness of the acts of ill-treatment, the Court reiterates that in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports of Judgments and Decisions* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83-84 and 86, *Reports of Judgments and Decisions* 1997-VI; *Selmouni v. France* [GC], no. 25803/94, § 105, ECHR 1999-V; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; and, among recent authorities, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-IV (extracts)).

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

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

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

45. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision requires by implication that there should be an effective official investigation. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The investigation into serious allegations of ill-treatment must be thorough. This means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 103 et seq., *Reports of Judgments and Decisions* 1998-VIII). They must take the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia,* eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov*, cited above, § 102 et seq.). Further, the investigation must be expeditious. The Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV). It has also given consideration to the promptness in opening investigations, delays in taking statements and to the length of time taken for the initial inquiry (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

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

47. In the Court's view, the manner in which the inquiry was conducted reveals the investigative authorities' determination to dispose of the matter in a hasty and perfunctory fashion (compare *Denis Vasilyev v. Russia*, no. 32704/04, § 155, 17 December 2009). The first two decisions refusing the institution of criminal proceedings were identical in their content and extremely limited in scope. The inquiry had been limited to the statements of two arresting officers and two officers from the police station, all of whom denied having used any physical force on the applicant. Neither the

applicant's version of events, nor the existing medical evidence were mentioned. No genuine attempt was made to explain the origin of multiple injuries that the forensic expert discovered on the applicant's person. Furthermore, it does not appear that the investigator interviewed him or arranged a confrontation between him and the police officers from the Shatskoye police station who had allegedly been involved in the ill-treatment.

48. A third decision refusing to institute criminal proceedings was given by the deputy Leninskiy district prosecutor just one day after the regional prosecutor had asked him to examine the matter. It is obvious that no additional material could be collected in such a short period of time and the decision merely referred to the statements by the investigators who had been previously in charge of the matter and those by the same police officer from the Shatskoye police station. No mention was made of the applicant's version of events or the existing medical evidence. These failures alone, for which no explanation has been provided to the Court, suffice to render the investigation ineffective.

49. The Court further notes that there was an apparent link between the officials responsible for the investigation and those allegedly involved in the ill-treatment (compare *Mikheyev*, cited above, § 115). The initial inquiry had been conducted by the investigator Mr Bu. of the Leninskiy district prosecutor's office who had been, in the applicant's submission, present at the police station on the day of the alleged ill-treatment and witnessed the beatings. The applicant brought the conflict of interests and lack of independence to the attention of the district prosecutor who, in response, referred him back to the decisions that had already been made by the investigator Mr Bu.

50. Finally, it is also apparent that the applicant was unable to obtain an effective review of the investigator's decisions refusing to institute criminal proceedings. The Leninskiy District Court rejected his complaint in a laconic decision which did not contain any description of his version of events or the medical evidence or put forward any detailed response to the specific grievance and allegations raised by the applicant in his written submissions. The Tula Regional Court endorsed the District Court's decision in summary fashion, without examining the applicant's arguments in any detail. The Court cannot but note also that the Tula courts did not take any measures to secure the applicant's right to effective participation in the proceedings (compare *Denis Vasilyev*, cited above, § 126). He was neither present nor represented before the District and Regional Courts, notwithstanding his explicit request for leave to appear and for the attendance of his representative before the appellate court. These failures further undermine the effectiveness of the domestic investigation.

51. In the light of the foregoing, the Court finds that the authorities failed to carry out an effective criminal investigation into the applicant's

allegations of ill-treatment. Accordingly, there has also been a violation of Article 3 under its procedural aspect.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 300,000 Russian roubles (RUB) in respect of non-pecuniary damage.

54. The Government submitted that the claim was excessive.

55. Having regard to the amount of compensation granted in comparable cases in respect of non-pecuniary damage, the Court cannot agree with the Government's submission that the amount claimed is excessive. Accordingly, it awards the applicant the entire amount claimed, that is EUR 8,300, under this head, plus any tax that may be chargeable.

B. Costs and expenses

56. The applicant also claimed RUB 60,000 for legal costs. He enclosed two receipts showing that his wife had paid that amount for his representation during the pre-trial investigation and at trial.

57. The Government submitted that the legal expenses were not necessary or reasonable.

58. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. Having regard to the materials in its possession, the Court awards EUR 850 in respect of costs and expenses, together with any tax that may be chargeable to the applicant.

C. Default interest

59. 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 application admissible;

2. *Holds* that there has been a violation 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 8,300 (eight thousand three hundred euros) in respect of non-pecuniary damage and EUR 850 (eight hundred fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on those amounts, 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 10 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President