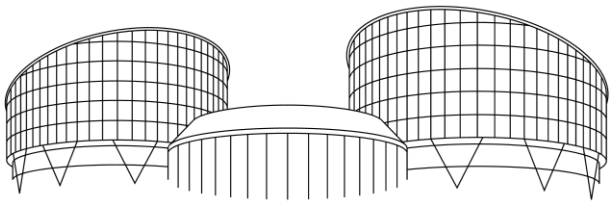

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KOLPAK v. RUSSIA

(Application no. 41408/04)

JUDGMENT

STRASBOURG

13 March 2012

FINAL

13/06/2012

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

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

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 21 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 41408/04) 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 Sergey Mikhaylovich Kolpak ("the applicant"), on 28 September 2004.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya, a lawyer from the International Protection Centre situated in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been ill-treated during his arrest and in police custody on the night following his arrest, and that no adequate investigation had been carried out into the matter. He also complained that neither he nor his lawyer had been summoned to an examination of his appeal against a decision of the first-instance court by which his complaint against the warrant for his arrest had been dismissed.

4. On 21 October 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in St Petersburg.

A. Criminal proceedings against the applicant

6. On 17 December 1999 criminal proceedings were instituted in connection with aggravated robbery with the use of firearms. It appears that during those proceedings the applicant's involvement in the offence was established, but he absconded.

7. By a decision of 7 September 2000 the investigator in charge brought formal charges against the applicant and ordered his arrest. He was put on the federal wanted list on 11 September 2000.

8. On 12 September 2000 the authorities disjoined the criminal case against the applicant from the main set of criminal proceeding, and then on 12 November 2000 suspended the investigation pending the search for the applicant.

9. On 5 July 2001 the applicant was arrested on suspicion of aggravated robbery and unlawful possession of firearms. The investigation in the criminal case against the applicant was resumed the following day. On 6 November 2001 the materials of the criminal case against the applicant were sent to the St Petersburg City Court for trial.

10. In a judgment of 8 February 2005 the St Petersburg City Court convicted the applicant of aggravated theft and robbery and sentenced him to ten years' imprisonment. On 22 December 2005 the Supreme Court of Russia upheld the applicant's conviction on appeal.

B. Alleged ill-treatment of the applicant

11. According to the applicant, although he did not offer any resistance during his arrest on 5 July 2001, police officers forced him to lie face down on the ground, handcuffed him and beat him. In particular, they hit him with a heavy object, presumably a pistol handle, on the back of his head so that he started bleeding, and beat him in the kidney area.

12. In the applicant's submission, he spent a night in a corridor of a police station of the St Petersburg Department for the Fight against Organised Crime, handcuffed to a radiator in a squatting position and in the absence of any facilities enabling him to rest. At least three times during that night he was taken for interviews to various offices where police

officers questioned and beat him, forcing him to confess to offences which had apparently been imputed to him.

13. On 6 July 2001 the applicant was taken to an investigator's office, formally charged with aggravated robbery, and questioned.

14. According to the Government, on the same date the investigator in charge, in the presence of two attesting witnesses, drew up a report on the examination of the applicant. The relevant report attested to the presence of abrasions on the back of the applicant's head and his back and stated that the applicant had explained that "[he] had sustained those injuries on 5 July 2001, as he had fallen during his arrest". It can be ascertained from the report that one of the attesting witnesses was the police officer who had effected the applicant's arrest.

15. The applicant then wrote an explanatory note in which he stated that he had sustained the aforementioned injuries because he had fallen during his arrest on 5 July 2001, and that he had no complaints against the police officers. According to the applicant, he was forced to write that explanation.

16. The applicant was then transferred to a temporary isolation ward where he was examined by a paramedic. As can be seen from a letter from the administration of the temporary isolation ward dated 5 June 2003, the paramedic established during that examination that the applicant had abrasions on his back and the back of his head and that he had made no complaints concerning his health. According to the applicant, the paramedic's report in which he had described the applicant's injuries later disappeared from the applicant's file.

17. On the basis of the results of the aforementioned examination, the applicant was taken to a trauma centre. There he was issued with an injured person's card (*карточка травматика*) indicating that he had no complaints and that he denied having sustained any injuries. The card further stated that the applicant had no visible injuries and no need of any medical treatment. According to the applicant, he was not in fact examined by the doctor, the latter having issued the card under pressure from the police officers who had escorted the applicant to the centre.

18. The applicant was returned to the temporary isolation ward and, according to him, on 16 July 2001 he was transferred to another detention facility.

C. The applicant's complaints concerning the alleged ill-treatment

19. During the trial, on 7 February 2003, the applicant complained before the St Petersburg City Court that he had been ill-treated at the moment of his arrest. On 28 March 2003 the court ordered an investigation into his allegations. In the same decision the court extended the term of the applicant's remand in custody for three months, until 30 June 2003.

20. Following an internal inquiry, on 14 May 2003 the St Petersburg Prosecutor's Office decided not to institute criminal proceedings owing to lack of evidence that a crime had been committed. The decision referred in particular to statements by the investigator in charge of the applicant's criminal case, who had indicated that on 6 July 2001 he had questioned the applicant as an accused and the applicant had read and signed a transcript of the interview. An arrest warrant had been served on the applicant and he had been sent to a temporary isolation ward where he had undergone a medical examination which had established that he had had a haematoma on the back of his head. Regarding the haematoma, the applicant had explained that he had sustained that injury in a fall some time before the arrest and that he had no complaints against the police officers. The investigator in charge had also stated that during the interview he had not seen any visible injuries on the applicant, and that in the course of the preliminary investigation neither the applicant nor his lawyer had lodged any complaints regarding the use of any illegal methods by any officers of the law-enforcement agencies. The decision further referred to statements of three police officers who had effected the applicant's arrest. The statements were similar to those of the investigator in charge. The officers had confirmed that they had forced the applicant to lie on the ground and handcuffed him, stating that it had been rendered necessary by the applicant's conduct as he had made a sudden move when he was told he was under arrest. However, they had denied that they had used any unlawful violence on the applicant and had indicated that they had not known how the applicant had sustained an injury to the back of his head, which had been established during an examination upon his arrival to the temporary isolation ward. The decision thus concluded that the applicant's allegations of ill-treatment were unfounded.

21. The applicant and his defence counsel challenged the decision of 14 May 2003 before the Oktyabrskiy District Court of St Petersburg ("the District Court"). They pointed in particular to the discrepancy between the medical record attesting to the presence of abrasions on the back of the applicant's head and his back, which had been drawn up in the temporary isolation ward, and the medical record drawn up by the trauma centre which stated that the applicant had had no visible injuries. The applicant and his lawyer thus insisted that the internal inquiry had not been full and objective. They also indicated that during the preliminary investigation in the applicant's case he had not lodged any complaints of ill-treatment out of fear for his security, as he had constantly been threatened by police officers.

22. On 20 January 2004 the District Court rejected the above complaint, stating that the decision of 14 May 2003 had been lawful and well-founded and provided convincing reasons for the refusal to institute criminal proceedings in respect of the applicant's complaints. The applicant's allegations had been investigated fully and in detail and had proved unfounded.

23. The applicant appealed. He complained that the inquiry into his allegations could not be regarded as objective as it had been confined to interviewing the officers of the law-enforcement agencies against whom he had made his allegations. He also complained that his argument concerning the discrepancy between the medical record drawn up in the temporary isolation ward and the one drawn up in the trauma centre remained unexamined.

24. On 31 March 2004 the St Petersburg City Court upheld the first-instance decision on appeal. The court rejected as unfounded the applicant's complaint that only the officers against whom he had made his allegations had been questioned during the inquiry. In this connection the court noted that the materials of the inquiry included the injured patient's card of 6 July 2001, which stated that the applicant had not complained of any injuries and had no visible injuries. Also, when he had been admitted to the temporary isolation ward the applicant was examined by a paramedic, who had identified abrasions on his back and the back of his head; however, the applicant had not made any complaints concerning his health. The court further noted that during the inquiry the investigator in charge and the police officers who had arrested the applicant had been questioned and had given explanations which were relied on in the decision of 14 May 2003. It concluded that the first-instance court had thoroughly examined the materials of the inquiry and had given a well-reasoned decision rejecting the applicant's complaint against the decision of 14 May 2003.

D. The applicant's complaint against his arrest

25. On an unspecified date, the applicant also challenged in court the warrant for his arrest which was issued by an investigator on 7 September 2000 and approved by a prosecutor on 12 September 2000. The applicant alleged that although his arrest had been duly authorised and the warrant in itself conformed to formal requirements, he had not been notified of this document in due time. He explained in particular that whilst he had been arrested on 5 July 2001, the arrest warrant indicated that it had been served on him a day earlier, on 4 July 2001. The applicant was also unsure whether the signature attesting that the document had been served on him, was his own. He insisted that he had not been shown the warrant until much later and that therefore he had been deprived of the opportunity to challenge it in time.

26. By a decision dated 1 July 2004 the Moskovskiy District Court of St Petersburg dismissed the applicant's complaint. On 19 October 2004 the St Petersburg City Court quashed that decision on appeal on the ground that it was dated 1 July 2004 whereas the first-instance court had in fact examined the applicant's complaint on 2 July 2004.

27. During a fresh examination which took place in the presence of the applicant's lawyer and the prosecution, in a decision of 25 November 2004 the Moskovskiy District Court again rejected the applicant's complaint. The court observed that the applicant had been arrested on 5 July 2001, as could be seen from the relevant report; however, procedural documents, such as the investigator's decision by which the applicant was accused of the criminal offences, had been served on him on 6 July 2001 and it was on this latter date that the applicant had signed them. The court further relied on the applicant's statements that he had not signed any documents before his arrest on 5 July 2001 and that on 6 July 2001 he had signed a number of documents during his interview. In this connection the court noted that it could not be excluded that the applicant had signed the warrant himself, having mistakenly put the date of 4 July 2001. The court concluded that the arrest warrant of 7 September 2000 had been lawful, as it had been duly issued by the investigator in charge and approved by a prosecutor on 12 September 2000, and that therefore the applicant's complaints should not be allowed.

28. By an interlocutory decision of 21 January 2005 the St Petersburg City Court scheduled an examination of the applicant's appeal against the decision of 25 November 2004 for 8 February 2005. The decision of 21 January 2005 included a note stating that a letter informing the applicant of the date of the examination of his appeal had been sent to the detention centre where he was being kept at that time, and that the applicant's lawyer had been apprised of the date of the examination in person. There is no indication in the decision as to whether the applicant received the aforementioned letter. The applicant's lawyer has also not confirmed whether he was indeed informed of the date in question.

29. On 8 February 2005 the St Petersburg City Court upheld the decision of 25 November 2004 on appeal. The court stated, in particular, that all the arguments advanced by the applicant in his appeal had already been thoroughly examined by the first-instance court and rejected in a reasoned decision.

30. Neither the applicant nor his lawyer attended the hearing before the appellate court, whereas the prosecutor was present and requested that the decision of 25 November 2004 be upheld on appeal. According to the applicant, he received the decision of 8 February 2005 on 11 February 2005.

II. RELEVANT DOMESTIC LAW

31. The Russian Code of Criminal Procedure of 2002 ("the Code") in its Article 144 § 1 (examining information on criminal offences) provides that an inquirer, inquiring body, investigator or investigating body (below referred to as "the inquirer") have an obligation to check information on any committed or planned criminal offence and, acting within their competence,

to take a decision in this respect. During such a check, the inquirer is entitled to carry out documentary checks, inspections, to study documents, objects and corpses and to involve specialists in those checks.

32. Article 145 § 1 (decisions taken based on the results of the examination of information on criminal offences) states that based on the results of the examination of information on criminal offences, the inquirer shall decide whether to institute criminal proceedings or whether to send information about a criminal offence for investigation by other competent authorities.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

33. The applicant complained that the police had beaten him during and after his arrest and left him overnight in a squatting position chained to a radiator in the corridor of a police station with no rest facilities. He also complained that the investigation into his allegations of ill-treatment had been ineffective. The applicant relied on Article 3 of the Convention, which reads as follows:

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

A. Alleged ill-treatment of the applicant

1. Submissions by the parties

34. The applicant insisted on his account of events of 5 and 6 July 2001. In particular, during his arrest police officers had hit him with a heavy object, presumably a pistol handle, on the back of his head and had beaten him in the kidney area, even though he had not shown any resistance. He had then been taken to a police station of the St Petersburg Department for the Fight against Organised Crime where he had spent a night chained to a heater in a squatting position. Several times during that night he had been taken to offices for questioning where the police had again beaten him in an attempt to extract his confession to the imputed offences.

35. The applicant pointed out that the respondent Government did not deny the fact that a number of injuries had been identified on him on 6 July 2001, when he had been under the State's control. However, they failed to provide any plausible explanation as to the origin of those injuries.

36. According to the applicant, he had written the note, in which he had explained that his injuries had been caused by a fall (see paragraph 15 above), under pressure from police officers and the investigator in charge who had threatened him with more beatings. He argued that the fact that the note had not provided any details of the alleged fall proved that it had been written in a rush with the only aim of shifting responsibility from the police for inflicting injuries on him.

37. The applicant further admitted that he had indeed not raised his complaint of ill-treatment until two years later, that is, during the trial. He explained that he had not raised any such complaints during the preliminary investigation out of fear for his safety, because he had received threats from police officers.

38. Overall, the applicant insisted that he had been subjected to treatment in breach of Article 3 of the Convention.

39. The Government denied that the applicant had been subjected to any form of treatment prohibited by Article 3 of the Convention during or after his arrest. They acknowledged that abrasions on the applicant's back and the back of his head had been found on 6 July 2001, when he had been in police custody; however, they argued, with reference to the applicant's explanatory note of the same date, that he had sustained those injuries because he had fallen the day before.

40. According to the Government, it had not been possible to establish the identity of the paramedic who had examined the applicant or the reasons for which he had been sent to a trauma centre because the relevant record of medical examinations carried out of new arrivals at the temporary isolation ward had been destroyed upon the expiry of the three-year time-limit for its storage. The Government explained that the applicant had probably been sent to a trauma centre because visible injuries had been established on him by the paramedic at the temporary isolation ward. They further submitted that the fact that a medical document issued by that centre had attested that the applicant had had no injuries could presumably be explained by the absence of the applicant's complaints in that regard during the examination by a doctor at the trauma centre.

41. The Government also acknowledged that, following his arrest on the evening of 5 July 2001, the applicant had been taken to a police station of the St Petersburg Department for the Fight against Organised Crime, where he had been left until 6 July 2001. In their submission, it was impossible to establish the exact length of time the applicant had spent there and the conditions in which he had been kept, given that the aforementioned department had been closed.

42. Furthermore, the Government argued that during the preliminary investigation the applicant had been interviewed on several occasions, but he had never made any complaints concerning the alleged beatings. They pointed out that it was not until two years later that the applicant had

complained for the first time about the alleged ill-treatment by the police, when he made an allegation in that regard during the examination of the criminal case against him by the first-instance court. In the Government's view, he raised this complaint deliberately in an attempt to have his self-incriminating statements, made during the preliminary investigation, rejected as inadmissible evidence by the trial court.

43. The Government thus insisted that it was before his arrest that the applicant had sustained the injuries established on him on 6 July 2001, and that therefore the infliction of those could not be imputed to the authorities.

2. The Court's assessment

(a) Admissibility

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

(b) Merits

45. The Court has observed on many occasions that Article 3 of the Convention enshrines one of the fundamental values of democratic societies and as such prohibits in absolute terms torture or inhuman or degrading treatment or punishment (see, for example, *Aksoy v. Turkey*, 18 December 1996, § 62, *Reports of Judgments and Decisions* 1996-VI, and *Aydın v. Turkey*, 25 September 1997, § 81, *Reports* 1997-VI). The Court further indicates, as it has held on many occasions, that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into police 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. Otherwise, torture or ill-treatment may be presumed in favour of the claimant and an issue may arise under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

46. 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). 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 v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

47. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of the domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, among other authorities, *Vladimir Romanov v. Russia*, no. 41461/02, § 59, 24 July 2008).

48. Turning to the present case, the Court observes that the Government acknowledged that the day after the applicant's arrest, namely on 6 July 2001, the presence of injuries had been established on the back of his head and on his back (see paragraphs 14 and 39 above).

49. The Court further notes that the Government provided somewhat conflicting explanations as regards the origin of those injuries. On the one hand, they seem to have argued, with reference to the findings of the domestic internal inquiry, that the applicant had sustained the injuries prior to his arrest (see paragraphs 20 and 43 above). On the other hand, in support of their relevant argument they also relied on a report of 6 July 2001 drawn up by the investigator in charge (see paragraph 14 above) and the applicant's explanatory note, also of 6 July 2001 (see paragraph 15 above), both documents explaining the origin of the applicant's injuries as having been sustained in a fall during his arrest.

50. At the same time, the fact that the applicant did not raise his allegations of beatings by the police before the domestic authorities until almost two years later reduces the credibility of his own account of events. The Court observes in this respect that on 6 July 2001 the applicant was examined by a paramedic of a temporary isolation ward and a doctor of a trauma centre. On neither of those two occasions did the applicant complain either about his health or about beatings by the police.

51. The Court does not overlook the applicant's argument that he made no such complaints out of fear for his safety, as he was allegedly threatened by police officers. In this respect the Court notes that, according to the applicant, he was mistreated on 5 and 6 July 2001, when he was arrested and taken to a police station. On the latter date, however, the applicant was transferred to a temporary isolation ward, and it has never been alleged by him, nor any evidence has been submitted, that after that transfer those police officers could have easily reached him either in that ward or in another detention centre, where he was transferred on 16 July 2001 (see

paragraph 18 above), to realise their threats. In any event, even assuming that the applicant feared for his safety throughout the preliminary investigation, it was completed no later than on 6 November 2001, when the applicant's case was sent to a court for trial (see paragraph 9 above). The applicant did not provide any explanation as to why he did not raise his complaints before the court once his case was sent there, but waited for over a year. It is hardly conceivable that the applicant continued receiving threats by the police during all that period.

52. The Court further observes that the evidence before it does not allow it entirely to exclude either the Government's or the applicant's version of events. Indeed, the injuries attested by a paramedic on 6 July 2001 could have been inflicted both as a result of the applicant's fall either before or during his arrest, as alleged by the Government, and as a result of the use of excessive force by the police, as alleged by the applicant. In the absence of any other evidence which could have shed light on the events under examination, the Court is unable to find it established that the applicant was, indeed, ill-treated by the police during or after his arrest (see, for similar reasoning, *Khatayev v. Russia*, no. 56994/09, §§ 108-10, 11 October 2011, and *Maksimov v. Russia*, no. 43233/02, §§ 80-82, 18 March 2010).

53. As regards the applicant's allegation that following his arrest on 5 July 2001 he had been left overnight chained to a heater in a squatting position with no possibility of having a rest, the Court notes that the Government did not submit any information in this respect with reference to the closure of the police department to which the police station where the applicant had been kept had belonged. It may be open to doubt that the closure of a police department would necessarily require the destruction of all relevant documents which could assist in establishing the circumstances of the applicant's detention during the night in question. However, the Court observes that the applicant does not appear to have ever raised a complaint that he had spent a night chained to a heater before the domestic authorities; it appears that he described this situation for the first time in his application to the Court. Against this background, the Court is also unable to verify the applicant's account in its relevant part.

54. Overall, the Court finds that the materials in the case file do not provide an evidential basis sufficient to enable it to conclude "beyond reasonable doubt" that the applicant was subjected to any form of treatment prohibited by Article 3 of the Convention, as alleged by him. Accordingly, the Court finds that there has been no violation of Article 3 of the Convention in its substantive aspect.

B. Alleged ineffectiveness of the investigation

1. Submissions by the parties

55. The applicant argued that the investigation into his allegations of ill-treatment fell foul of the Convention requirements of effectiveness. He pointed out that the only step that had been taken during the internal inquiry had been interviewing the police officers against whom his allegations had been directed and the investigator in charge; no other measures had been taken. The applicant contended that the credibility of the police officers' statements had not been checked, and no other witnesses, such as the paramedic from the temporary isolation ward or the doctor from the trauma centre, had ever been questioned. He also alleged that the paramedic's report listing his injuries, an important piece of evidence, had not been included in the materials of the internal inquiry and, moreover, had then disappeared from his file, and that he himself had never been interviewed in connection with his allegations.

56. Although the applicant had not complained about the alleged ill-treatment until almost two years later, the authorities should in any event have carried out an inquiry immediately after his injuries had been established.

57. The applicant also averred that neither he nor his lawyer had ever been given access to the materials of the internal inquiry. He further questioned the independence of the prosecutor's office as the body which had carried out the internal inquiry into his allegations of ill-treatment. In the applicant's view, the prosecutor's office, being a prosecuting party in the criminal case against him, had not been interested in casting doubts on the admissibility of his self-incriminating statements by establishing that they had been obtained as a result of beatings by the police.

58. According to the Government, the applicant's allegations of ill-treatment had been duly investigated. An internal inquiry into his allegations had been carried out which established that they had been unfounded. In the course of the inquiry, the investigator in charge of his case and the police officers who had arrested the applicant had been interviewed.

59. The Government accepted that during that inquiry neither the paramedic from the temporary isolation ward who had examined the applicant upon his arrival, nor the doctor from the trauma centre had ever been questioned. No explanation was provided by the Government as to the conflict between the record drawn up in the temporary isolation ward attesting to the presence of abrasions on the back of the applicant's head and his back, and the record drawn up in the trauma centre stating that the applicant had had no visible injuries. They maintained that the circumstances in which the applicant had sustained the injuries identified on

him on 6 July 2001 had been described in his explanatory note (see paragraph 15 above).

2. The Court's assessment

(a) Admissibility

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

(b) Merits

61. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 55, 15 February 2007; *Matko*, cited above, § 84; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV; and *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII).

62. The minimum standards of "effectiveness" defined by the Court's case-law also require that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, among many other authorities, *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III). In all cases the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests (see, *mutatis mutandis*, *Shanaghan v. the United Kingdom*, no. 37715/97, §§ 91-92, 4 May 2001).

63. The Court observes that the applicant's allegations of ill-treatment were examined during an internal inquiry ordered by the St Petersburg City Court on 28 March 2003 (see paragraph 19 above), that is, almost two years after the events complained of by the applicant. The Court takes into account that the parties agreed that the applicant had never raised any such complaints earlier. In this connection, however, it accepts the applicant's

argument that the identification in police custody on 6 July 2001 of fresh injuries on the applicant – this fact not being in dispute – should, in principle, have prompted the authorities duly to inquire as to the origin of those injuries. Yet, it does not appear that the investigator in charge made any meaningful effort in this respect.

64. In any event, even after the internal inquiry was commenced in 2003, it can hardly be said to have been adequate. Indeed, the existence of injuries on the applicant on 6 July 2001 was never called into question. Nevertheless, as was pointed out by the applicant at the domestic level (see paragraph 23 above) and in his submissions to the Court, the inquiry in question was limited to interviewing the police officers against whom the applicant had made his allegations and the investigator in charge who had investigated the criminal case against the applicant. It comes as no surprise that these officials denied the applicant's allegations of ill-treatment.

65. The Court accepts the applicant's argument that the authorities made no attempts to investigate his relevant complaints any further or to verify the credibility of the aforementioned officers' statements. It notes in this respect that it falls to the State to have recourse to a procedure which would enable it to take all measures necessary for it to comply with its positive obligation to investigate imposed by Article 3 of the Convention.

66. The Court furthermore notes that the authorities never interviewed important witnesses such as the paramedic, who had identified injuries on the applicant upon his transfer to the temporary isolation ward (see paragraph 16 above), and the doctor from the trauma centre where the applicant was later taken (see paragraph 17 above). The paramedic's identity could have been easily established, given that the relevant documents were not yet destroyed at the time when the inquiry was being conducted (see paragraph 40 above). Also, there is no evidence that either the authority which carried out the internal inquiry, or the domestic courts at two levels of jurisdiction ever tried to resolve the conflict between the record drawn up in the temporary isolation ward attesting to the presence of abrasions on the back of the applicant's head and his back, and the record drawn up in the trauma centre stating that the applicant had had no visible injuries, despite the applicant's attempt to attract their attention to this discrepancy (see paragraph 21 above). The authorities at various levels seem to have satisfied themselves with the explanation that the applicant made no complaints about his health (see paragraphs 20 and 24 above).

67. Furthermore, there is no information that the authorities paid any attention, or attempted to resolve, the conflict between the report of 6 July 2001 drawn up by the investigator in charge stating that, according to the applicant, he had sustained his injuries because he had fallen at the time of his arrest (see paragraph 14 above), and an interview given by the investigator in the course of the preliminary inquiry, in which he said that

the applicant had explained that a haematoma on the back of his head had been caused by a fall some time before his arrest (see paragraph 20 above).

68. The Court further notes that throughout the inquiry the applicant was not questioned in connection with his allegations. Moreover, it does not appear that he or his lawyer were able to access the materials of that inquiry.

69. The aforementioned failings and shortcomings are sufficient to enable the Court to conclude that the inquiry into the applicant's allegations of ill-treatment was inadequate and ineffective.

70. Accordingly, there has been a violation of Article 3 of the Convention on that account.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

71. The applicant complained that neither he nor his lawyer had been duly summoned for, and had therefore been unable to attend, the examination of his appeal against the decision of the first-instance court of 25 November 2004 by which his complaint against the arrest warrant had been dismissed. This complaint falls to be examined under Article 5 § 4 of the Convention, which provides as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Submissions by the parties

72. The applicant argued that neither he nor his lawyer had been duly notified of the examination on 8 February 2005 of his appeal against the decision of 25 November 2004 by which his complaint against his arrest warrant had been dismissed. He pointed out that the decision of the appeal court of 8 February 2005 had not indicated whether it had checked that the applicant and his lawyer had been duly notified of the examination of the applicant's appeal.

73. The applicant stated that on the date in question he had been taken to the court premises in connection with the delivery of the trial court's judgment in his criminal case; however, he had not been informed that on the same date his appeal against the decision of 25 November 2004 had been examined. He contended that a situation in which neither he nor his lawyer had participated in the examination of his appeal while the prosecution had been present and able to present arguments violated his rights under Article 5 § 4.

74. The Government argued, with reference to the interlocutory decision of 21 January 2005 (see paragraph 28 above), that both the applicant and his lawyer had been duly informed of the date of the examination of the

applicant's appeal against the decision of the Moskovskiy District Court of 25 November 2004. Nevertheless, in breach of the relevant requirements of the Russian procedural law, neither the applicant nor his counsel had ever lodged any request to secure their participation in that examination. Moreover, on the date when the St Petersburg City Court examined the applicant's appeal against the decision of 25 November 2004, the applicant had been taken to the court premises in connection with the delivery of the judgment in the criminal case against him. However, he made no requests to ensure his participation in the examination of his appeal against the decision of 25 November 2004. The Government therefore argued that the applicant had, in fact, waived his right to participate in the examination of his appeal.

75. The Government also argued that in his appeal against the decision of 25 November 2004 the applicant had not advanced any arguments that had not already been examined by the first-instance court. Therefore, in their opinion, the requirements of Article 5 § 4 of the Convention had not been breached in the present case.

B. The Court's assessment

76. The Court observes at the outset that the parties disagreed as to whether the applicant and his lawyer had been duly notified of the date on which the examination of the applicant's appeal against the decision of 25 November 2004 had been scheduled. The Government insisted that the applicant and his counsel had been made aware of the date in question, given that the interlocutory decision of 21 January 2005 by which the hearing in question had been scheduled for 8 February 2005 indicated that a letter informing the applicant of that decision had been sent to the applicant's detention centre and that his lawyer had been apprised of it in person (see paragraph 28 above). The applicant contended that neither he nor his counsel had ever been informed of the date of the examination of his appeal. The question arises whether the decision of 21 January 2005 could serve as a reliable piece of evidence proving that the applicant and his lawyer were duly notified of the appeal hearing, as the decision contained no information as to whether the applicant had received the letter. Similarly, the decision bears no signature of the applicant's lawyer or any other marks to confirm that the lawyer was, indeed, duly notified of the date of the hearing. The Court, however, will leave this question open, as, in its opinion, the present complaint is in any event inadmissible for the following reasons.

77. The Court reiterates that Article 5 § 4 deals only with those remedies which must be made available during a person's detention with a view to that person obtaining speedy judicial review of the lawfulness of the detention capable of leading, where appropriate, to his or her release. The provision does not deal with other remedies which may serve to review the

lawfulness of a period of detention which has already ended (see, for instance, *Slivenko v. Latvia* [GC], no. 48321/99, § 158, ECHR 2003-X).

78. In the present case, the applicant failed to specify the date on which he lodged with a court his complaint against the arrest order of 7 September 2000. However, in the absence of any allegations on the part of the applicant which would enable the Court to conclude that the applicant's complaint had not been examined speedily, the Court finds it reasonable to assume that the complaint was lodged shortly before it was examined for the first time by the Moskovskiy District Court of St Petersburg in July 2004 (see paragraph 26 above). In the absence of any information to the contrary, this means that by the time the applicant lodged his complaint against the arrest order of 7 September 2000, his detention on remand had presumably been extended on several occasions by other orders. Consequently, that order no longer formed the basis for the applicant's detention, and therefore the judicial review of the lawfulness of that order was devoid of any useful purpose, being incapable of leading to the applicant's release (see, in a somewhat similar context, *Starokadomskiy v. Russia*, no. 42239/02, § 86, 31 July 2008).

79. In any event, the applicant was represented before the first-instance court by a lawyer who had been able to state the applicant's case (see paragraph 27 above). Moreover, in his appeal submissions the applicant did not raise any arguments other than those already examined and rejected by the first-instance court (see paragraph 29 above). It has never been alleged by him that he or his lawyer intended to advance any new arguments other than those summarised in his written pleadings. In such circumstances, the Court is unable to agree with the applicant that his and his lawyer's presence was necessary at the appeal hearing of 8 February 2005 for the guarantees of Article 5 § 4 to have been respected in his case.

80. The Court therefore finds that the present complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

81. Lastly, the applicant raised various complaints relating to the lawfulness of his detention between 6 and 16 July 2001, the fact that the warrant for his arrest was issued long before his arrest was effected, that he was not brought promptly before a judge following his arrest, and various irregularities in the proceedings by which he challenged the decision of 14 May 2003 not to institute criminal proceedings into his allegations of ill-treatment. He relied on Article 5 §§ 1 (c) and 3, and Articles 6, 13 and 17 of the Convention.

82. Having regard to the materials in his possession the Court finds that these complaints, in so far as they fall within its competence, do not disclose

any appearance of a violation of the rights and freedoms set out in the Convention.

83. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 2,000,000 euros (EUR) in respect of non-pecuniary damage.

86. The Government contested that amount as excessive.

87. The Court notes that it has found a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's allegations of ill-treatment by the police. The applicant must have suffered anguish and distress on account of those infringements of his rights. Having regard to these considerations and judging on an equitable basis, the Court finds it reasonable to award the applicant EUR 10,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

88. The applicant also claimed EUR 1,400 for the costs and expenses incurred before the Court. He submitted a detailed invoice of costs and expenses which included research and drafting documents at a rate of EUR 60 per hour.

89. The Government stated that, according to the Court's case-law, an applicant was entitled to reimbursement of their costs and expenses only in so far as it had been shown that those had been actually incurred and were reasonable as to the quantum.

90. The Court reiterates that an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court is satisfied that the expenses in question were actually incurred. It further considers their amount to be

reasonable. The Court therefore awards EUR 1,400, that is, the full amount claimed, under this head, less EUR 850 already received by way of legal aid from the Council of Europe, plus any tax that may be chargeable to the applicant on this amount.

C. Default interest

91. 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 under Article 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention in its substantive aspect;

3. *Holds* that there has been a violation of Article 3 of the Convention in its procedural aspect;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 550 (five hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President