CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF SAMOYLOV v. RUSSIA

(Application no. 64398/01)

JUDGMENT

STRASBOURG

2 October 2008

FINAL

06/04/2009

This judgment may be subject to editorial revision.

In the case of Samoylov 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,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 September 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 64398/01) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Leonid Nikolayevich Samoylov ("the applicant"), on 14 June 2000.

2. The applicant, who had been granted legal aid, was represented by Ms K. Kostromina, a lawyer practising in Moscow. The Russian Government ("the Government") were initially represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Ms V. Milinchuk.

3. The applicant alleged, in particular, that he had been subjected to ill-treatment by police officers and that no effective investigation had been conducted into the matter.

4. By a decision of 5 June 2007, the Court declared the application admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and lives in Zelenograd.

A. Alleged ill-treatment by the police

7. On 5 February 1999 three police officers from the Metro police (*милиция метро*) at Leningradskiy railway station in Moscow, L., S. and I., arrested the applicant and another person, R., on suspicion of burglary. They took them to the Komsomolskaya Metro police station for questioning and urged the applicant to confess. The applicant refused and asked to be provided with a lawyer. Angry about this request, the policemen punched the applicant in the upper body and the head.

8. Later, the policemen took the applicant to a special Metro police station for further questioning. According to the applicant, as soon as the interrogation had begun, the policemen beat him to make him sign a confession they had prepared. The applicant refused to sign. Angry about this refusal, the policemen cuffed the applicant's hands behind his back, dropped him on the floor, and applied electric shocks to his neck, kidney and liver areas and private parts. They kicked the applicant in the stomach, put him in a chair, and beat his head with a document file until he fainted. Fifteen minutes later the policemen told the applicant that they would hand him over to officers from the Sokol district police station because the burglary had been committed in that district.

9. The officers from the Sokol district police station questioned the applicant and placed him in a temporary detention unit. Three days later, the applicant was transferred to remand prison SIZO–48/5.

10. On the applicant's admission to the prison, the doctor on duty observed injuries on his body. He sent the applicant to a first-aid point to record the injuries.

11. On 10 February 1999 the staff at the first-aid point recorded the following injuries sustained by the applicant:

> "Bruises on the soft tissue of the left auricle, right forefinger and right elbow joint and an abrasion on the left shin."

The applicant explained that the injuries were caused by the ill-treatment he had received from the policemen.

12. On 22 February 1999 the prison administration asked the public prosecutor of the Golovinskiy District to investigate the applicant's allegation of ill-treatment. The prosecutor referred the request to the Metro

public prosecutor (*прокурор Московского метрополитена*) because it was Metro police officers who had allegedly ill-treated the applicant.

B. Trial and the first cycle of the investigation into ill-treatment

13. The applicant's criminal case was submitted for trial in the Golovinskiy District Court. At the trial, the court questioned as a witness L., the policeman who had arrested the applicant, who stated that he had not used physical coercion against him. The applicant recognised L. as the man who had beaten him. The court asked the Metro public prosecutor about the results of the inquiry (*прокурорская проверка*) into the alleged ill-treatment. On 9 June 1999 the Internal Investigations Department of the Moscow police informed the court that the applicant could have been injured when being transported to the remand prison.

14. On 5 October 1999 the court convicted the applicant and R. of burglary and sentenced them to four years and four months' imprisonment. The court found the applicant's allegation of ill-treatment unsubstantiated, stating:

> "The use of physical coercion [against the applicant and R.] by the policemen has not been corroborated by the results of the inquiry conducted."

15. On 15 December 1999 the Moscow City Court upheld the applicant's conviction on appeal.

C. Second cycle of the investigation into ill-treatment

16. On 26 June 1999 the Metro public prosecutor refused to institute criminal proceedings against the alleged perpetrators on the ground that there was no indication that a crime had been committed. On 31 October 1999 the applicant asked the Moscow public prosecutor to quash the decision of 26 June 1999.

17. On 17 January 2000 the Moscow public prosecutor quashed the decision of 26 June 1999 rendered by the Metro public prosecutor and referred the case back for further investigation.

D. Third cycle of the investigation into ill-treatment

18. On 24 January 2000 the Metro public prosecutor refused to open criminal proceedings against the policemen for the second time.

19. On 28 January 2004 a Moscow deputy public prosecutor quashed the decision of 24 January 2000, finding that it was superficial. He noted, in particular, that no medical examination had been carried out to establish the method by which the injuries had been inflicted and their gravity and, furthermore, that O. and D., persons who had been detained simultaneously

with the applicant and had sustained similar injuries, had not been questioned. He referred the case back for further investigation.

E. Fourth cycle of the investigation into ill-treatment

20. On 5 March 2004 the deputy Metro public prosecutor refused to institute criminal proceedings against the policemen for the third time on the ground that there was no indication that a crime had been committed. In the decision it was noted that the policemen L., S. and I., who had arrested the applicant, had stated that they had not used physical coercion against him. Three other policemen, K., Z. and J., who had been on duty at the police station on 5 and 6 February 1999, were also questioned. K. stated that during his shift the applicant had not been brought to the police station. Z. and J. submitted that on 5 February 1999 at around 2 p.m. two persons had been brought to the police station; however, no physical force had been used against them and no procedural steps had been taken that day. O. and D., the persons who had been detained simultaneously with the applicant, could not be questioned because they did not reside in Moscow any more. As regards the injuries noted in the medical report of 10 February 1999, it was impossible to determine when and in what circumstances they had been inflicted.

II. RELEVANT DOMESTIC LAW

21. Before 1 July 2002, criminal proceedings in Russia were governed by the 1960 Code of Criminal Procedure of the RSFSR (the old CCP). Under Article 113 of the old CCP, a refusal to open criminal proceedings could be appealed against to a prosecutor or a court. Under Article 220, a refusal by the prosecutor could be appealed against to a higher prosecutor.

22. On 1 July 2002 the old Code was replaced by the Code of Criminal Procedure of the Russian Federation (the new CCP). Article 125 of the new CCP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

23. In the first set of their observations the Government pointed out that the investigation had been resumed and was pending, and that it was

therefore too early to assess the merits of the complaint. In their second set of observations they claimed that the applicant had failed to exhaust domestic remedies because he had neither appealed to a court against the decision of 26 June 1999 not to institute criminal proceedings, nor appealed to a court or to a higher prosecutor against the decision of 5 March 2004 not to institute criminal proceedings.

24. The applicant argued that the fact that the investigation had been pending for over three years by the time he submitted his first set of observations did not mean that the complaint was premature but proved that the investigation had been inadequate. As regards any subsequent reviews of the investigation results, they were bound to grind to a halt as it would be impossible to rectify the flaws in the investigation four years after the events.

25. 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. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the 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). It is also established that a mere doubt as to the prospect of success is not sufficient to exempt an applicant from submitting a complaint to the competent authority (see *Whiteside v. the United Kingdom*, decision of 7 March 1994, application no. 20357/92, DR 76, p. 80).

26. The Court further emphasises that the application of the exhaustion rule must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to set up. Accordingly, it has recognised that Article 35 must be applied with some degree of flexibility and without excessive formalism. It has further recognised 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. This means in particular that the Court must take realistic account, not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the

case, the applicant did everything that could reasonably be expected of him to exhaust domestic remedies (see *Akdivar and Others*, cited above, § 69, and *Yaşa v. Turkey*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2432, § 77).

27. The Court observes that the investigating authorities became aware of the applicant's allegations of ill-treatment on 22 February 1999, several days after a medical examination had stated that the applicant had bruises and abrasions, and subsequently an investigation was instituted. The applicant and the Government dispute the effectiveness of this investigation. The Court considers that the Government's preliminary objection raises issues which are closely linked to the merits of the applicant's complaints. Thus, it considers that this matter falls to be examined below under the substantive provisions of the Convention (see paragraphs 39-46 below).

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

28. The applicant complained under Article 3 of the Convention that he had been ill-treated by the police and that the investigation into the matter had not been effective. Article 3 of the Convention reads as follows:

Article 3

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

A. The parties' submissions

29. The applicant maintained that his rights under Article 3 had been violated. He noted, in particular, that in the course of the investigation into the alleged ill-treatment no expert medical examination had been carried out and persons detained simultaneously with him had not been questioned, which was not disputed by the Government.

30. In their first set of observations the Government accepted the applicant's account of the facts, having noted, however, that it was too early to assess the merits of the complaint. In their second set of observations they further submitted that in the light of the decision of 5 March 2004, the complaint was manifestly ill-founded.

B. The Court's assessment

1. Effectiveness of the investigation

a. General principles

31. 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 (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

32. Thus, the investigation into 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 (see *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 103 et seq.). They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, etc. (see, *mutatis mutandis*, *Salman*, cited above, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq.; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). 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.

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

b. Application to the present case

i. Conduct of the investigation

34. The Court notes that upon the applicant's admission to remand prison SIZO-48/5 the doctor on duty noticed injuries on his body and transferred him to a first aid point to record them. On 10 February 1999 the first aid point recorded bruises and abrasions on his body. As the applicant claimed that the injuries had been caused by policemen who had ill-treated him, on 22 February 1999 the prison administration asked the prosecuting authorities to investigate the allegations. The investigating authorities thus became aware of the applicant's allegations of ill-treatment shortly after bruises on his body had been recorded in a medical report. A police inquiry was conducted into the matter. After the applicant had raised the allegations of ill-treatment also before the trial court, the court requested the results of the inquiry. On 9 June 1999 the Internal Investigations Department of the Moscow police informed the court that the applicant could have been injured when being transported to the remand prison. No information as to which investigative steps had been taken so as to verify the applicant's version of the events was made available to the Court.

35. The Court further notes that on two occasions, namely on 26 June 1999 and 24 January 2000, the Metro prosecutor refused to institute criminal proceedings into the applicant's allegations on the ground that there was no indication that a crime had been committed. Following the applicant's appeal, both decisions were quashed by the higher prosecutor on 17 January 2000 and on 28 January 2004 respectively. Likewise, no information as regards the investigative measures taken was provided to the Court. However, from the decision of 28 January 2004 it follows that the most elemental steps had never been taken. It was noted, in particular, that the investigating authorities had failed to conduct a medical examination so as to establish the gravity of the injuries and the method by which they had been inflicted and, furthermore, to question O. and D., persons who had been detained simultaneously with the applicant and had sustained similar injuries.

36. However, on 5 March 2004 the deputy Metro public prosecutor again refused to institute criminal proceedings on the grounds that the policemen who had detained the applicant had stated that no physical force had been applied to him, that it was not possible to question O. and D. because they did not reside in Moscow any more and that it was not possible to determine when and in what circumstances the injuries recorded in the medical report of 10 February 1999 had been inflicted.

37. The Court observes that the most fundamental investigative measures, such as inspection of the scene where the applicant alleged to have been ill-treated and a medical examination to establish when and how the injuries on the applicant's body had been inflicted, had never been

carried out. These failures alone, for which no explanation was provided to the Court, suffice to render the investigation inefficient.

38. Moreover, other investigative steps were either taken with an inexplicable delay or not taken at all. In particular, it appears that policemen who had been on duty on 5 February 1999, the date of the applicant's arrest, were only questioned as late as in 2004. As for O. and D., no explanation was provided to the Court as to why they had not been questioned before 2004. Furthermore, the Court is not satisfied with the explanation provided for the failure to question them in 2004 or later, since even if neither of them resided in Moscow at that time, the Court sees no reason why Moscow prosecuting authorities could not have applied to regional prosecuting authorities with a request to locate and question them. No information was provided to the Court as to any measures taken in this regard. Finally, it notes a long period of inactivity between the decision not to institute criminal proceedings of 24 January 2000 and the decision to resume the investigation of 28 January 2004.

ii. The first limb of the Government's preliminary objection

39. Having regard to the limb of the Government's preliminary objection which related to the fact that the investigation was pending, the Court observes that after this objection was raised the investigation was discontinued. Accordingly, the Court does not find it necessary to examine it.

iii. The second limb of the Government's preliminary objection

40. As regards the limb of the Government's preliminary objection relating to the applicant's failure to appeal to a court against the refusal to institute criminal proceedings of 26 June 1999, the Court notes that under Article 113 of the old CCP the refusal could be appealed against either to a prosecutor or to a court. The Court observes that although a court itself had no competence to institute criminal proceedings, its power to annul a refusal to institute criminal proceedings and indicate the defects to be addressed appears to be a substantial safeguard against the arbitrary exercise of powers by the investigating authority (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003). Therefore, in the ordinary course of events such an appeal might be regarded as a possible remedy where the prosecution decided not to investigate the claims.

41. The Court notes that although the applicant did not appeal against the decision of 26 June 1999 to a court, he first brought the allegation of ill-treatment before the trial court and, second, appealed against the decision to the higher prosecutor. The Court shall now examine whether having had recourse to these two avenues the applicant has complied with the requirement to exhaust domestic remedies.

42. The Court observes that bringing allegations of ill-treatment before the trial court does not always constitute an effective remedy in respect of Article 3 complaints. In particular, in *Slyusarev v. Russia* ((dec.), no. 60333/00, 9 November 2006), where the applicant had raised the issue before the trial court but had failed to challenge separately before a court the prosecutor's refusal to open criminal proceedings, the Court concluded that he had failed to exhaust domestic remedies. The Court reached this conclusion on the following grounds: (i) the applicant himself had raised the issue of ill-treatment in the context of admissibility of evidence only; (ii) he had not alleged before the trial court that the investigation into his complaints of ill-treatment had been inadequate; and (iii) the applicant had not complained about the ill-treatment to the doctor who had examined him several hours after his arrest when he had allegedly been beaten by policemen, and the complaint had only been brought to the attention of the authorities two months after the alleged event.

43. The Court considers that the present case should be distinguished from *Slyusarev* on the following grounds: (i) the applicant did not raise the issue of ill-treatment in the context of admissibility of evidence, but he raised the complaint in substance, and the trial court examined it. In particular, the court questioned the alleged perpetrator L., requested the results of the prosecutor's preliminary inquiry and dismissed the applicant's allegations as unfounded; (ii) the applicant could not have alleged before the trial court that the investigation into his complaints of ill-treatment had been inadequate because he only became aware of the results of the preliminary inquiry at the trial; (iii) the applicant did complain about the ill-treatment to the doctor who examined him shortly after the events complained of, and the issue was promptly brought to the attention of the authorities.

44. The Court further observes that following the applicant's appeal to the higher prosecutor, the refusal to institute criminal proceedings of 26 June 1999 was reversed and the case was referred back for further investigation. The institution of criminal proceedings was subsequently again refused, and that decision was also reversed on 28 January 2004 as superficial, the higher prosecutor having indicated particular flaws in the investigation that had to be rectified. In the circumstances, where the allegations of ill-treatment had already been brought before and addressed in substance by the trial court, and where the decisions to continue the investigation were taken by the prosecuting authorities themselves, an appeal to a court does not appear to be able to offer the applicant any different outcome. Accordingly, the Court considers that in the circumstances of the present case, raising the ill-treatment complaint before the trial court and lodging an appeal before a higher prosecutor was sufficient to comply with the requirement to exhaust domestic remedies. This limb of the Government's objection is therefore dismissed.

iv. The third limb of the Government's preliminary objection

45. As regards the limb of the Government's preliminary objection relating to the applicant's failure to appeal either to a court or to a higher prosecutor against the refusal to institute criminal proceedings of 5 March 2004, the Court notes that the institution of criminal proceedings had already been refused twice and the applicant had successfully appealed against those decisions on both occasions. However, the prosecuting authorities had conspicuously disregarded the instructions of the higher prosecutor and failed to investigate properly the applicant's allegations. In the Court's view, the requirement to appeal yet again against such a refusal would be over-formalistic and place an excessive burden on the applicant. Furthermore, owing to the time that had elapsed since the events complained of, certain investigative steps that ought to have been carried out much earlier, such as an expert medical examination and inspection of the scene of the events, could no longer usefully be conducted. Therefore, another reversal of the refusal to open criminal proceedings would not constitute an effective remedy in the present case. Accordingly, the Court considers that in these circumstances the applicant should be dispensed from the requirement to appeal against the refusal to open criminal proceedings of 5 March 2004.

v. Conclusion

46. In the light of the foregoing, the Court dismisses the Government's preliminary objection as regards the applicant's failure to exhaust domestic remedies and finds that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment. Accordingly, there has been a violation of Article 3 in this connection.

2. Ill-treatment by police officers

a. General principles

47. The Court 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 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*, judgment of 4 December 1995, Series A no. 336, § 34; see also, *mutatis mutandis*, *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*, 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 *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 34, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

b. Application to the present case

48. The Court notes that on 5 February 1999 the applicant was arrested by policemen. Several days later, upon his transfer from police custody to remand prison SIZO-48/5 the doctor on duty saw injuries on the applicant's body and referred him to the first-aid point. On 10 February 1999 the staff at the first-aid point recorded bruises on the soft tissue of the left auricle, right forefinger and right elbow joint and an abrasion on the left shin.

49. According to the applicant, the injuries were caused by policemen who ill-treated him to make him sign a confession they had prepared. In particular, they cuffed his hands behind his back, dropped him on the floor, and applied electric shocks to his neck, kidney and liver areas and private parts, kicked him in the stomach, put him in a chair and beat his head with a document file until he fainted.

50. The Court observes that not only did the Government not contest the applicant's account of the ill-treatment he had been subjected to in the police station, but in the first set of their observations they expressly accepted it. The Court takes note of the Government's subsequent argument that in the light of the decision of 5 March 2004 not to institute criminal proceedings into the applicant's allegations, the complaint was manifestly ill-founded. It observes, however, that after five years the domestic investigation was discontinued having brought no tangible results. Furthermore, in paragraphs 34-46 above, the Court found the investigation ineffective, in breach of Article 3 of the Convention.

51. Having regard to the applicant's consistent and detailed allegations, corroborated by the medical report, and in view of the absence of any other plausible explanation as to the origin of the injuries found on the applicant upon his transfer to remand prison SIZO-48/5, the Court accepts that the applicant was subjected to the ill-treatment by police described above.

52. 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. The Court has previously had before it cases in which it has found that there has been treatment which

could only be described as torture (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2279, § 64; *Aydın v. Turkey*, judgment of 25 September 1997, *Reports* 1997-VI, pp. 1891-92, §§ 83-84 and 86; *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)). The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. In any event, the Court reiterates that, in respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Selmouni*, cited above, § 99).

53. The Court finds that in the instant case 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. In particular, he claimed to have been tortured with electrodes, which was not refuted by the Government. The sequence of events also demonstrates that the pain and suffering was inflicted on him intentionally, in particular with the view of extracting from him a confession to having committed the offence he was suspected of.

54. 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 torture within the meaning of Article 3 of the Convention.

55. Accordingly, there has also been a violation of Article 3 in this connection.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

56. The applicant complained that the investigation into his allegations of ill-treatment was ineffective contrary to Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

57. The Court observes that this complaint concerns the same issues as those examined in paragraphs 34-46 above under Article 3 of the Convention and considers it unnecessary to examine them separately under Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage for the ill-treatment by policemen and the lack of an adequate domestic investigation into the matter.

60. The Government considered the claim to be unfounded and excessive.

61. The Court has found a violation of Article 3 of the Convention on account of the torture by policemen and the lack of an effective domestic investigation into the matter. The Court thus accepts that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It awards to the applicant the amount claimed, plus any tax that may be chargeable thereon.

B. Costs and expenses

62. The applicant did not make any claims in respect of the costs and expenses incurred before the domestic courts and before the Court.

63. Accordingly, the Court makes no award under this head.

C. Default interest

64. 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. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure to conduct an effective investigation into the applicant's allegations of ill-treatment;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment inflicted on the applicant by policemen;

4. *Holds* that there is no need to examine separately the applicant's complaint under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

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