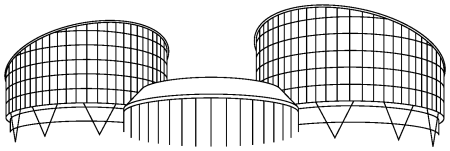

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF RAZZAKOV v. RUSSIA

(Application no. 57519/09)

JUDGMENT

STRASBOURG

5 February 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Razzakov v. Russia,

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

Isabelle Berro, *President*,
Elisabeth Steiner,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 57519/09) 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 an Uzbekistani national, Mr Rashid Shamuradovich Razzakov ("the applicant"), on 14 October 2009.

2. The applicant was represented by Ms O. Gnezdilova, a lawyer practising in Voronezh. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been unlawfully deprived of his liberty and ill-treated in police custody in order to make him confess to a crime, and that no effective investigation into his complaints had been carried out.

4. On 31 August 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971. He is a migrant worker who arrived in Voronezh in 2002 and has been working on construction sites and in repairs. He lives in the village of Mikhnevo, Nizhnedevitskiy district of Voronezh region.

A. The applicant's alleged ill-treatment by the police

1. The applicant's apprehension

6. At about 2 p.m. on 26 April 2009 the applicant arrived at a meeting place as requested by his employer, Mr G., who was acting on police instructions. Three police officers in plain clothes knocked the applicant to the ground, handcuffed him and pushed him into their unmarked car. They did not explain who they were, where they were taking him or why. According to G., who witnessed the scene, they were armed with pistols.

2. Events at the Zheleznodorozhniy ROVD of Voronezh

7. The police officers took the applicant to the Zheleznodorozhniy district police department of Voronezh (*отдел внутренних дел Железнодорожного района г. Воронежа*, "the Zheleznodorozhniy ROVD"), where he was led to an office on the upper floor. Two police officers in uniforms demanded that he confess to a murder. He refused to do so and was punched.

8. The uniformed police officers and those in plain clothes subjected the applicant to various acts of physical violence. They removed the handcuffs from him and bound his hands with scotch tape instead. He was seated on the floor with his arms around his bended knees. A metal bar was passed under his knees. The police officers lifted him and hung him on the bar, the ends of which were put on two tables. The police officers continued punching him in the head and the rest of his body. The pressure caused by the bar behind his knees was such that it prevented his blood from circulating. The police officers hit him several times on the head with an empty glass beer bottle. The applicant felt unwell. He was taken off the bar and untied for a short time. The police officers then hung him again in the same way and attached wires from a special device to his ears. They subjected him to electric shocks by rotating a handle on the device. The applicant felt sharp pain.

9. Then four men in masks and rubber gloves entered the office. They undressed the applicant completely, including his underwear, tied his arms and legs with his own shirt and leather belt, and hung him with a rope on the door of the office, head down. They showed him a syringe containing a yellowy fluid and threatened him with an intravenous injection. One of them tied a rope to his penis and pulled it, thereby opening and shutting the door on which the applicant was hanging. They squeezed his testicles. Several times the applicant said that he agreed to confess to the murder, but his answers did not satisfy the policemen. At some point they loosened the rope and he fell onto his head.

10. The treatment described above continued until the next morning, when the applicant was placed in a cell for administrative detainees at the

same police station. A young man who was detained in that cell advised him to do as the police had requested. Two or three hours later the applicant was taken to an office and given some food. His questioning by the police officers continued. He was warned that he would not be able to support two more days of such treatment. He then confessed to the murder of a certain D., as dictated by them. In the evening he was again placed in the cell for administrative detainees, where he spent the night.

11. On 28 April 2009 police officers B. and E.S. took the applicant in handcuffs to the Zheleznodorozhniy district investigation department of the investigative committee at the Voronezh regional prosecutor's office (*Следственный отдел по Железнодорожному району Следственного управления Следственного комитета при прокуратуре РФ по Воронежской области*, "the district investigative committee") for questioning by an investigator as a witness in a criminal case concerning the murder of D. During the questioning the applicant remained in handcuffs. He was requested to sign a paper in Russian, which he could not read. He was then transferred back to the cell at the Zheleznodorozhniy ROVD.

12. At the end of the day the applicant was taken out of the cell and given back his papers and mobile phone. He was asked to sign a document which he could not read and was released. The applicant's landlady, Ms S., who had been phoning the police in vain for the past two days to find out about his whereabouts, saw him arrive home at about 8 p.m. with a swollen eye, bruises on his wrists, a swollen leg, a lesion on his right ear resembling a burn mark and suffering from sharp pains in his chest.

13. No criminal proceedings were brought against the applicant.

B. Medical records of the applicant's injuries

14. The following morning, on 29 April 2009, accompanied by his landlady, the applicant was examined at the emergency unit of town hospital no. 1 and received a medical certificate diagnosing him with bruising of the soft tissue of his face and his rib cage.

15. On 30 April 2009 the applicant was examined at the Voronezh Regional Forensic Medical Bureau. He described his ill-treatment at the Zheleznodorozhniy ROVD. According to the expert's forensic medical report (*акт судебно-медицинского освидетельствования*), the applicant had bruises each measuring 3 to 4 centimetres above and below his right eye and on his left eyelid, a bruise on his right cheek, bruises on his chest (two bruises measuring 3 to 4 cm and a bruise of 1 to 2 cm), a bruise of 3.5 to 4.5 cm on his scrotum, abrasions on his forearms and right wrist, a bruise of 4 to 5 cm on his left forearm, and bruises measuring 1 to 2 cm and 2 to 3 cm behind his right and left knees respectively.

16. On 14, 15 and 18 May 2009 the applicant was examined at town clinic no. 3. On the basis of an X-ray examination he was diagnosed with a fracture of the ninth rib on the right side.

17. According to a report prepared as a result of a forensic medical examination of the applicant carried out on 19 and 20 October 2009, his injuries could have been inflicted on 26-28 April 2009.

C. Administrative proceedings against the applicant

18. According to police records, at 9.15 p.m. on 27 April 2009 police officer M. arrested the applicant, who had allegedly used obscene language in the street, and at 9.30 p.m. brought him to the Zheleznodorozhniy ROVD. The applicant was found guilty of petty hooliganism and sentenced to a 500 Russian rouble (RUB) administrative fine. He was allegedly released at 12 noon on 28 April 2009.

19. On 16 July 2009 the applicant was given access to documents concerning the administrative proceedings against him. On 29 July 2009 the Zheleznodorozhniy District Court of Voronezh examined an appeal lodged by the applicant against the decision of the Zheleznodorozhniy ROVD of 28 April 2009 to give him an administrative fine. The District Court quashed the decision and terminated the administrative proceedings against the applicant for lack of an administrative offence.

D. Criminal proceedings into the applicant's alleged ill-treatment

1. Refusal to institute criminal proceedings

20. According to the applicant, on 7 May 2009 the deputy head of the district investigative committee refused to receive his complaint of ill-treatment by the police and allegedly threatened to call the migration service and have him deported from the country.

21. On 14 May 2009 the applicant's counsel lodged a complaint of ill-treatment with the district investigative committee, describing the ill-treatment in detail. She supported the allegations by submitting the medical certificate of 29 April 2009 (see paragraph 14 above) and the forensic medical report of 30 April 2009 (see paragraph 15 above). She requested that criminal proceedings be brought against the police officers concerned for abuse of power (Article 286 of the Criminal Code) and torture (Article 117 of the Criminal Code). She asked for specific investigative measures to be carried out, in particular an opportunity for the applicant to identify the police officers who had been on duty on 26-28 April 2009 and a forensic medical expert examination of the applicant with a view to establishing the possible cause and time of the infliction of the injuries.

22. An investigator of the district investigative committee carried out a pre-investigation inquiry. He interviewed the applicant, who gave a detailed account of his alleged ill-treatment (see paragraphs 6-12 above), Ms S., who saw the applicant arrive home with the injuries after his alleged ill-treatment (see paragraph 12 above), and police officer B., who stated that on 26 April 2009 he had stayed home and that on 27-28 April 2009 he had performed duties at the Zheleznodorozhniy ROVD which had had nothing to do with the applicant. The investigator also interviewed police officers Sh. and E., who stated that on 28 April 2009 they had held a "conversation" (*беседа*) with the applicant in one of their offices, at the request of the head of the criminal unit of the Zheleznodorozhniy ROVD, about the applicant's involvement in the murder of D. After the "conversation" they had taken the applicant, at the request of their supervisor, to investigator G. of the district investigative department. Both of them denied any violent behaviour on their part. The investigator also obtained the police records, according to which the applicant had been brought to the Zheleznodorozhniy ROVD at 9.30 p.m. on 27 April 2009 (see paragraph 18 above).

23. On 25 May 2009 the investigator refused to institute criminal proceedings concerning the applicant's complaint for lack of elements of a crime in the acts of police officers Sh. and E., pursuant to Article 24 § 1 (2) of the Code of Criminal Procedure ("CCrP").

24. The applicant appealed against the decision to the Voronezh Zheleznodorozhniy District Court under Article 125 of the CCrP. On 18 June 2009 the District Court terminated the proceedings because the previous day a deputy head of the district investigative committee had quashed the investigator's decision as unlawful and unfounded. In particular, he had ordered that the head of the criminal police unit of the Zheleznodorozhniy ROVD, S., be interviewed in the course of an additional preliminary inquiry.

25. The investigator's subsequent decisions of 27 June and 6 August 2009 that no criminal proceedings would be instituted on the applicant's allegations were likewise revoked on the same grounds by the district investigative committee (on 27 July and 1 September 2009). Court appeals lodged by the applicant were not examined for the same reason (the Zheleznodorozhniy District Court's decisions of 28 July and 1 September 2009). In his decision of 1 September 2009 the head of the district investigative committee ordered that police officers M. and Se., who had brought the administrative proceedings against the applicant, be interviewed. He also noted that the identity of all the police officers present during the "conversation" with the applicant at the ROVD had not been established.

2. Institution of criminal proceedings

26. On 11 September 2009 the district investigative committee again refused to institute criminal proceedings for lack of elements of a crime in the acts of police officers Sh., E., S. and R. On 8 October 2009 the investigative committee at the Voronezh regional prosecutor's office (*следственное управление Следственного комитета при прокуратуре РФ по Воронежской области*, "the regional investigative committee") set aside as unlawful and unfounded the district investigative committee's refusal. It noted, in particular, that the applicant's allegations were supported by the forensic medical report of 30 April 2009 (see paragraph 15 above), the explanations of Ms S. (see paragraph 12 above) and the police records certifying the applicant's presence at the police station at the relevant time (see paragraph 18 above). It concluded that there were sufficient data disclosing elements of a crime under Article 286 § 3 (a) and (b) of the Criminal Code (see paragraph 42 below) committed by unidentified police officers at the Zheleznodorozhniy ROVD, and opened criminal proceedings.

27. On 16 October 2009 the applicant was given victim status in the criminal proceedings.

3. Suspension of criminal proceedings

28. On 8 April 2010 the criminal proceedings were suspended for failure to establish the identity of a person to be charged, pursuant to Article 208 § 1 (1) of the CCrP.

29. The proceedings were subsequently reopened and suspended again on the same grounds several times, the last time on 25 November 2010. The investigator established in that decision that at about 2 p.m. on 26 April 2009 three unidentified police officers had taken the applicant to the Zheleznodorozhniy ROVD by force and in handcuffs. In an office on the upper floor of the ROVD two other unidentified police officers in uniforms had demanded that the applicant confess to a murder. He had refused and had been beaten up by the officers who had taken him in. During the period from 26 to 28 April 2009 both uniformed and plain-clothes police officers had subjected the applicant to various acts of physical violence, in particular punching him and hitting him with a glass bottle on his head and other parts of his body, subjecting him to electric shocks via wires attached to his ears and genitalia, and to other forms of torture, as a result of which he had confessed to the murder of D.

30. During the preliminary investigation the regional investigative committee had questioned witnesses, including police officers who had been on duty at the ROVD during the relevant period, the head of the criminal police unit and his deputies, the police officers of the criminal investigation unit, witnesses to the applicant's apprehension, persons detained in the cells

for administrative offenders during the period concerned and the doctor who had examined the applicant on 29 April 2009. It examined the offices where the ill-treatment could have taken place and held identification parades to enable the applicant to identify the alleged perpetrators from among a number of the police officers who had been working at the Zheleznodorozhniy ROVD. While a number of those identification parades had not resulted in an identification (for example, police officer D.M. who was found to have been using a phone number from which calls to the applicant's employer G. had been registered (see paragraph 6 above) had not been identified by the applicant), the applicant had identified police officers B. and S. as participants in his ill-treatment. The investigator found their identification insufficient for the prosecution in view of its alleged inconsistency with the applicant's statements describing the perpetrators and in view of their alibi, as neither of them had according to their statements allegedly been present at the ROVD during the period concerned.

31. On 9 March 2011 the first deputy to the Voronezh regional prosecutor dismissed an appeal lodged by the applicant against the investigator's decision of 25 November 2010 (see paragraph 29 above).

On 19 April 2011 judge G. of the Leninskiy District Court dismissed a further appeal lodged by the applicant under Article 125 of the CCrP. That decision was upheld by the Voronezh Regional Court on 14 June 2011. In particular, the applicant, represented by his counsel, argued in the court proceedings that the identity of the alleged perpetrators had been established since he had identified police officers B. and S.; hence, it had been wrong to suspend the proceedings for failure to identify the alleged offenders. The courts rejected his submissions and found the investigator's decision lawful and well-reasoned.

32. Some of the applicant's allegations – notably that the administrative charge of petty hooliganism against him had been trumped up and that police officer B. had unlawfully handcuffed him on 28 April 2008 when taking him for questioning to the investigator in the murder case – were the subject of separate proceedings. The district investigative committee's initial refusal to open a criminal case was followed by the regional investigative committee's decision of 5 December 2011 to open criminal proceedings concerning the alleged forgery of administrative-case documents under Article 292 § 2 of the Criminal Code and their subsequent suspension. On 7 September 2012 the district investigative committee's initial refusal to open a criminal case into the applicant's handcuffing was revoked and an additional preliminary inquiry was ordered.

4. Request for transfer of the criminal case to a division for the investigation of crimes committed by police officers

33. The applicant's counsel requested the transfer of the criminal cases concerning the applicant's ill-treatment to a new division at the Central

Federal District investigative department, which had been created pursuant to order no. 20 of the chairman of the investigative committee to investigate crimes committed by police officers (see paragraph 43 below).

34. On 31 August 2012 the regional investigative committee replied to the applicant that firstly, it was not competent to take such a decision as, under Article 152 § 6 of the CCrP, a criminal case could only be transferred for investigation to a superior investigative authority by a reasoned decision of the head of that authority, and that secondly, order no. 20 did not provide for obligatory transfer of cases of this kind to the new investigative divisions.

35. On 28 September 2012 the central office of the investigative committee of the Russian Federation sent the applicant's transfer request back to the regional investigative committee, which, in a letter of 6 November 2012, gave the applicant the same reply as before (see paragraph 34 above).

E. Civil proceedings against the State

36. The applicant brought civil proceedings for damages sustained as a result of his unlawful arrest, detention at the police station, torture, handcuffing and unlawful questioning about his involvement in a criminal offence. He claimed RUB 1,200,000 in respect of non-pecuniary damage and RUB 1,435 in respect of pecuniary damage. Judge Sh. of the Leninskiy District Court of Voronezh held a hearing with the participation of the applicant, his lawyer and his interpreter, representatives of the Ministry of Finance, the Voronezh regional department of finance and budget policy and the Voronezh regional police department acting as a third party, and a prosecutor.

37. In its judgment of 29 November 2011 the District Court noted that the investigative measures conducted by the investigative committee after the opening of a criminal case had allowed it to establish the fact of the applicant's unlawful arrest, handcuffing and detention during the period from 26 to 28 April 2009 in the offices of police officers of the criminal investigation unit (*сотрудников уголовного розыска*) of the Zheleznodorozhniy ROVD and in a cell for administrative detainees, as well as the fact that he had been subjected to physical violence with the aim of obtaining his confession to a murder and had had bodily injuries inflicted on him on the premises of the Zheleznodorozhniy ROVD (see paragraph 29 above). As a result of the physical and psychological violence, the applicant had confessed to a murder. He had not been detained as a suspect, nor charged with, or found guilty of, any crime.

38. On the basis of the preliminary investigation, which had established the elements of a crime under Article 286 § 3 (a) and (b) of the Criminal Code, the Zheleznodorozhniy District Court's judgment of 29 July 2009

terminating the administrative proceedings against the applicant for lack of an administrative offence (see paragraph 19 above) and the evidence submitted by the applicant in the civil proceedings, the District Court found it established that the applicant had been subjected to the above-mentioned unlawful acts by police officers, despite the failure to identify them all. Of those identified, the District Court noted M., G. and Ch., who had signed the records and the decision concerning the administrative offence allegedly committed by the applicant. The physical violence to which the applicant had been subjected had not been made necessary by his conduct, had diminished his human dignity and had as such been a violation of the law. The District Court awarded the applicant RUB 840,000 in respect of non-pecuniary damage and RUB 835 in respect of pecuniary damage, to be paid by the federal and regional treasuries, and rejected the remainder of his claims.

39. According to the internet site of the Voronezh Regional Court, on 22 March 2012 it examined the case following appeals lodged by the respondent authorities. No appeal against the Leninskiy District Court's judgment had been lodged by the applicant, who was represented before the appeal court by his counsel. The Regional Court rejected the appeals and upheld the judgment.

F. Ministry of the Interior

40. A complaint about the applicant's ill-treatment was also lodged with the Voronezh regional police department, which informed the applicant's counsel on 23 July 2009 that police officer M. had been disciplined for his failure to identify an alleged witness to the applicant's administrative offence.

41. Police officer S., identified by the applicant as one of those who had participated in his ill-treatment (see paragraph 30 above), was promoted on 1 October 2010 as head of a district police department.

II. RELEVANT DOMESTIC LAW AND PRACTICE

42. Article 286 § 3 of the Criminal Code of the Russian Federation provides that the actions of a public official which clearly exceed his authority and entail a substantial violation of an individual's rights and lawful interests, committed with violence or the threat of violence (Article 286 § 3 (a)) or with the use of arms or special devices (Article 286 § 3 (b)), are punishable by three to ten years' imprisonment, with a prohibition on occupying certain posts or engaging in certain activities for a period of up to three years.

43. On 18 April 2012 the chairman of the investigative committee of the Russian Federation issued order no. 20. He ordered that new divisions be

created in order to ensure effective investigation of crimes committed by police officers and other law-enforcement agents. Those divisions were to be created within the general investigative department of the investigative committee of the Russian Federation ("*отдел по расследованию преступлений, совершенных должностными лицами правоохранительных органов в Главном следственном управлении Следственного Комитета Российской Федерации*") with six staff, as well as within the investigative departments of each federal district (with three staff in each division) and within the investigative departments of Moscow, Moscow region and St Petersburg (with ten staff in each division).

44. Article 125 of the Code of Criminal Procedure of the Russian Federation provides for judicial review of decisions, acts or inaction on the part of an inquiry officer, investigator or head of an investigation unit which are liable to infringe the constitutional rights or freedoms. The judge is empowered to examine the lawfulness and reasonableness of the decision, act or inaction and to issue one of the following decisions: (i) to declare the impugned decision, act or inaction unlawful or unfounded and to order the authority concerned to rectify the breach; or (ii) to dismiss the complaint.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

45. The applicant complained under Article 3 of the Convention that he had been tortured in police custody in order to make him confess to a criminal offence. He further complained under Article 13 of the Convention that no effective investigation had been conducted into his ill-treatment.

46. The Court will examine both aspects of the complaint under Article 3 of the Convention, which reads as follows:

Article 3

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

47. The Government acknowledged a violation of Article 3.

48. The applicant submitted that although he had not formally been given the status of a suspect or an accused, he had been questioned about his alleged involvement in the murder of D. He had not been afforded any of the rights which a suspect or an accused would have had, such as the right to a lawyer and an interpreter. Nor was he informed of his right not to give self-incriminating statements. The applicant contended that in view of the initial refusal to open a criminal case, which had resulted in the late commencement of the investigation, and the subsequent refusal to prosecute

police officers B. and S. identified by him as accomplices in his ill-treatment, there had been no effective investigation into his complaint. The police officers who had subjected him to torture had continued to serve in the police and S. had even been promoted (see paragraph 41 above).

A. Admissibility

49. The Court notes that in the domestic civil proceedings the applicant was awarded compensation for the damage which he had sustained as a result of, *inter alia*, his ill-treatment (see paragraphs 36-39 above). It further notes that the Government's acknowledgment of a violation of Article 3 covers both aspects of the applicant's complaint, notably that he was subjected to ill-treatment at the hands of the police and that no effective investigation was carried out into his ill-treatment.

50. The Court reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention. It notes with satisfaction that the domestic civil court duly examined the applicant's case, established the State's liability for his ill-treatment and awarded him compensation. However, in cases of wilful ill-treatment by State agents in breach of Article 3, the Court has repeatedly found that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Secondly, an award of compensation to the applicant is required where appropriate or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010). In cases of wilful ill-treatment by State agents, a breach of Article 3 cannot be remedied only by an award of compensation to the victim because, if the authorities could confine their reaction to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice (see *Vladimir Romanov v. Russia*, no. 41461/02, § 78, 24 July 2008, and *Gäfgen*, cited above, § 119).

51. In the absence of an effective investigation the applicant can still claim to be a victim of a violation of Article 3 in respect of his alleged ill-treatment.

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

B. Merits

1. The applicant's ill-treatment in police custody

53. In view of the Government's acknowledgment of a violation of Article 3 in the present case and the domestic authorities' decisions in the criminal and civil proceedings, the Court finds the applicant's allegations as to what happened to him on 26-28 April 2009 established (see paragraphs 6-13, 29 and 37 above).

54. The Court notes that the ill-treatment to which the police officers subjected the applicant during his arbitrary detention in their offices at the police station included punching him, hitting him on the head with a glass bottle, undressing him, tying him up and hanging him in painful positions from a metal bar and a door, head down and naked, pulling his penis, squeezing his testicles, threatening him with an intravenous injection and subjecting him to electric shocks. To have subjected the applicant to electric shocks, tied him up and hung him in painful positions required a certain preparation and knowledge on the part of the police officers and the use of special devices. The applicant endured the sequence of these abhorrent acts of physical and psychological violence during a prolonged period of time, between being taken to the police station sometime in the afternoon of 26 April 2009 and the following morning, that is, for at least twelve hours. The ill-treatment left the applicant with numerous bruises on his body and a broken rib (see paragraphs 14-17 above). The police officers acted intentionally with the aim of making him confess to the murder of D. The applicant – who was unlawfully deprived of his liberty and denied all the rights of a person detained on suspicion of having committed a criminal offence (see paragraph 37 above), including access to a lawyer and an interpreter, notification of his detention to a third party or access to a doctor – was entirely vulnerable *vis-à-vis* the police officers. The fact that he was a foreigner and his command of Russian was limited could only have further exacerbated his vulnerability.

55. The Court finds that the treatment to which the applicant was subjected at the hands of the police amounted to torture (see *Samoylov v. Russia*, no. 64398/01, §§ 52-54, 2 October 2008; *Valyayev v. Russia*, no. 22150/04, § 57, 14 February 2012; *Tangiyev v. Russia*, no. 27610/05, § 56, 11 December 2012; and *Aleksandr Novoselov v. Russia*, no. 33954/05, §§ 65-66, 28 November 2013).

56. There has accordingly been a violation of Article 3 under its substantive head.

2. Obligation to conduct an effective investigation

57. The applicant made a credible assertion that he had suffered treatment proscribed under Article 3 at the hands of the police. His assertion

was supported by forensic medical evidence and confirmed by other evidence that emerged as a result of the very first steps undertaken by the investigative committee (see paragraphs 21-22 above). The State therefore had an obligation to carry out an effective official investigation into his allegation.

58. The Government have acknowledged that no such investigation took place. The Court, as with regard to the violation of Article 3 in its substantive aspect, has no reason to hold otherwise.

59. Indeed, the investigative authority did not open a criminal case until 8 October 2009, that is, five months after the applicant's alleged ill-treatment had been brought to its attention. It then instituted proceedings on the grounds that it had sufficient data disclosing elements of a crime committed by unidentified police officers at the Zheleznodorozhniy ROVD, and commenced an investigation (see paragraph 26 above).

60. The Court found in *Lyapin v. Russia* that in cases of credible allegations of treatment proscribed under Article 3 of the Convention, it was incumbent on the authorities to open a criminal case and conduct an investigation, a "pre-investigation inquiry" alone not being capable of meeting the requirements of effective investigation under Article 3. It held that the mere fact of the investigative authority's refusal to open a criminal investigation into credible allegations of serious ill-treatment in police custody was indicative of the State's failure to comply with its obligation under Article 3 to carry out an effective investigation (see *Lyapin v. Russia*, no. 46956/09, §§ 128-40, 24 July 2014).

61. The above findings are fully applicable to the present case. On the facts, the Court notes that the data which the investigative committee assessed as sufficient for opening a criminal case on 8 October 2009 were in the committee's hands shortly after the applicant's ill-treatment (see paragraph 21-22 above). Hence, nothing can explain the five months' delay in commencing the criminal investigation into the applicant's complaint. The Court considers that such a delay could not but have had a significant adverse impact on the investigation, considerably undermining the investigative authority's ability to secure the evidence concerning the alleged ill-treatment (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001; *Kopylov v. Russia*, no. 3933/04, § 137, 29 July 2010; *Eldar Imanov and Azhdar Imanov v. Russia*, no. 6887/02, § 99, 16 December 2010; and *Shishkin v. Russia*, no. 18280/04, § 100, 7 July 2011). In particular, the significant lapse of time must have diminished the applicant's ability to identify the alleged perpetrators or made the possibility of identification unrealistic (see paragraph 30 above). The Court notes that the judicial remedy under Article 125 of the Code of Criminal Procedure was inaccessible to the applicant for his complaints against the investigative committee's refusal to open a criminal case. The investigative committee

repeatedly revoked its decisions before the court hearings had taken place, only to issue new such decisions thereafter (see paragraphs 24-25 above).

62. The Court would also note that, despite the creation of a new division at the Central Federal District investigative department in order to ensure effective investigation of crimes committed by police officers, the applicant's request for transfer of the criminal case concerning his ill-treatment to that division was rejected on the grounds that there was no obligation to transfer cases of this kind (see paragraphs 33-35 and 43 above).

63. The body of evidence collected during the preliminary investigation, after the criminal case concerning the applicant's alleged ill-treatment had been opened, laid a basis for the civil court to establish the facts of the incident to the extent required for a finding of the State's liability for the acts of ill-treatment committed by its police officers and for an award of compensation to the applicant for the harm suffered by him (see paragraphs 37 and 38 above). As regards individual liability, the investigative committee considered that evidence insufficient for the prosecution of the two police officers identified by the applicant and suspended the investigation for failure to establish the identity of the alleged perpetrators. It appears that in doing so the investigative committee had unreservedly relied on the statements of the police officers who had denied their involvement in the applicant's ill-treatment (see paragraph 30 above). The material of the case file does not suggest that the investigation's conclusions were based on a thorough, objective and impartial analysis of all relevant elements (see, *mutatis mutandis*, *Kolevi v. Bulgaria*, no. 1108/02, § 192, 5 November 2009).

64. The Court finds that the significant delay in opening the criminal case and commencing a full criminal investigation into the applicant's credible assertions of serious ill-treatment at the hands of the police disclosing elements of a criminal offence, as well as the way the investigation was conducted thereafter, show that the authorities did not take all reasonable steps available to them to secure the evidence and did not make a serious attempt to find out what had happened (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000‑IV, and *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 103 et seq., *Reports of Judgments and Decisions* 1998-VIII). They thus failed in their obligation to conduct an effective investigation into the applicant's ill-treatment in police custody.

65. Accordingly, there has been a violation of Article 3 of the Convention under its procedural head.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

66. The applicant complained that police officers had arbitrarily deprived him of his liberty and that his detention had been partly unrecorded and partly under the guise of administrative detention on the trumped-up charge of petty hooliganism. His complaint falls to be examined under Article 5 § 1 of the Convention, which reads as follows:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. The parties' submissions

67. The Government acknowledged that the applicant's rights guaranteed by Article 5 of the Convention had been violated.

68. The applicant submitted that it was common practice to refuse official acknowledgment of detention. A person was detained unofficially until he or she "voluntarily" wrote or signed a "confession statement" (*явка с повинной*) in the course of a "conversation" (*беседа*). The term "invited for a conversation" was widely used not only by law-enforcement officers but also by the courts, whereas it actually meant "brought in for questioning as a suspect". Such practice and the use of formal and informal terminology by the law-enforcement and judicial authorities led to the deprivation of rights guaranteed to persons suspected of having committed a criminal offence. Persons who came to a police station "voluntarily" for a "conversation" were not registered in the police station records. In the

majority of cases it was precisely during such unacknowledged detention that persons were subjected to ill-treatment in order to force them to give a "confession statement". Even where a "confession statement" was not used as evidence, the law-enforcement authorities were still interested in obtaining it in order to receive information about the details of a crime which would enable them to acquire other evidence in support of the prosecution.

69. The applicant also submitted that the administrative proceedings against him had been brought in order to "cover up" his unlawful detention.

B. The Court's assessment

Admissibility

70. As the Court has already reiterated above, it falls first to the national authorities to redress any alleged violation of the Convention. It observes that the complaint now before it was examined in domestic civil proceedings and that the applicant was awarded compensation for the damage which he had sustained as a result of, *inter alia*, his unlawful detention (see paragraphs 36-39 above). The Court will therefore examine whether, for the purposes of Article 34 of the Convention, the applicant can still claim to be a "victim" of the alleged violation of his rights secured by Article 5 § 1 of the Convention. In this connection, it reiterates that an applicant is deprived of his or her status as a victim if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Sergey Vasilyev v. Russia*, no. 33023/07, § 45, 17 October 2013).

71. In its judgment of 29 November 2011 the Leninskiy District Court found that the applicant had been unlawfully deprived of his liberty by police officers from 26 to 28 April 2009. It referred, *inter alia*, to the Zheleznodorozhniy District Court's judgment of 29 July 2009 terminating the administrative proceedings against the applicant for lack of an administrative offence (see paragraph 19 above). The national authorities can therefore be said to have acknowledged in substance (the domestic courts) and expressly (the Government) a violation of the applicant's rights under Article 5 § 1 of the Convention.

72. The Leninskiy District Court awarded the applicant RUB 840,000 (approximately 20,000 euros) for the damage which he had sustained as a result of, *inter alia*, his unlawful detention. On 22 March 2012 the Voronezh Regional Court upheld the Leninskiy District Court's judgment following the examination of the appeals lodged by the respondent authorities. No appeal was lodged against the District Court's judgment by the applicant (see paragraph 39 above). It can therefore be presumed that he

was satisfied with the amount of compensation awarded by the District Court. In these circumstances, there are no grounds for the Court to verify whether the sum awarded was reasonable in comparison with awards made by the Court in similar cases (see *Kopylov*, cited above, § 144). It considers that the compensation in the circumstances of the present case amounted to appropriate and sufficient redress for the alleged violation of Article 5 § 1.

73. It follows that the applicant can no longer claim to be a victim of a violation of Article 5 § 1. This complaint is therefore inadmissible and should be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

74. 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

75. The applicant submitted that he had sustained considerable non-pecuniary damage as a result of his unlawful detention, torture and ill-treatment, the initial refusal to open a criminal case into his allegations and the refusal to bring charges against the police officers he had identified. He noted that the amount of compensation claimed by him before the Leninskiy District Court for the damage which he had sustained as a result of his unlawful detention and torture was reasonable and equitable. He however relied on the Court in the determination of the amount of just satisfaction.

76. The Government did not comment.

77. In paragraph 51 above the Court found that the applicant can still claim to be a victim of a violation of Article 3 in respect of his alleged ill-treatment in view of the authorities' failure to conduct an effective investigation. It further found a violation of Article 3 under its substantive head (see paragraph 56 above) and under its procedural head (see paragraph 65 above). Making its assessment on an equitable basis, and taking into account the amount awarded by the domestic courts, the Court awards the applicant 20,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

78. The applicant claimed 144,360 Russian roubles (RUB) (approximately EUR 3,675) for the legal costs and translation and interpretation expenses incurred in the domestic proceedings and RUB 112,000 (approximately EUR 2,850) for legal costs and translation expenses incurred before the Court.

79. The Government did not comment.

80. 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 are reasonable as to quantum. The Court notes that as regards the costs and expenses incurred in the domestic proceedings, the sum of RUB 51,200 was at the applicant's expense and the remaining sum of RUB 93,160 was paid by the non-governmental organisation, the Civic Assistance Committee ("the CAC"). The documents in the Court's possession do not attest to the applicant's obligation to reimburse the sum paid by the CAC. Having regard to the violation of Article 3 found in the present case and the above criteria, the Court rejects the claim for reimbursement of the costs and expenses in the domestic proceedings paid by the CAC and considers it reasonable to award the applicant the sum of EUR 1,300 for costs and expenses in the domestic proceedings and EUR 2,000 for the proceedings before the Court, together with any tax that may be chargeable to the applicant. The sum of EUR 3,270 is to be paid directly to the applicant's representative, Ms Gnezdilova, and the remaining EUR 30 to the applicant, as was requested by him.

C. Default interest

81. The Court considers it appropriate that the default interest rate 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 complaint under Article 3 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive head in that the applicant was subjected to torture;

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

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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,300 (three thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, of which the sum of EUR 3,270 (three thousand two hundred and seventy euros) is to be paid directly into the bank account of the applicant's representative Ms Gnezdilova and the remaining sum of EUR 30 (thirty euros) is to be paid to the applicant;

(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 5 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro
Registrar	President