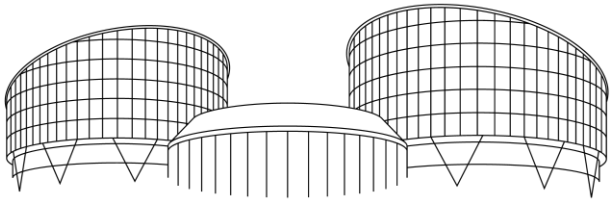

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIRST SECTION

CASE OF DENIS VASILYEV v. RUSSIA

(Application no. 32704/04)

JUDGMENT

STRASBOURG

17 December 2009

FINAL

17/03/2010

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 Denis Vasilyev v. Russia**,**

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

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

Having deliberated in private on 26 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 32704/04) 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 Denis Vladimirovich Vasilyev ("the applicant"), on 23 July 2004.

2. The applicant, who had been granted legal aid, was represented by Ms M. Voskobitova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the assault on him had not been properly investigated, that he had been the victim of ill-treatment on the part of police officers and medical personnel which had likewise not been investigated, and that he had not been recognised as a civil party in the criminal proceedings.

4. On 4 April 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

5. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it. The Court decided, after consulting the parties, that no hearing in the case was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1983 and lives in Moscow.

A. Assault on the applicant and medical treatment

1. Assault on the applicant and his friend

7. On 29 June 2001 the applicant and his school friend Mr N. were spending the evening together. At about 11.30 p.m. they went to Mr N.'s place as Mr N., who is a diabetic, needed an insulin injection. After that they took a taxi to the applicant's place.

8. While walking through the courtyard they were assaulted, near house no. 16/18 on Shcherbakovskaya Street in the Eastern Administrative District of Moscow. The attacker called out to them from behind and, before they could turn round, they received strong blows to their heads, fainted and collapsed on the ground. A considerable sum of money, a gold bracelet and a cell phone were stolen from them.

9. Neighbours called the Sokolinaya Gora police station. At 1.40 a.m. on 30 June 2001 the police officers Mr Zharov and Mr Volkov arrived at the scene. They served in the 2nd police battalion of the Eastern Administrative District of Moscow, whose main task was to provide security to businesses and private property under commercial contracts. In addition to that, they acted as neighbourhood patrol officers.

10. According to their statements, they saw two young men on the road whom they believed to be drunk. One of them was sitting, the other lay still. Some vomit could be seen. The policemen claimed that they reported the situation to the officer at the Sokolinaya Gora police station and told him that an ambulance or specialists from a sobering-up centre should be called.

11. The policemen then dragged the unconscious applicant and his friend away from the road into the courtyard of house no. 16/18. According to the Government, the policemen left the applicant and N. "on a grass plot"; the applicant claimed that they had been put "in the rubbish dump". At that moment the private security co-ordinator (*дежурный по отделу вневедомственной охраны*) informed the officers that an alarm had gone off and instructed them to check it out. They reported it to the officer at the police station and left the scene.

12. At about 7 a.m. janitors Ms E. and Mr B. spotted two young men some three or four metres away from the rubbish bins and attempted to

wake them up. However, both were unconscious, the dark-haired one (Mr N.) mumbled incoherently. They called for an ambulance.

13. At 8 a.m. Doctor P. arrived in the first ambulance. On seeing two victims, he called for another ambulance and began attending to Mr N. who had an abrasion and haematoma on his left cheek. When Mr N. regained consciousness, Doctor P. helped him climb into the van and took him to Moscow City Hospital no. 1.

14. In the meantime, a second ambulance arrived with Doctor Ch. He loaded the still unconscious applicant into the van and took him to Moscow City Hospital no. 33.

2. Treatment at Hospital no. 33

15. Upon arrival at the hospital at 9.05 a.m. the applicant was diagnosed with alcohol intoxication. Injuries and abrasions on his wrists and forehead were noted. Two hours later he was examined by a neurosurgeon.

16. Until 5 p.m. on 1 July 2001 the applicant remained, still unconscious and also undressed, on a trolley in the hospital corridor.

17. At 6.30 p.m. emergency surgery – bilateral trepanation of the skull – was performed on him.

18. On 8 July 2001 the applicant's mother invited a private doctor to examine her son. The doctor determined that the applicant was in a life-threatening condition. An ambulance transferred the applicant in a state of coma to the Burdenko Military Hospital in Moscow.

3. Treatment at Burdenko Hospital and partial recovery

19. From 9 July to 27 July 2001 the applicant was in a coma. On 25 July 2001 tracheotomy (creation of a surgical airway in the cervical trachea) was performed and a cannula was inserted.

20. After he woke up from the coma, he was transferred to the neurosurgery unit where he stayed in a critical state until 10 August.

21. Until the removal of the cannula in October 2001 and then in December 2002, the applicant underwent several operative procedures for osteomyelitis of the skull.

22. On 1 October 2001 a medical panel recognised the applicant as having disability of the second category.

23. In 2002 the applicant developed post-traumatic convulsive disorder. On 13 June 2003 he had a seizure and fainted. He was taken to Burdenko Hospital and operated upon for a pus abscess in the skull.

B. Investigations and judicial proceedings

1. Investigation into the assault (case no. 073041)

24. On 30 June and 1 July 2001 the Sokolinaya Gora police station received from Hospitals nos. 1 and 33 reports on bodily injuries concerning the applicant and Mr N. The head of the inquiries section of the police station asked the operational officer Mr Yermakov to check the reports. Subsequently the internal inquiry (see below) revealed that Mr Yermakov had not taken any measures for the purpose of inspecting the crime scene, identifying witnesses or interviewing the victims.

25. On 6 July 2001 Mr Yermakov forwarded the materials to the Investigations Department where the case was assigned to the operational officer Mr Abdryayev. Mr Abdryayev did not take any procedural decision regarding the materials until 17 July 2001.

26. On 18 July 2001 the head of the Sokolinaya Gora police station launched an internal inquiry which revealed that nothing had been done with regard to the injury reports. Both Mr Yermakov and Mr Abdryayev were disciplined. On the same day the crime scene was examined for the first time. On 20 July 2001 a criminal investigation into the assault on the applicant and Mr N. was opened.

27. On 20 September 2001 the investigator Mr Drozdov issued a decision to discontinue the proceedings because the perpetrator of the assault could not be identified. The only items of evidence referred to in the decision were statements by the police officers Volkov and Zharov, by the ambulance doctor and by Mr N.

28. On 16 October 2001 the investigator Mr Solomkin decided to re-open the investigation.

29. By letter of 29 October 2001, a deputy to the Presidential Envoy in the Central Federal Region wrote to the applicant’s mother that her complaint about the prolonged investigation had been examined by the Internal Security Department of the Ministry of the Interior. It had been established that the inquiry had not been properly conducted, that no one had visited or examined the crime scene, and that no other investigative steps had been taken. Operational police officers Mr Yermakov and Mr Abramov had been reprimanded.

30. On 16 November 2001, 6 January, 19 April, 13 June and 15 August 2002, decisions to suspend the proceedings were issued because the perpetrator(s) could not be identified. Supervising prosecutors set these decisions aside and instructed the investigator to take additional investigative measures, such as interviewing caretakers in the neighbouring buildings and the night watchman in the Korona café and examining the list of calls made from the stolen cell phone.

31. On 12 September 2003 the case was transferred to the Main Investigations Department of the Moscow City Police.

32. In a letter of 27 February 2004 the Investigations Committee of the Ministry of the Interior acknowledged that the investigation of cases nos. 073041 and 1056 (see below) had been improper, noting as follows:

> "Thus, it has been established that at the initial stage the investigation of case no. 73041 was carried out at a low professional level and in breach of the rules of criminal procedure. On many occasions proceedings were prematurely suspended on the ground that the persons responsible could not be identified. Certain officers of the Sokolinaya Gora police station of the Eastern Administrative District in Moscow were disciplined for violations of the rules of criminal procedure and inadequate management of the investigation. Investigation of case no. 1056 [medical negligence] was also held back because of significant failures.
>
> Having regard to deficiencies in the investigation and in compliance with the directions of the Moscow city prosecutor's office, additional investigative steps and operational measures are now being carried out in the above cases with a view to examining the events in a comprehensive and thorough fashion and establishing the criminal liability of those responsible."

33. On 2 April and 13 May 2004 public prosecutors reversed further police decisions suspending the investigation and ordered that specific investigative measures be taken.

34. On 4 June 2004 the case was referred to the Eastern Administrative District prosecutor's office and assigned to the investigator Mr Volk, who was in charge of particularly important cases. On 20 July 2004, 30 January, 18 August and 5 October 2005, and 27 March 2006 Mr Volk suspended the investigation on the ground that the perpetrator(s) of the assault could not be identified. Those decisions were reversed by supervising prosecutors.

35. The most recent decision by Mr Volk on suspending the investigation which has been made available to the Court is dated 17 July 2006. It took stock of the evidence that had been collected in the case.

36. The decisions indicated that the statements had been taken from both victims – the applicant and N. – who had not remembered the attacker, their friends who had not seen the attack, and also the police officers, janitors and doctors who had seen the victims after the attack. The forensic experts had established that the applicant had sustained "serious bodily injuries" and N. "light bodily injuries".

37. The applicant's mother told the investigator that shortly after the crime she had visited the Sokolinaya Gora police station. One of the police officers who had curly hair and the nickname "Pushkin", had described to her that the victims had been found near the Korona café. The applicant's mother had gone to the café and talked to the employees who had told her that on the night of 29 to 30 July 2001 three police officers nicknamed "Sasha", "Sidor", and "Kostya" had been heavily drinking in the café and had been aggressive to the point of seeking a fight with the bartender.

However, they had not witnessed any fights between the officers and her son or Mr N. The investigator also took testimony from seven officers from the Sokolinaya Gora police station who claimed they were unable to remember visiting the café on that particular night and did not know anyone nicknamed "Sidor" or "Pushkin". Three of them denied that they had ever been to the Korona café and the other four acknowledged that they had gone there from time to time.

38. Mr N.'s mother stated to the investigator that in the hospital her half-conscious son had mumbled incoherently about "cops" hitting him on the head. When she came to visit him two days later, she stumbled upon two men in civilian clothing by her son's bed, one of them was shaking her son and asking him whether he had remembered the "cops" who had beaten him. She loudly protested and they all went out into the corridor where the men produced their badges and introduced themselves as the police officers from the Sokolinaya Gora police station, Mr Drozhzhin and Mr Konovalenko. Between themselves, they called each other "Pushkin" and "Dimon". They told her that they were investigating the assault on her son. The investigator interviewed Mr Drozhzhin, who denied that he had ever visited Mr N. in hospital. Mr Konovalenko was not available for questioning.

39. The investigator found that it was impossible to identify the persons responsible for the assault. On 30 November 2006 a supervising prosecutor annulled that decision and instructed Mr Volk to elucidate discrepancies in the testimony by organising confrontations and to locate and examine former police officers from the Sokolinaya Gora police station.

2. Investigation into the actions of the police officers Zharov and Volkov (case no. 229337)

40. On 6 January 2002, following on the applicant's mother's complaint about an improper performance of their duties by the police officers Mr Zharov and Mr Volkov and by Doctor K., who had not rendered assistance to the applicant that was appropriate for his condition, certain material was severed from the main criminal case for a separate inquiry.

41. On 13 March 2002 an investigator with the Izmaylovskiy District prosecutor's office, on the basis of statements by Mr N., the applicant's mother, Doctors P., Ch. and K., and the officers Zharov and Volkov, decided that there was no indication of a criminal act because Doctor K. had correctly diagnosed the applicant and had taken all the required measures, and because the officers had "erred in good faith as to Mr Vasilyev's and Mr N.'s capacity to take care of themselves".

42. On 15 March 2002 a supervising prosecutor quashed that decision. She found that the conclusion about the police officers' good-faith error contradicted the facts of the case, as the applicant had been unconscious when they had arrived. She decided on the institution of criminal

proceedings under Article 293 § 2 of the Criminal Code (criminal negligence leading to the victim's death or grave injury). The investigation was assigned to the Izmaylovskiy District prosecutor.

43. On 15 June and 26 July 2002 the investigation was discontinued for a lack of indications of a criminal offence. These decisions were set aside by higher-ranking prosecutors.

44. On an unspecified date the officers Zharov and Volkov were formally charged with abandonment of the applicant and N. in danger, an offence under Article 125 of the Criminal Code.

45. On 5 September 2002 the applicant was granted the status of a victim in the proceedings.

46. On 27 November 2002 the applicant asked the investigator to amend the legal characterisation of the officers' actions. He pointed out that the officers had been on duty and had acted in breach of requirements of the Police Act. For that reason they should have been charged with criminal negligence leading to grave consequences, an offence under Article 293 § 2 of the Criminal Code. On the same date the applicant asked the investigator to recognise his status as a civil party. His application bore a handwritten acknowledgement of receipt by the investigator, dated 28 November 2002. It is not clear what response the investigator gave to the applicant's requests.

47. On 29 November 2002 the bill of indictment was served on Mr Volkov and Mr Zharov. The prosecution's case under Article 125 of the Criminal Code was that they had been the patrolling police officers on duty when they had arrived at the scene and found two unconscious men. Being aware that the men had been helpless and unable to care for themselves, Volkov and Zharov had not fulfilled their legal duty, under the Police Act, the Regulation on Police Patrols and the internal instructions, to protect victims of offences or accidents, intoxicated persons unable to move, and other vulnerable individuals. Even though they had a realistic possibility of providing assistance, they had failed to examine or identify the victims, call an ambulance, administer first aid or take them to a hospital, locate witnesses or secure the crime scene. Instead, they had moved the victims to the side and had falsely reported to the officer at the Sokolinaya Gora police station that all the required measures had been taken.

48. On 24 January 2003 the Izmaylovskiy District Court of Moscow scheduled the opening of the trial for 7 February 2003. The judge allegedly told the applicant that his request to join the proceedings as a civil party would be examined at a later stage.

49. Hearings were held on 20 February, 25 March, 30 April, 23 June, 28 July and 24 September 2003.

50. The trial court took testimony from a neighbourhood resident, the janitors Ms E. and Mr B., ambulance doctors P. and Ch., who described the circumstances in which they had discovered the applicant and Mr N. The

senior operational officer Mr K., who had been on duty at the Sokolinaya Gora police station on the night of 29 to 30 June 2001, stated that no telephone call concerning two young men on the Shcherbakovskaya Street had been recorded in the log. However, he had been replaced for one hour by the officer Mr Vancharin. He also testified that the police officers serving in the private-security department (*отдел вневедомственной охраны*) had to give priority to the orders of the security co-ordinator rather than the orders of the officer-on-duty at the police station.

51. The officer Mr Vancharin confirmed that he had taken a call concerning the young men but had not recorded it in the log because it had not been placed through the emergency line. He had radioed to the patrol officers from the private-security department and told them to verify the information. They reported back that they had found two drunk men and that the situation was under control. In response, he instructed them to continue patrolling. The security co-ordinator testified to the court that at 1.44 a.m. he had received an alarm signal and had dispatched the officers Volkov and Zharov to check it out.

52. On 29 September 2003 the District Court acquitted both police officers, having made the following assessment of the evidence:

> "...[T]he court considers that it has not been shown that the defendants Volkov and Zharov acted in the knowledge of the fact that [the applicant and his friend] were in a state that was dangerous for their life and health because they could not know it, as they only spent a few minutes on the scene in the night time and as no injuries were visible. They decided that [the applicant and his friend] were in a state of alcohol or drug intoxication...
>
> In support of their claim that Mr Volkov and Mr Zharov made a false report [to the officer-on-duty] the prosecution referred only to the testimony by the witness Mr Vancharin, who was a police officer but who was not authorised to take any reports. However, he was replacing the officer-on-duty, in breach of the regulations of the Sokolinaya Gora police station...
>
> Upon receipt of such information, an officer-on-duty has an obligation to record it in the registration log, to check it and to record the results of the check. The court considers that the officer-on-duty, upon receiving information from Volkov and Zharov that the situation was under control, was required to verify it and obtain credible information about the situation. Mr Vancharin, however, did not do that and did not relay that information or the results of the check to the actual officer-on-duty... The court therefore lends credence to the testimony by Mr Volkov and Mr Zharov... because in these circumstances Mr Vancharin had no interest in telling the truth."

53. On 17 February 2004 the Moscow City Court upheld the judgment on appeal in a summary fashion.

3. Investigation into medical negligence (case no. 1056)

54. On 14 August 2001 the chief medical officer of the emergency care unit informed the applicant's mother that an internal inquiry had established

that the ambulance doctor had diagnosed the applicant on the basis of his friend's statements. As a result, he had underestimated the gravity of his condition. The doctor had been severely disciplined.

55. On 8 November 2001 and 8 February and 2 August 2002 the public prosecutors at various levels informed the applicant's mother that the doctors of Hospital no. 33 had committed no prosecutable offence and refused to institute criminal proceedings.

56. By letter of 4 January 2002, the deputy head of the Moscow Health Protection Committee confirmed that a review of the medical care administered to the applicant at Hospital no. 33 had not identified any defects or shortcomings.

57. Further to a complaint by the applicant's mother, on 5 March 2003 the first deputy to the Moscow City prosecutor cancelled the decision of 2 August 2002, by which the institution of criminal proceedings had been refused, and instructed the Preobrazhenskiy District prosecutor to open a criminal investigation into the offence under Article 124 § 2 of the Criminal Code (failure to render medical assistance to a patient resulting in grave damage to his health).

58. On 15 June 2003 a composite medical study was commissioned for the purpose of determining whether the applicant's health could have been harmed by belated and inadequate medical treatment at Hospital no. 33.

59. On 7 July 2003 a panel of six experts from the 111th Centre for Forensic Medicine of the Ministry of Defence began their work.

60. On 4 September 2003 the investigator Mr Kirichevskiy suspended proceedings because the person responsible could not be identified.

61. On 1 December 2003 the experts' panel returned their findings based on the applicant's medical record (no. 23304) from Hospital no. 33, materials of the criminal case and information from attending physicians. The experts found, in particular, that an incomplete and contradictory description of the applicant's injuries upon his arrival at Hospital no. 33 made it impossible to determine the exact origin, time and cause of his injuries. It could only be established that he had been hit on the head with a heavy blunt object. Moreover, a subsequent examination at Burdenko Hospital revealed two broken thoracic vertebrae which had gone unnoticed at Hospital no. 33, where an X-ray examination had been indicated but never carried out.

62. The experts determined that, given the grave condition in which the applicant had been admitted, he should have been examined immediately by a neurosurgeon and other specialists for differential diagnosis of craniocerebral injury and intoxication and for decisions on urgent treatment. However, a neurosurgeon examined the applicant more than two hours later upon his arrival and in the following thirty-two hours no specialists saw him and no medical tests, not even the basic blood and urine tests, were carried

out. Even the applicant's temperature was not taken. The experts determined as follows:

> "From the moment of arrival (at 9.05 a.m. on 30 June 2001) and until the beginning of preparation for surgery (at 5.30 p.m. on 1 July 2001) the [applicant] was not adequately and objectively examined, the real clinical diagnosis was not made... and appropriate medical treatment was not indicated... Prolonged passive observation of the [applicant] not accompanied by clinical examination led to drastic deterioration of his condition and, as a consequence, to belated surgical intervention not based on clinical and lab tests which resulted in markedly negative post-traumatic and post-surgery complications for the [applicant]...
>
> In the post-surgery period antibacterial treatment was indicated but given inconsistently and without appropriate supervision which, most likely, pre-determined subsequent development of suppurative inflammation of post-operative wounds, arachnoid membranes and medullary substances, osteomyelitis of the right parietal bone, etc..."

63. The experts also noted that there had been no objective basis for diagnosing the applicant with alcohol intoxication. Neither the ambulance doctor in his notes nor his colleagues in subsequent entries in the medical record mentioned alcohol breath. A reference to alcohol breath appeared for the first time in the partly illegible and incomplete report of a medical examination of 30 June 2001. However, that examination was carried out in breach of the applicable regulations. No treatment for intoxication was indicated and the intoxication diagnosis did not feature in any other documents. The credibility of the intoxication diagnosis was further undermined by the fact that the amount of alcohol allegedly found in the applicant's blood would have been lethal.

64. The experts concluded as follows:

> "The extent of damage resulting from the [applicant's] prolonged stay in a medical institution without adequate medical assistance cannot be fully ascertained. It can only be asserted that his condition gravely deteriorated during that period and that irreversible brain changes progressed to the point where emergency surgery was required by life-saving indications...
>
> The present study identified a number of defects in the medical care dispensed to [the applicant] at Hospital no. 33 of Moscow – in particular, unjustified conservative treatment, incomplete examination, belated and incomplete diagnosis, belated surgical intervention, inadequate medical measures – which failed to arrest development of the grave post-traumatic process and contributed to an unfavourable outcome and the [applicant's] disability. However, it is not possible to measure the extent to which these defects affected the outcome because appropriate measurement methods do not exist."

65. At some point in 2003 it transpired that the applicant's medical record from Hospital no. 33 was lost. It had been removed by the investigator Mr Solomkin from the hospital in 2001 and produced to the experts for examination. It was then returned to the investigators, who were no longer able to locate it.

66. On 12 January 2004 a deputy Moscow City prosecutor reversed the decision suspending the proceedings and asked that those responsible for delays and procedural violations be disciplined. On 17 February 2004 an internal inquiry established that the investigator Mr Kirichevskiy had unlawfully decided to discontinue the proceedings before the medical examination had been completed. The investigator received a reprimand and his superior was demoted.

67. On 3 February 2004 the investigator Mr Shakhov from the Investigations Department of the Eastern Administrative District Police took up the case. He wrote to the applicant's mother that those responsible for the loss of the medical record had been disciplined.

68. On 20 April 2004 the investigator Mr Shakhov commissioned a new medical study by the same experts and with the same questions. The previous study was considered inadmissible because it had been completed at the time when the proceedings had been suspended. On 17 May 2004 the new study was completed. The experts returned the same findings. They also noted that their task had been hampered by numerous corrections of entries, in particular dates and times, in the medical records from Hospital no. 33 and because of inexplicable contradictions in those entries.

69. On 20 May 2004 the investigator Mr Shakhov issued a decision suspending the proceedings on the ground that the authorised investigation period had expired. On 19 June 2004 the decision was annulled by a supervising prosecutor.

70. The investigation was transferred to Mr Buvin who suspended the proceedings on the same ground on 1 September and 19 November 2004. A public prosecutor set aside his decisions on 13 October and 18 December 2004.

71. On 18 January 2005 the investigator noted that the initial forensic examination had not determined the extent of correlation between the deficiencies in the medical assistance provided to the applicant at Hospital no. 33 and the damage to his health. He appointed a new medical examination by the experts from the Health Protection Department of the Moscow Government and suspended the proceedings in the case.

72. On 30 May 2005 the experts returned their findings which were based, in the absence of the original medical records, on the materials of the case file and extensive quotations from the original records in the text of the initial expert examination. The experts found that the applicant had suffered from a vascular pathology which had resulted in a subdural hematoma against the backdrop of a head trauma and alcohol intoxication. In their view, at the moment of the applicant's admission to Hospital no. 33, no urgent surgery was required. The hematoma was allowed to grow over a period of time under constant supervision by medical specialists who awaited the most propitious moment for brain surgery. The experts concluded that the findings of the initial examination had been "objectively

untenable" and that the diagnosis and surgery had been carried out in a timely and precise fashion. On the same day the public prosecutor ordered the proceedings to be resumed.

73. Further decisions concerning the discontinuance of the proceedings on various procedural grounds were issued on 18 January 2005 (annulled on 30 May) and 31 May 2005 (annulled on 24 June).

74. On 15 August 2005 the investigator decided to commission a further forensic examination with a view to eliminating the discrepancies between the findings of the first and second experts' reports. It was entrusted to the Russian Centre for Forensic Medicine at the Federal Agency for Health Protection and Social Development. However, the Centre refused to conduct the examination in the absence of the original medical records. The director of the Centre's First Department stated to the investigator that an examination on the basis of the case-file materials and previous findings by other experts would be "methodologically incorrect and in breach of the existing practice of expert examinations".

75. On 6 September 2005 the investigator granted the applicant the status of a victim in the proceedings and recognised his mother as his legal representative.

76. On 28 April and 19 July 2006 the investigator Mr Volk decided to discontinue the proceedings on the ground that no offence had been committed. The decisions were set aside by supervising prosecutors.

77. The most recent decision on discontinuance of criminal proceedings, which the Court has in its possession, was made by the investigator Mr Volk on 29 November 2006. He took stock of the existing evidence, including the testimony by the doctors Mr K., Mr Ts. and Mr B. from Hospital no. 33, the ambulance doctors, the applicant's friend Mr N., the applicant's mother, and the applicant himself. The findings of the first and second forensic studies were extensively quoted, as were the reasons given by the federal centre for forensic examination for refusing to conduct a "conciliatory" study in the absence of the original documents. The investigator reached the following conclusion:

> "Despite the existence of substantial discrepancies in the above-mentioned findings by two experts' commissions as to the origins and development of [the applicant's] disease and the professional level of treatment that was administered to him, neither commission could state that there was a link of causality between the treatment administered to [the applicant] and the consequences in the form of serious damage to the victim's health.
>
> In these circumstances, the investigation finds that there are no objectively verifiable factual indications that Doctors K., Ts, and B. from Hospital no. 33 failed to render medical assistance to [the applicant] without valid reasons, thus resulting in serious damage to his health, that is, that they committed the offence under Article 124 § 2 of the Criminal Code."

78. On the same date a supervising prosecutor quashed that decision and instructed Mr Volk to remedy the shortcomings in the investigation and, in particular, to locate the original medical documents.

II. RELEVANT DOMESTIC LAW

A. Criminal Code

79. Article 124 of the Criminal Code defines the offence of non-provision of medical assistance to a patient as failure to provide medical assistance, without valid reasons, by the person who had a legal obligation to render such assistance. Paragraph 2 of the Article concerns the situation in which such failure resulted in the patient's death or grave damage to his health.

80. Article 125 concerns the offence of abandonment in a life-threatening situation, which is defined as the deliberate act of abandoning without assistance a person who finds himself or herself in a situation that endangers his or her life or limb and who is incapable of taking measures for self-preservation because of his or her young or old age, illness or helplessness, provided that the offender had the possibility of rendering assistance to that person and also a duty to take care of him or her.

81. Article 293 defines the offence of professional negligence as non-performance or improper performance of professional duties entailing a substantial violation of the rights and legitimate interests of citizens.

B. The Police Act (Law no. 1026-I of 18 April 1991)

82. Section 10 provides that the police have, in particular, the duty to render assistance to victims of criminal and administrative offences and accidents, and to persons in a helpless state or in a state that is dangerous for their life or limb.

C. Regulation on Police Patrols (Order of the Ministry of the Interior no. 17 of 18 January 1993)

83. On arrival at the crime scene, a police patrol must render assistance to the victims, call an ambulance if necessary, identify possible witnesses and eye-witnesses to the crime, secure the site, report to the officer-on-duty and proceed in accordance with his instructions (paragraph 135).

84. While administering first aid or transferring the victim to a medical institution, the police officer must examine the victim's clothing and exposed areas of the body with a view, in particular, to identifying him or

her. If the victim shows no visible signs of life, the officer must firstly ascertain whether he is alive or not, without altering his position or that of surrounding objects (paragraph 141).

D. Regulation on Private Security Departments Attached to the Police (Government Resolution no. 589 of 14 August 1992)

85. Private-security departments attached to the police force are created for the protection of private property (paragraph 1). Private-security forces comprise police officers as well as technical and support staff (paragraph 4). Officers of private-security departments are recruited by the Ministry of Internal Affairs (paragraph 9) and they have the same rights as those conferred on the police officers under the Police Act, including the right to carry weapons and the right to arrest offenders (paragraph 8).

E. Code of Criminal Procedure

86. Before 10 July 2003 the Code of Criminal Procedure provided that a civil claim could be lodged after the institution of the criminal proceedings but before the end of the pre-trial investigation (Article 44 § 2). After the amendments introduced by Federal Law no. 92-FZ of 4 July 2003, the time period for lodging a civil claim was extended up to the beginning of final pleadings in the first-instance court.

THE LAW

I. ALLEGED INEFFECTIVENESS OF THE INVESTIGATION INTO THE ASSAULT ON THE APPLICANT

87. The applicant complained under Article 2 of the Convention that the State had failed to provide for a mechanism to ensure public safety and to investigate the assault on his life and health.

88. In his observations on the admissibility and merits of the application, the applicant emphasised that his claim was not that he had been assaulted by State agents or that the attack had been otherwise attributable to the State. Rather, he maintained that the State had not discharged its obligation to carry out an effective investigation into the circumstances of the life-threatening assault, to identify the perpetrators and to compensate him for the damage. In this connection, he pointed out that the investigation had not been prompt because the case had been opened more than twenty days after the incident, that it had been closed and re-opened at least eight times, that

his mother's version of the involvement of police officers had been checked for the first time only in 2004, and that the overall duration of the investigation had been excessively long.

89. The Government submitted that police officers had been disciplined for the failure to institute criminal proceedings in a timely fashion. The initial decisions to discontinue the criminal proceedings had not been justified and for that reason the case had been transferred to the Investigations Department of the Eastern Administrative District of Moscow. However, there had been further delays in the investigation which had brought about the dismissal of the investigator Mr Shakhov and disciplinary sanctions against the investigator Mr Kirichevskiy and the deputy public prosecutor of the Eastern Administrative District of Moscow. Subsequently the case had been reassigned to the public prosecutor's office of the Eastern Administrative District of Moscow. On 7 June 2006 the Moscow City prosecutor's office had set aside the decision to discontinue the proceedings and the investigation had been resumed.

A. Admissibility

90. The Government submitted that the complaint was premature because the investigation had not yet been concluded by a final decision. Accordingly, the applicant had not exhausted domestic remedies.

91. The Court considers that the Government's objection should be joined to the merits, since it is closely linked to the substance of the applicant's complaint about the State's alleged failure to conduct an effective investigation (see *Mikheyev v. Russia*, no. 77617/01, § 88, 26 January 2006). The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. Moreover, it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The applicable Convention provision

92. On the facts, the Court observes that the applicant was attacked by one or more individuals with an apparent intention to rob him. He received a hard blow to his head, lost consciousness and later remained in a coma for a long period of time. Forensic experts described the injuries he had sustained as "serious" according to the domestic classification.

93. In the present case, the applicant's injuries did not prove fatal. This outcome, however, does not exclude in principle an examination of his complaint under Article 2, the text of which, read as a whole, demonstrates

that it covers not only intentional killing but also situations where the use of force may result, as an unintended outcome, in the deprivation of life. Furthermore, the Court has already examined complaints under this provision where the alleged victim did not die as a result of the impugned conduct (see *Makaratzis v. Greece* [GC], no. 50385/99, § 49, ECHR 2004-XI; *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 174, 24 February 2005; and *İlhan v. Turkey* [GC], no. 22277/93, § 75, ECHR 2000-VII).

94. Nevertheless, the Court's case-law has established that it is only in exceptional circumstances that physical ill-treatment which did not result in death may disclose a violation of Article 2. The degree and type of force used and the intention or aim behind the use of force may, among other factors, be relevant in assessing whether in a particular case the actions resulting in an injury short of death were such as to bring the facts within the scope of the safeguard afforded by Article 2. In many cases where a person was assaulted or ill-treated, his or her complaints will rather fall to be examined under Article 3 of the Convention (see, *mutatis mutandis*, *Makaratzis*, § 51, and *İlhan*, § 76, both cited above). In this connection, the Court reiterates that, to fall within the scope of Article 3, the alleged ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim (see *Saadi v. Italy* [GC], no. 37201/06, § 134, ECHR 2008-...).

95. The applicant and his friend were attacked by an unknown person and a large sum of money was stolen from them. A blow had been dealt to each of them from behind. Judging by the direction of the attack, it would appear that the assailant had sought to knock the victims out before they could register his face. After the applicant had fainted, he was not beaten or kicked any more. No lethal weapons were involved in the incident and nothing suggested an intention by the robber to take the applicant's life. The Court finds, therefore, that the situation fell outside the ambit of Article 2. Nevertheless, in view of the severity of the injury sustained by the applicant and its lasting effect on his health, the Court considers that this act of violence amounted to ill-treatment of the kind prohibited by Article 3 (compare *Beganović v. Croatia*, no. 46423/06, § 66, 25 June 2009, and *Šečić v. Croatia*, no. 40116/02, § 51, ECHR 2007-VI).

96. Accordingly, the Court will examine this complaint from the standpoint of Article 3 of the Convention, which provides as follows:

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

2. Compliance with Article 3

97. The Court observes that the applicant did not lay any blame on the authorities of the respondent State for the attack of which he and his friend were victims; nor was it suggested that the authorities knew or ought to have known that the applicant had been at risk of physical violence at the hands of third parties and failed to take appropriate measures to safeguard him against that risk. The elements collected by the domestic investigation, such as an unverified statement by the applicant's mother about local police officers' pugnacious partying in a nearby café, are not capable of founding an "arguable claim" of any involvement of State agents in the attack or the existence of an established risk to the applicant's well-being.

98. However, the absence of any direct State responsibility for acts of violence that meet the condition of severity such as to engage Article 3 of the Convention does not absolve the State from all obligations under this provision. The obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals (see *Moldovan and Others v. Romania (no. 2)*, nos. 41138/98 and 64320/01, § 98, ECHR 2005-VII (extracts); *M.C. v. Bulgaria*, no. 39272/98, § 149, ECHR 2003-XII; and *A. v. the United Kingdom*, 23 September 1998, § 22, *Reports* 1998-VI).

99. Admittedly, it goes without saying that the obligation on the State under Article 1 of the Convention cannot be interpreted as requiring the State to guarantee through its legal system that inhuman or degrading treatment is never inflicted by one individual on another or, if it has been, that criminal proceedings should necessarily lead to a particular sanction. What Article 3 does require is that the authorities conduct an effective official investigation into the alleged ill-treatment even if such treatment has been inflicted by private individuals (see *Ay v. Turkey*, no. 30951/96, § 60, 22 March 2005, and *M.C.*, cited above, § 151).

100. Even though the scope of the State's positive obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals (see *Beganović*, cited above, § 69), the requirements as to an official investigation are similar. For the investigation to be regarded as "effective", it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the

investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard, and a requirement of promptness and reasonable expedition is implicit in this context (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, §§ 102 et seq.). In cases under Articles 2 and 3 of the Convention where the effectiveness of the official investigation has been at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV). Consideration has been given to the opening of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, § 67, *Reports* 1998-IV) and to the length of time taken for the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

101. Turning to the facts of the instant case, the Court notes that local residents immediately informed the police that two men had been victims of a brutal assault. Whereas the conduct of the police officers who had left the applicant without assistance will be subject to the Court's examination below, what is relevant for an assessment of the authorities' compliance with the duty to conduct an effective investigation is that the police did not compile any report on the crime or open an inquiry into the circumstances of the assault in the days following its perpetration. Furthermore, the Sokolinaya Gora police station received the reports on bodily injuries concerning the applicant and his friend from two hospitals. However, despite the fact that they contained serious indications of a criminal offence, an official investigation only began on 20 July 2001, that is more than twenty days later.

102. The initial delay in opening the investigation resulted in a loss of precious time and made it impossible to secure the evidence concerning the incident. No one visited or described the crime scene, took statements from the applicant or Mr N., or attempted to identify potential eye-witnesses. That failure brought about disciplinary proceedings against two operational officers to whom the initial inquiry had been assigned. Furthermore, letters of 29 October 2001 and 27 February 2004 acknowledged that even after the proceedings had been instituted, a number of major investigative measures, such as the description of the crime scene and interviewing of neighbourhood residents, had not been taken. The domestic authorities acquiesced in the fact that the investigation had been "prolonged" and that it had been carried out "at a low professional level and in breach of the rules of criminal procedure".

103. The responsibility for the investigation was transferred to a different police or prosecution authority on at least three occasions. Within a period of five years no fewer than twelve decisions to discontinue criminal

proceedings were issued, only to be subsequently set aside by supervising prosecutors. The decisions ordering the reopening of the proceedings consistently referred to the need for further and more thorough investigation. However, this direction was not always followed by the investigators in charge of the case, and many of the decisions to discontinue the proceedings issued by the investigator Mr Volk in 2004, 2005 and 2006 had been based on identical evidence and reasoning. The scope of the investigation has not evolved over time to include verification of new versions of events, such as the one about involvement of drunk police officers which had been put forward by the applicant's mother as a result of her own enquiries.

104. In the light of the very serious shortcomings identified above, the Court concludes that the investigation was not prompt, expeditious or sufficiently thorough. The Court accordingly dismisses the Government's objection as to non-exhaustion of domestic remedies (see *Mikheyev*, cited above, § 121) and holds that there has been a violation of Article 3 of the Convention under its procedural limb in that the investigation into the assault on the applicant was ineffective.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF POLICE'S FAILURE TO RENDER ASSISTANCE TO THE APPLICANT

105. The applicant complained under Article 3 of the Convention that the conduct of the police officers who had denied him assistance amounted to inhuman and degrading treatment and that the investigation had not led to punishment of those responsible.

106. The applicant submitted that on the night of 30 July 2001 the police officers Zharov and Volkov had not examined him with sufficient care to establish that his life was not under threat. They had not used their radios to call an ambulance. The decision to carry the victims to another place had not merely been unprofessional but had resulted in further damage to the applicant's health and destruction of evidence concerning the assault. The ensuing investigation and trial had not met the requirement of independence because of close proximity between the police and the local courts. As a result of the acquittal, the police officers had not incurred any responsibility, disciplinary or otherwise, for their actions.

107. The Government, referring to the submissions by the Ministry of Internal Affairs, stated that the applicant's allegation of inhuman and degrading treatment could not be "objectively verified". The investigation had been "comprehensive and effective". An internal inquiry had not established any breaches of the applicable legislation on the part of the police officers and the courts had acquitted them of the criminal charges.

A. Admissibility

108. The Government submitted that the applicant had not exhausted domestic remedies because he had not lodged a supervisory-review application against the judgment by which the police officers had been acquitted.

109. The Court reiterates that an application for supervisory review in the Russian criminal-law system is not an effective remedy which must be used for the purposes of compliance with the requirements of Article 35 § 1 of the Convention (see, as a recent authority, *Krasulya v. Russia*, no. 12365/03, § 29, 22 February 2007). The Government's objection must therefore be dismissed.

110. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

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

111. The Court notes that the facts are not in dispute between the parties. It is established that the police officers Mr Zharov and Mr Volkov had been instructed to verify information about two young men lying in the street. Upon their arrival, they found the unconscious applicant and his friend N., who was sitting in an upright position but was unable to speak coherently. They reported back to the police station that an ambulance was needed and then dragged both men a few metres away from the road. The parties disagreed whether the officers had put the men near the rubbish bins or elsewhere but this element has more emotional than legal weight and its exact determination would be of little probative value for the Court's assessment.

112. The officers were then directed by the private-security co-ordinator to go elsewhere to check out an alarm call. As it happened, at the time they reported to the police station the officer-on-duty had gone away and was being replaced by the operational officer Mr Vancharin. The latter did not record the call in the log, nor did he call an ambulance or telephone the sobering-up centre. Consequently, the applicant spent the whole night in the courtyard until an ambulance picked him up in the morning.

113. The Court's task is to determine whether the facts, as recapitulated above, disclose a failure on the part of the State authorities to uphold the

prohibition against torture, inhuman and degrading treatment under Article 3 of the Convention.

114. Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). As noted above, the assessment of the severity of the treatment depends on many factors, including its nature and context, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim. The question whether the purpose of the treatment was to make the victim suffer is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a violation of Article 3 (see *Denmark, Norway, Sweden and the Netherlands v. Greece* (the "Greek case"), applications nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission's report of 5 November 1969, Yearbook XII, and *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III). Even if there was no evidence of any positive intention to humiliate or debase the applicant and no fault on the part of individual officials involved in the alleged ill-treatment, it should be emphasised that the Governments are answerable under the Convention for the acts of any State agency, since what is in issue in all cases before the Court is the international responsibility of the State (see *Novoselov v. Russia*, no. 66460/01, § 45, 2 June 2005, and *Lukanov v. Bulgaria*, 20 March 1997, § 40, *Reports* 1997-II).

115. The Court reiterates its constant approach that Article 3 imposes on the State a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, for instance, detainees or conscripted servicemen (see *Chember v. Russia*, no. 7188/03, § 50, 3 July 2008; *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; *Jalloh v. Germany* [GC], no. 54810/00, § 69, ECHR 2006-IX, and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). However, given the absolute nature of the protection of Article 3, whose requirements permit of no derogation, this duty to protect cannot be said to be confined to the specific context of the military or penitentiary facilities. It also becomes relevant in other situations in which the physical well-being of individuals is dependent, to a decisive extent, on the actions by the authorities, who are legally required to take measures within the scope of their powers which might have been necessary to avoid the risk of damage to life or limb (see, in the similar context of a positive obligation under Article 2 of the Convention, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 55, ECHR 2002-II).

116. In the present case the authorities were undeniably aware that the applicant was in a vulnerable and life-threatening position. As the public prosecutor pointed out in her decision to institute criminal proceedings, the officers Zharov and Volkov had found the applicant unconscious on their

arrival and, accordingly, could not have "erred in good faith" as to the gravity of his condition and his ability to take care of himself (see paragraph 42 above). The Court considers that from the moment the police had verified the information from the local residents about an unconscious young man lying on the ground, the matter was within the control of the authorities, who were under an obligation to take the requisite measures to prevent further harm to the applicant's life and limb.

117. Under Russian law, the police owes a special duty of care and protection to citizens in general and to victims of attacks and persons in a vulnerable or life-threatening state in particular. Their duty to render assistance to such individuals is codified both in the Police Act (see paragraph 82 above) and the Regulation on Police Patrols (see paragraph 83 above). The Regulation contains a detailed inventory of actions that must be carried out by the police officers arriving at a crime scene. They are mandated to administer first-aid to the victim, identify him or her, call an ambulance, and to secure possible on-site evidence, without, however, altering the victim's position or that of the objects around him. The Court notes that calling for an ambulance is explicitly listed as a duty of the patrolling police officers rather than that of the officer-on-duty at the police station or any other official.

118. In the instant case, the officers Zharov and Volkov manifestly disregarded the requirements of the above-mentioned legal instruments. They did not examine the unconscious applicant with a view to determining the gravity of his condition or the nature of assistance that could be appropriate in the circumstances. They did not call an ambulance or any medical professional, although they were equipped with radios and could also use cellular phones or a public payphone or ask local residents to use a telephone at a private residence. A much more serious breach of rules which probably had nefarious effects on the applicant's recovery was the officers' decision to drag him away by the armpits – conduct that was contrary both to legal requirements and to the most basic rules of first-aid, prohibiting handling of people with suspected head injuries, which police officers are expected to be acquainted with. Finally, the officers left the scene on the orders of the private-security co-ordinator, in full knowledge of the applicant's helpless and life-threatening state.

119. As regards their precipitated departure, the Court finds unusual the Russian police arrangement, according to which neighbourhood patrolling was entrusted to police officers whose primary duty was to act as a commercial security agency in respect of private property (see paragraph 85 above). The officers Zharov and Volkov left the applicant unattended after they had been directed by the private-security co-ordinator to check out an alarm that had gone off elsewhere on someone's property. As the senior police officer Mr K. explained to the trial court, orders of the private-security co-ordinator took precedence over the orders of the officer-on-duty

at the police station (see paragraph 50 above). In the Court's view, this arrangement resulted in a flagrant perversion of priorities, as it had the effect of putting the interests of the protection of private property before those of the protection of the applicant's life.

120. Furthermore, the Court notes that manifest breaches of the applicable procedures occurred at the Sokolinaya Gora police station and came to light at the trial. It transpired that the officer-on-duty had stepped out, leaving Mr Vancharin as his replacement. However, although Mr Vancharin was also an officer, he had not been authorised to stand in for the officer-on-duty. Mr Vancharin had not recorded the call from the officers Zharov and Volkov in the log or verified their report that the situation had been under control, he had not taken any measures to contact a hospital or at least a sobering-up centre and, finally, he had not said anything about this situation to the officer-on-duty upon his return.

121. As it happened, the two police officers who had actually seen the unconscious applicant had left the scene without rendering any assistance to him, while at the police station the officer-on-duty had not received any information about the incident because he had allowed himself to be replaced by an incompetent officer who had not followed the established procedure for processing patrol reports. This vicious circle of shifted responsibility and multiple failings had resulted in the applicant's lying unconscious on the ground for another six or seven hours until he was discovered by the janitors and an ambulance arrived. Such treatment on the part of the Russian authorities can, in the Court's assessment, only be described as "inhuman".

122. There has therefore been a violation of Article 3 of the Convention on account of the authorities' failure to take the requisite measures to prevent harm to the applicant's life and limb which amounted to inhuman treatment.

2. Alleged inadequacy of the investigation

123. The Court considers that medical evidence of serious damage to the applicant's health, together with the applicant's undisputed allegation of being left overnight in the courtyard without assistance despite the fact that the police had been put on notice about the attack already at 1 a.m., amounted to an "arguable claim" of ill-treatment. Accordingly, the authorities had an obligation to carry out an effective investigation into the circumstances surrounding that incident. For the purposes of its further analysis, the Court refers to the requirements as to the effectiveness of an investigation set out in paragraph 100 above.

124. The Court observes, firstly, that the competent authorities were particularly slow in opening a criminal investigation into the alleged ill-treatment. The material concerning the conduct of the officers Zharov and Volkov was severed from the case concerning the attack on the applicant on

6 January 2002, that is more than six months after the events, and only in response to a complaint filed by the applicant's mother. The Court reiterates in this connection that, in cases of life-threatening situations, the authorities must act of their own motion, once the matter has come to their attention, and they cannot leave it to the initiative of the victim's relatives (see *Paul and Audrey Edwards*, cited above, § 69). The initial inquiry was discontinued on the basis of an unreasonable finding that the police had "erred in good faith" as to the applicant's capacity to take care of himself even though he had been unconscious. Only after that decision was reviewed and annulled by a supervising prosecutor on 15 March 2002 did the criminal investigation actually begin.

125. The Court is satisfied that, once instituted, the proceedings were conducted in a reasonably diligent manner and the case was submitted for trial within one year. However, it appears that a downside of that commendable promptness was the restricted and incomplete scope of the investigation. Throughout the proceedings the police officers Zharov and Volkov were the only suspects in the case. The public prosecutors made no attempt to examine whether the officer-on-duty at the police station who had asked an incompetent officer to replace him, or his replacement Mr Vancharin, could have been responsible for the failure to render assistance to the applicant in a timely fashion.

126. It cannot be found with certainty that the applicant's right to participate effectively in the investigation was secured. Admittedly, on 5 September 2002 he was granted victim status in the proceedings and acquired the rights attaching to that procedural status, including the right to lodge applications. However, it appears that the investigator did not reply to, or take any decision on, his detailed and reasoned request for attribution of a different legal characterisation to the conduct of the accused or his application to join the proceedings as a civil party, both submitted on 27 November 2002 and received by the investigator on the following day.

127. It further appears that the case collapsed in court because the prosecution had failed to prepare a solid evidentiary basis for the trial. Thus, one of the elements of the charges was that the officers Zharov and Volkov had falsely reported to the Sokolinaya Gora police station that all measures had been taken. However, the public prosecutors had not arranged for a confrontation between them and Mr Vancharin, on the one hand, and between Mr Vancharin and the officer-on-duty, on the other, with a view to eliminating discrepancies in their testimonies. The trial court ultimately rejected Mr Vancharin's testimony as unreliable on the ground that he had acted in breach of the applicable regulations and therefore had a vested interest in concealing the truth. That the prosecution had overestimated the probative weight of Mr Vancharin's testimony is an obvious consequence of their above-mentioned omission to investigate the conduct of the police officers of the Sokolinaya Gora police station.

128. Finally, in the Court's view, the findings of the District Court were irreconcilable with the facts, as established in the proceedings, in so far as it determined that the police officers Zharov and Volkov could not have known that the applicant was in a life-threatening state because they had only "spent a few minutes on the scene in the night time and [because] no injuries were visible". That finding sits ill with the undisputed fact that the applicant had been unconscious and unable to move on his own, which was the reason why the officers had resorted to dragging him away from the road. The fact of his being unconscious, which the officers did not dispute, was obviously incompatible with the conclusion that the gravity of his condition and the risk it posed to his life and limb could have gone unnoticed. The Moscow City Court, which heard the case on appeal, did not address the deficiencies in the factual basis on which the trial court's acquittal had rested.

129. In the light of the above-mentioned considerations, the Court finds that the investigation into the alleged ill-treatment was initiated belatedly, that its scope was insufficient and that the applicant's procedural rights were not secured, and that the proceedings lacked a solid evidentiary and factual basis. Accordingly, the investigation of the matter by the domestic authorities cannot be considered "effective". There has therefore been a violation of Article 3 of the Convention under its procedural limb on account of the authorities' failure to conduct an effective investigation into the applicant's allegations of being abandoned by the police without assistance.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

130. The applicant complained under Articles 6 § 1 and 13 of the Convention that he had not been able to join the criminal proceedings against the police officers Zharov and Volkov as a civil party, that their acquittal had not been justified and that the proceedings had been marred by procedural defects. The Court observes that the only element in which these complaints are distinct from the issues that have already been examined from the standpoint of the procedural limb of Article 3 above is the question of the availability of a civil-law remedy for the applicant's claim for compensation for the alleged ill-treatment. The Court considers that this complaint falls to be examined under Article 13 of the Convention (see *Chember v. Russia*, no. 7188/03, § 66, 3 July 2008, and *Betayev and Betayeva v. Russia*, no. 37315/03, § 125, 29 May 2008), which reads as follows:

> "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."

131. The applicant submitted that he did not have an effective opportunity to make a civil claim for compensation because the domestic courts had not established anyone's guilt. Since no one had been convicted, under the Russian Civil Code, a civil claim would also fail.

132. The Government explained that the applicant had not lodged a request to join the proceedings as a civil party at the stage of the pre-trial investigation. He did make that request after the beginning of the trial but the trial court correctly dismissed it by reference to the then effective wording of Article 44 of the Code of Criminal Procedure, which allowed such requests to be made until the end of the pre-trial investigation. After Article 44 had been amended by the Federal Law of 4 July 2003, with the effect of extending the time-limit for lodging the request until the end of the trial, the applicant did not resubmit his request. Thus the applicant did have effective remedies at his disposal of which he did not make use.

A. Admissibility

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

B. Merits

134. The Court reiterates that Article 13 of the Convention guarantees the availability, at the national level, of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Cobzaru v. Romania*, no. 48254/99, §§ 80-82, 26 July 2007; *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-162, ECHR 2002-IV; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 208, 24 May 2005).

135. The Court has already found that the State authorities were responsible for the inhuman treatment of the applicant resulting from the police officers' failure to render him assistance at the time when he had been in a life-threatening state. The applicant therefore had an "arguable claim" for the purposes of Article 13 and the authorities were under an obligation to carry out an effective investigation into his allegations against

the police officers. For the reasons set out above, no effective criminal investigation can be considered to have been carried out in accordance with Article 13, the requirements of which are broader than the obligation to investigate imposed by Article 3 (see *Cobzaru*, cited above, § 83, and, *mutatis mutandis*, *Buldan v. Turkey*, no. 28298/95, § 105, 20 April 2004, and *Tanrıkulu v. Turkey*, no. 23763/94, § 119, ECHR 1999-IV).

136. Furthermore, as regards the availability of a civil-law remedy, the Court does not consider it necessary to determine whether the applicant had an effective opportunity to join the criminal proceedings as a civil party. What is important is that those proceedings culminated in the acquittal of the police officers. In this connection, the Court reiterates that it has already found on a number of occasions that there is no case-law authority for Russian civil courts to be able, in the absence of a finding of guilt in criminal proceedings, to consider the merits of a civil claim relating to alleged serious criminal actions. The Court has found that while the Russian civil courts in theory have the capacity to make an independent assessment of factual and legal issues, in practice the weight attached to the findings of the preceding criminal proceedings is so important that even the most convincing evidence to the contrary furnished by a plaintiff would be discarded and such a remedy would prove to be only theoretical and illusory rather than practical and effective, as required by the Convention (see *Chember*, cited above, § 71; *Menesheva v. Russia*, no. 59261/00, § 77, ECHR 2006-III; *Isayeva v. Russia*, no. 57950/00, § 155, 24 February 2005; and *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, § 147, 24 February 2005). In cases where criminal proceedings against public officials were discontinued at the pre-trial stage or ended in an acquittal, any other remedy available to the applicant, including a claim for damages, had limited chances of success and could not be regarded as capable of affording redress to the applicant (see *Tarariyeva v. Russia*, no. 4353/03, § 101, ECHR 2006-... (extracts); *Dedovskiy and Others v. Russia*, no. 7178/03, § 101, 15 May 2008). In the instant case the Court does not see any reason to depart from these findings.

137. The Court therefore finds that the applicant has been denied an effective remedy in respect of his complaint of ill-treatment as a result of neglect by the police. Consequently, there has been a violation of Article 13 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED MEDICAL NEGLIGENCE

138. The applicant also complained under Article 3 that the doctors at Hospital no. 33 had failed to dispense the medical care appropriate for his grave condition and that this matter had not been properly investigated.

139. The applicant submitted that his mother and other relatives had seen him undressed on a trolley in the corridor of Hospital no. 33. He had remained in that position from the early morning of 30 June 2001 until at least 6 p.m. on 1 July 2001. No one had attended to him and he had not been properly diagnosed or X-rayed, the only diagnosis having been recorded on the basis of his friend's statements. Moreover, he had been infected with hepatitis C through blood transfusion during surgery at Hospital no. 33. The applicant emphasised that medical negligence during the initial treatment in Hospital no. 33 had resulted in his permanent disability. The State had to be held responsible for the treatment because Hospital no. 33 was a municipal institution providing medical care to the general public.

140. The applicant further submitted that the investigation into the alleged medical negligence had only begun twenty months after the events and that it had so far lasted four and a half years. During that period no fewer than seven decisions to discontinue the investigation were made and later reversed. His medical record from Hospital no. 33 was lost. In the end, no person guilty of medical negligence was identified or convicted. The applicant concluded that the investigation had not been prompt, diligent or sufficient in its scope. Besides, his involvement in the investigation had been restricted and he had received little information about its progress.

141. The Government submitted that the applicant's mother had repeatedly filed complaints about the inadequacy of the medical care provided to her son at Hospital no. 33. Her complaints had been examined by the Health Department of the Moscow Government in 2001 and on 5 March 2003 criminal proceedings were instituted. A separate criminal case concerning the loss of the applicant's medical record was under investigation by the public prosecutor's office of the Eastern Administrative District. Finally, the Government indicated that on 30 November 2006 the Moscow City prosecutor had disciplined the investigator Mr Volk for unspecified breaches of criminal procedure during the investigation in the medical negligence case.

A. Admissibility

142. The Government submitted that the applicant had not exhausted domestic remedies because he had not appealed to the Izmaylovskiy District Court of Moscow against the decision to discontinue criminal proceedings or lodged a claim against the doctors of Hospital no. 33.

143. The Court observes that, according to the Government's own factual submissions, the most recent decision to discontinue the investigation into the alleged medical negligence had been annulled on the same day by the supervising prosecutor with a specific instruction to remedy shortcomings in the investigation (see paragraph 78 above). As that

decision had been quashed, there was no reason for the applicant to lodge an appeal against it with a court.

144. As to the possibility of suing the medical personnel in civil proceedings, the Court reiterates its above findings that Russian civil courts appear to be unable, in the absence of a finding of guilt in criminal proceedings, to consider the merits of a civil claim relating to alleged serious criminal actions (see paragraph 136 above). In the instant case the criminal proceedings did not lead to trial and conviction. Accordingly, the civil claim could not be considered an effective domestic remedy which the applicant was required to have used (see, in particular, *Tarariyeva*, cited above, § 101). The Court dismisses the Government's objection as to non-exhaustion of domestic remedies.

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

B. Merits

1. Compliance with Article 3 as regards adequacy of medical care

146. The applicant was in Hospital no. 33 from 30 June to 8 July 2001. His allegations of inadequate medical care mostly related to the initial period which lasted from 9 a.m. on 30 June when he was admitted to the hospital until 6.30 p.m. on 1 July when emergency brain surgery was performed. He submitted, and his submission was not disputed by the Government, that during that entire time he had remained undressed on a trolley in the corridor, without medical attention.

147. The Court observes that the issue of adequacy of medical care dispensed to the applicant at Hospital no. 33 was examined by two panels of experts. The first panel, composed of experts from the specialised Centre for Forensic Medicine of the Ministry of Defence, found a number of serious defects in the examination and treatment of the applicant. The second panel, which was organised by the Health Protection Department of the Moscow Government, dismissed the findings of the first one as unreliable and determined that the medical personnel of Hospital no. 33 had correctly abstained from any intervention until such time as the brain surgery had become possible. In view of the contradictory findings of two panels, the investigation attempted to organise a "conciliatory" study; however, this proved to be impossible in the absence of the applicant's original medical record from Hospital no. 33.

148. Confronted with contradictory findings as to the adequacy of medical care, the Court considers that the following elements would enable it to determine which report it should lend credence to. Firstly, the initial

examination was carried out on the basis of the original medical records, whereas the second panel had at its disposal some extracts from those records which had been reproduced in the first experts' report. The Court notes the opinion of the director of the Russian federal centre for forensic medicine, who stated that conducting an examination solely by reference to previous findings was incompatible with the professional methods and standards of forensic medicine (see paragraph 74 above). Secondly, the Court observes that the experts on the first panel worked for the Ministry of Defence, a State body unrelated to both the medical institution in question and the investigative authority. By contrast, the second examination was entrusted to the Health Protection Department of the Moscow Government, which was the authority responsible for maintenance and supervision of all Moscow city hospitals, including Hospital no. 33. This situation created an apparent conflict of interests and was incompatible with the requirement that a forensic doctor enjoy formal and *de facto* independence (see *Barabanshchikov v. Russia*, no. 36220/02, § 59, 8 January 2009). In the light of the above considerations, the Court accepts the findings of the first experts' report as the basis for its analysis.

149. According to the forensic experts, the applicant was admitted to Hospital no. 33 in a particularly serious condition which called for heightened medical attention and immediate examination by a neurosurgeon, toxicologist and other specialist doctors. Instead, the hospital personnel failed to implement even the most basic procedures which have to be followed in the case of a new patient. The applicant's condition and the nature and extent of his injuries were described in a cursory and incomplete fashion. The diagnosis of alcohol intoxication was not based on a blood or urine test or an examination by a toxicologist, but solely on a mention of "alcohol breath". Moreover, despite the alleged high and potentially lethal alcohol concentration in the applicant's blood, no disintoxication treatment was prescribed or administered. A neurosurgeon saw the applicant only two hours after his admission, and until the beginning of preparation for emergency surgery thirty-two hours later the applicant was essentially left unattended. He was not "objectively and adequately examined" by any specialist doctor, an X-ray was indicated but never performed, and even his temperature was not taken.

150. The experts also determined that procrastination in administering appropriate treatment to the applicant and a failure to examine him properly and promptly upon his admission to Hospital no. 33 had brought about a serious deterioration of his condition. Brain changes had become irreversible and so severe as to require emergency surgical intervention for life-saving reasons. The experts emphasised that owing to the lack of supervision of the applicant's worsening condition, the intervention was belated. A subsequent failure to administer post-surgery antibacterial treatment in a consistent manner and absence of proper control led to

multiple inflammations of the post-operative wounds and osteomyelitis of the skull bones.

151. The Court notes the experts' acquiescence in the existence of a causal link between the defects they had identified in the medical care dispensed to the applicant at Hospital no. 33 and the ensuing disability. Although they agreed that it would be impossible to determine, in the absence of appropriate measurement methods, whether the applicant's health problems were due to a decisive extent to the defective treatment and supervision or to the original head trauma, they concurred that the grave failings on the part of the medical personnel of Hospital no. 33 had "contributed to an unfavourable outcome".

152. In the light of the above experts' findings, which were not refuted by the Government, the Court considers that the medical care administered to the applicant at Hospital no. 33 in Moscow was inadequate. There has therefore been a violation of Article 3 on account of the authorities' failure to secure adequate medical care to the applicant.

2. Alleged inadequacy of the investigation

153. The Court notes that, confronted with allegations of gross medical negligence by the applicant himself and by his mother, supported by medical evidence of serious damage to the applicant's health, the authorities had an obligation to carry out an effective investigation into the nature and scope of medical treatment that had been administered to the applicant in Hospital no. 33. For the purposes of further analysis, the Court refers to the requirements as to the effectiveness of an investigation set out in paragraph 100 above.

154. The parties concurred that, from the moment of the applicant's transfer from Hospital no. 33 to Burdenko Hospital on the initiative of the applicant's mother, she had repeatedly filed complaints about inadequate medical care at Hospital no. 33. All of her complaints were rejected by the health administration officials and public prosecutors from various offices. The criminal case was only opened on 5 March 2003, almost two years after the events. The Court considers that the Russian authorities are responsible for the belated institution of criminal proceedings and also for the failure to act promptly and of their own motion, as they had left the matter essentially to the initiative of the victim's relatives (see *Paul and Audrey Edwards*, cited above, § 69).

155. The manner in which the investigation was conducted reveals the investigative authorities' determination to dispose of the matter in a hasty and perfunctory fashion. The case was shuttled between authorities and investigators who routinely attempted to stall the proceedings on ostensibly procedural grounds. Over a period of three years no fewer than ten decisions to discontinue the proceedings were made, all of which were promptly set aside by supervising prosecutors because the investigation that had been

carried out until then had been incomplete and insufficient in scope. Several investigators were reprimanded or disciplined for failing to conduct the investigation in accordance with the rules of criminal procedure.

156. It is not denied that the investigation was also responsible for the loss of the crucial piece of evidence, namely the applicant's original medical record, from Hospital no. 33. Its disappearance rendered impossible any further forensic examinations or the determination of a causal link and correlation between the alleged inadequacy of the medical assistance provided to the applicant in Hospital no. 33 and the damage to his health.

157. Finally, the applicant's right to effective participation in the proceedings was not secured. He was recognised as a victim only on 6 September 2005, two and a half years after the institution of criminal proceedings. Prior to that date, he had not been able to exercise the procedural rights attaching to that status, such as the right to lodge applications or put questions to the experts (compare *Tarariyeva*, cited above, § 93).

158. In the light of the very serious shortcomings identified above, the Court concludes that the investigation was not prompt, diligent or sufficiently thorough. There has been a violation of Article 3 of the Convention under its procedural limb in that the investigation into the alleged medical negligence was not effective.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

159. Lastly, the applicant complained under Article 5 § 1 of the Convention that, as a result of the assault and the lack of medical assistance by the police officers and doctors, his right to security of person had been impaired. He further complained under Article 8 of the Convention about the loss of his medical record.

160. The Court observes that the applicant was never actually deprived of his liberty and that there was no disclosure of his medical information. Accordingly, these complaints are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

VI. ALLEGATION OF HINDRANCE OF THE RIGHT OF INDIVIDUAL PETITION GUARANTEED BY ARTICLE 34 OF THE CONVENTION

161. On 29 March 2007 the applicant submitted a statement in which he claimed that the Government had put pressure on him in breach of Article 34 of the Convention. He claimed, in particular, that the Government had defamed him by describing him as being in a state of intoxication at the time of the assault, that he had been wrongly registered with the psycho-

neurological specialised clinic in Moscow, that the authorities had attempted to obtain the original medical record from his mother, that his mother had been disciplined at her place of employment, and that, on reaching the age of twenty-three, his entitlement to State benefits in connection with the death of his father, a military officer, had ceased.

162. Having examined the applicant's submissions, the Court does not consider that they are capable of corroborating the allegation of hindrance of the exercise of the right of individual petition under Article 34 of the Convention. According, the Court rejects this allegation as unsubstantiated.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

163. 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

164. First, the applicant claimed an award for pecuniary damage relating to ongoing treatment of the ailments resulting from the assault of 29 June 2001 and the belated and inadequate medical assistance. He indicated that he needed daily assistance by a nurse (estimated cost of 13,500 euros (EUR) per year), continued intake of medicine (EUR 2,000 per year), physical therapy and regular check-ups (EUR 13,925 per year), rehabilitation courses in Germany or Austria (EUR 13,200 every two years), and medical equipment (EUR 2,000). He further claimed a loss of opportunity and earnings valued at EUR 7,000 per year. Multiplied by the life expectancy of thirty years, the total claim for pecuniary damage amounted to EUR 1,292,750. The applicant also claimed EUR 200,000 in respect of non-pecuniary damage.

165. The Government submitted that, as the investigation into the assault and medical-assistance cases was still pending, the applicant retained the right to claim compensation at national level and that his claims for pecuniary damage were accordingly premature. They further pointed out that the applicant received a disability pension and that he had been given a free trip to a spa resort in 2003, a discounted Russian-made car and a tent for the latter. In the Government's view, the claim in respect of the loss of earnings was groundless because it concerned "future probabilities". Finally, the Government considered that the claim in respect of non-pecuniary damage was excessive and was not in line with the Court's case-law.

166. The Court reiterates that a precise calculation of the sums necessary to make complete reparation (*restitutio in integrum*) in respect of the pecuniary losses suffered by an applicant may be prevented by the inherently uncertain character of the damage flowing from the violation (see *Young, James and Webster v. the United Kingdom (former Article 50)*, 18 October 1982, Series A no. 55, § 11). An award may still be made notwithstanding the large number of imponderables involved in the assessment of future losses, though the greater the lapse of time involved the more uncertain the link between the breach and the damage becomes (see *Orhan v. Turkey*, no. 25656/94, §§ 426 et seq., 18 June 2002). The question to be decided in such cases is the level of just satisfaction, in respect of either past or future pecuniary loss, which it is necessary to award to an applicant, and is to be determined by the Court at its discretion, having regard to what is equitable (see *Sunday Times v. the United Kingdom (former Article 50)*, 6 November 1989, Series A no. 38, § 15, and *Lustig-Prean and Beckett v. the United Kingdom (Article 41)*, nos. 31417/96 and 32377/96, §§ 22-23, ECHR 2000).

167. The Court observes that in some previous cases where the loss of future earnings was at issue, the Court based its calculations on the actuarial calculations of capital needed for maintaining a certain level of income, as produced by the applicants' representatives (see *Aktaş v. Turkey*, no. 24351/94, § 350, ECHR 2003-V, and *Orhan*, cited above, § 433). The same approach may be applied to the calculation of future expenses. In the present case, however, the overall amount claimed by the applicant was calculated simply by multiplying his annual medical expenses by average life expectancy in Russia. The amount claimed under the head of loss of future income was calculated in the same way.

168. Therefore, even assuming that all the calculations and data supplied by the applicant are correct, the Court considers that the method of calculation applied in the present case is not in line with the Court's approach to the calculation of future losses (see *Mikheyev*, cited above, § 161). Furthermore, the calculation of his lost income does not include the amount which he collects by way of disability pension. Therefore, the Court cannot accept the final figure claimed under this head by the applicant.

169. Nonetheless, bearing in mind the uncertainties of the applicant's situation, and the fact that he has suffered, and will suffer, significant material losses as a result of his disability and the need for constant medical treatment, the Court considers it appropriate, in the present case, to make an award in respect of pecuniary damage based on its own assessment of the situation (see *Mikheyev*, cited above, § 162). Given the seriousness of the applicant's condition and the need for specialised and continuous medical treatment, the Court awards him EUR 75,000 in respect of pecuniary damage, plus any tax that may be chargeable on this amount.

170. Furthermore, the Court reiterates its findings that the Russian authorities were responsible for the actions of the police, who had abandoned the applicant without assistance following a serious assault, and for the failure of the medical personnel to provide medical care appropriate to his grave condition. Nor did the authorities discharge their duty to investigate, in an efficient manner, the assault on the applicant or the above-mentioned failings of the police and medical personnel. These events must have caused the applicant not just physical pain and suffering but also emotional feelings of distress, frustration, injustice, and prolonged uncertainty which call for an award in respect of non-pecuniary damage (see, as a recent authority, *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, § 224, 18 September 2009, with further references). Making an assessment on an equitable basis, the Court awards the applicant EUR 78,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

171. The applicant did not make a claim for costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the inadequacy of the investigation into the assault on the applicant, the lack of assistance to him on the part of the police and medical personnel, the inadequacy of the investigation into those matters, and the existence of a civil-law remedy, admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to conduct an effective investigation into the assault on the applicant;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the police's failure to render assistance to the applicant;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to conduct an effective investigation into the actions of the police;

5. *Holds* that there has been a violation of Article 13 of the Convention;

6. *Holds* that there has been a violation of Article 3 of the Convention on account of the inadequacy of the medical care dispensed to the applicant at Hospital no. 33;

7. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to conduct an effective investigation into the alleged medical negligence;

8. *Holds* that the allegation of hindrance of the exercise of the right of individual petition under Article 34 of the Convention has not been made out;

9. *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 75,000 (seventy-five thousand euros) in respect of pecuniary damage and EUR 78,000 (seventy-eight thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Russian roubles at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President