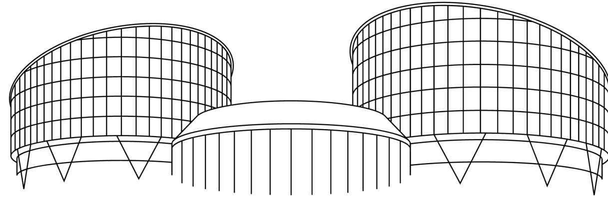

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KAYANKIN v. RUSSIA

(Application no. 24427/02)

JUDGMENT

STRASBOURG

11 February 2010

FINAL

11/05/2010

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 Kayankin v. Russia**,**

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

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

Having deliberated in private on 21 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 24427/02) 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 Aleksandr Sergeyevich Kayankin ("the applicant"), on 14 May 2002.

2. The applicant, who had been granted legal aid, was represented by lawyers of the Human Rights Centre Memorial. The Russian Government ("the Government") were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been subjected to inhuman and degrading treatment as a result of being drafted into the army in a very poor state of health, that during his military service he had been beaten up by an officer and fellow soldiers, that there had not been an effective investigation into the incidents and that the tort proceedings brought by him had been excessively long.

4. On 1 March 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1980 and lives in the village of Sosnovo in the Leningrad Region.

6. As transpires from a copy of the applicant's medical record, submitted by him to the Court, on a number of occasions in 1987 he applied to the Sosnovo village hospital complaining of headaches. On 16 November 1987 he was diagnosed with hypertension. The diagnosis was recorded in his medical history.

A. The applicant's military service and the state of his health

7. In 1996 the Priozersk District Military Board registered the applicant for compulsory military service.

8. On 12 February 1997 the Priozersk District Military Medical Commission, comprising a surgeon, a general practitioner, a neuropathologist, a psychiatrist, an oculist, a dentist, a dermatologist and an otolaryngologist, examined the applicant for the purpose of making a preliminary assessment of the state of his health to determine whether he was fit for military service. The commission diagnosed the applicant with "hypotrophy of unknown genesis", and assigned him category "D" on the medical scale of eligibility for service, finding him "temporarily unfit". The diagnosis was made on the basis of the disproportionate correlation between the applicant's height of 167 centimetres and his weight of 50 kilograms. The commission concluded that an additional medical examination of the applicant by an endocrinologist was necessary in relation to the diagnosis of hypotrophy. The applicant's conscription was deferred for six months on medical grounds.

9. According to the applicant, the commission did not provide him with a medical certificate or any other medical documents directing him to a particular public health institution for further medical examinations, monitoring and, if necessary, treatment, as required by the Instruction on Military Medical Examinations in the Armed Forces of the Russian Federation, adopted on 22 September 1995 by Decree no. 315 of the Russian Defence Ministry and in force at the material time. However, as transpires from the applicant's medical history submitted to the Court, on 18 February 1997 he was examined by an endocrinologist, who noted the disproportionate ratio between the applicant's weight and height, but considered that his state of health was satisfactory. At the same time the endocrinologist diagnosed the applicant with a diffuse enlargement of the thyroid gland of the first degree, connected to puberty.

10. In October 1998 the applicant was again examined by the military medical commission and found to be “fit for military service”. The report of the commission indicated that he had not complained about the state of his health. The applicant's call-up was scheduled for April 1999.

11. No further medical examinations of the applicant were performed until April 1999, when the military medical commission re-examined him. The commission concluded that the applicant was fit for military service without any restrictions. As transpires from the applicant's personal file of a conscript produced to the Court, his height of 175 centimetres and his weight of 63 kilograms meant that the diagnosis of “hypotrophy” was no longer an issue. The applicant countersigned the medical report indicating that he had no complaints pertaining to the state of his health.

12. On 3 June 1999 the applicant was drafted into the army. He was assigned to military unit no. 22336 in Volgograd. The applicant alleged that in the unit he had on many occasions been beaten up and harassed by senior conscripts. They had allegedly forced him and other younger conscripts to sleep outdoors at night and had taken away their food. According to the applicant, on 5 September 1999 the head of the military headquarters, Captain Ch., in the presence of the soldier A., hit the applicant five times in the head with an artillery gun shell. On 17 October 1999 a group of senior conscripts allegedly beat the applicant up.

13. On 25 October 1999 the applicant's mother arrived at the unit. The applicant told her about the beatings.

14. Two days later the applicant left the unit without authorisation and travelled with his mother to St Petersburg.

15. In St Petersburg the applicant was examined at the Bekhterev Scientific Research Psychoneurology Institute (*Научно-исследовательский Психоневрологический Институт им. В. М. Бехтерева*). A magnetic resonance imaging (MRI) scan, a transcranial scan with Doppler apparatus and an ultrasound scan of the applicant's head were performed. He was also examined by an oculist, a psychologist and neurologist. On 9 November 1999 the Institute issued the applicant with an advisory opinion, the relevant part of which read as follows:

> “[The applicant complains] of headaches, dizziness, fatigability, irritability, a hearing impairment of the right ear, and somniloquence.
>
> [He] has suffered from headaches since the age of nine; [the headaches] have a piercing, squeezing character; [the headache] starts in the morning with the impression that [someone] is applying pressure to the eyes; [the headache] becomes stronger during mental and physical work; it is accompanied by photophobia, degradation of working capacity, and fast fatigability.
>
> Medical history (according to the applicant's mother and his medical record):
>
> ...

> [The applicant] was an active child; he frequently fell, hitting his head. At the age of four months he fell from a shelf, hitting his head; he lost consciousness. He hit his head hard a number of times while skating. At the age of nine years he severely hit his forehead; a suture was applied. When he was 12 years old, he was accidentally hit on the head with a hammer.
>
> ...
>
> Diagnosis: organic brain disease – the result of craniocerebral traumas sustained [by the applicant], neuroinfections, a perinatal disorder – cerebral arachnoiditis with apparent hypertensive syndrome, cerebral angiodystonia, epileptiform paroxysms ..., bilateral pyramidal signs, psycho-organic and astheno-psychic syndrome. Osteochondropathy of the knee joints.
>
> Recommended: supervision by a neuropathologist and a psychoneuropathologist ... Limitation of physical activity. Placement in a military hospital."

16. On 12 November 1999 the applicant applied to the St Petersburg Military Prosecutor's Office, complaining that his conscription had been unlawful and that he had been ill-treated during his military service. On 15 November 1999, on a recommendation from the prosecutor's office, he was admitted to the neurology unit of a military hospital, where he stayed until 9 December 1999.

17. On 7 December 1999 the applicant was examined by the Military Medical Commission of Medical Clinical Hospital no. 442. According to a medical certificate issued by the Commission, the applicant was diagnosed with "long-term effects of neuroinfection in the form of external hydrocephalus with disseminated neurological signs and pseudo-neurasthenic syndrome; 1st degree S-shaped scoliosis of the thoracodorsal region with Schmorl's nodule in the 4th to 9th vertebral bodies, transitional lumbosacral vertebra, incomplete closure of 2, 3 and 4 vertebral arches of the spine; chronic tonsillitis". The certificate indicated that the illness had been acquired during the applicant's military service and that he was "partially fit for military service".

18. On 25 January 2000 the applicant was discharged from military service on account of his illness.

19. On 15 December 2000 the St Petersburg Medical Expert Commission issued the applicant with a medical certificate indicating that he had a third-degree disability as a consequence of the illness.

B. Tort proceedings

20. On 19 January 2000 the applicant brought an action in the Priozersk Town Court against the Priozersk District Drafting Military Commission and the Priozersk District and Leningrad Regional Military Boards, seeking compensation for damage. He also asked the Town Court to set aside the decision of 3 June 1999 of the Priozersk District Military Board as

unlawful, claiming that he should not have been drafted into the army as he had been seriously ill.

21. The case was assigned to Judge C. on 24 January 2000.

22. On 4 October 2000 Judge C. delivered a decision, accepting the case for examination on the merits, and scheduled the first hearing for 1 December 2000. On the same day she also sent a letter to the defendants asking to submit the applicant's personal file of a conscript.

23. The hearing of 1 December 2000 was adjourned because the applicant wanted to study the case file and to retain a lawyer.

24. As transpires from the Government's submissions, the following hearing, which took place on 26 September 2001, was adjourned after the applicant's representative had successfully petitioned the Town Court for provision of additional evidence.

25. The next hearing, scheduled for 8 October 2001, was adjourned on a request from the Priozersk District Military Board because its representative could not attend.

26. On 17 October 2001 the Town Court, at the applicant's request, sent letters to a number of military and medical authorities seeking the production of additional evidence. The latest response was received by the Town Court on 4 December 2001 from the Sosnovo village hospital. The hospital informed the Town Court that it could not submit an extract from a hospital register showing that the applicant's medical record had been sent to the military medical commission for an examination when the question on his eligibility to the military service was to be decided. The hospital explained that the register in question was missing. At the same time the hospital noted that as a general rule medical records of potential conscripts were sent to the military medical commission.

27. The following hearing, scheduled for 16 January 2002, was postponed because the defendants failed to appear. The Town Court also afforded the applicant's representative additional time to prepare written questions to put to a medical expert.

28. On 21 January 2002 the Town Court sent letters, repeating its requests for provision of evidence, to a number of military authorities which had failed to reply to the first letter of 17 October 2001.

29. On 18 February 2002 the Town Court, in response to its order of 4 October 2000, received the applicant's personal file of a conscript.

30. On 20 May 2002 the case was transferred to Judge B. who, in the process of the examination of the case file, sent letters to a number of military and medical officials, asking for additional evidence to be provided. According to the Government, the latest reply was received by the Town Court on 12 July 2002.

31. In October 2002 the Town Court asked the Priozersk Town Council to submit documents regulating the activities of the Priozersk District Military Board.

32. At the first hearing fixed by Judge B. for 10 December 2002 the applicant amended his claims. The Town Court issued the applicant and his representative with a written warning that the amendment of the claims would result in a stay of the proceedings. The hearing was rescheduled for 14 January 2003. That hearing was also adjourned on account of a defendant's failure to attend. In the meantime, the applicant filed an additional amendment to the statement of claims.

33. The following hearing, scheduled for 29 January 2003, was postponed until 13 March 2003 at the defendants' request to allow them to study additional documents submitted by the applicant.

34. The defendants failed to attend the hearing on 13 March 2003 and the Town Court sent a warning, informing them of the consequences of their conduct and ordering them to appear at the following hearing, listed for 14 May 2003.

35. On 14 May 2003 the applicant's representative asked the Town Court to adjourn the hearing as she could not attend. The Town Court fixed the following hearing for 16 October 2003. The latter hearing was also rescheduled for 4 December 2003 as the defendants failed to appear.

36. At the hearing on 4 December 2003 the applicant's representative successfully asked the Town Court to join the Leningrad Regional and Priozersk District Divisions of the Federal Treasury as co-defendants. The proceedings were stayed until 18 March 2004.

37. On 18 March 2004, at the hearing, the applicant refused to undergo a medical examination. On the same day the Priozersk Town Court dismissed the action, finding, in so far as relevant, as follows:

> "Having heard the submissions by the parties and third persons and having studied the material in the case file, the file on criminal case no. 14/04/0035-2000D and the [applicant's] personal file of a conscript with the enclosed medical documents, the court finds [the applicant's] claims ill-founded and dismisses them.
>
> By virtue of section 26-28 and 30 of the Federal Military Duty and Military Service Act, the district military board, at the expense of the federal budget, is entrusted with the obligation to conscript men for military service, to organise their medical examinations and to provide for exemptions from the duty to serve in the army.
>
> The military board was established by Decision no. 263, issued by the head of the Priozersk District Council of the Leningrad Region on 31 March 1999 for the purpose of organising and implementing conscription for military service; Ms S. was appointed to act as the chief doctor.
>
> In 1999 Decree no. 315 on the procedure for performing military medical examinations in the armed forces of the Russian Federation, issued by the Ministry of Defence of the Russian Federation on 22 September 1995, regulated the activities of the military board and the procedure for medical examinations of men at the time of their initial inclusion in the military service register and [when they are] drafted into the army.

When included for the first time in the military service register on 12 February 1997 (record no. 5), [the applicant] did not make any complaints; his weight was 50 kilograms, his height 167 centimetres, his diagnosis was 'hypotrophy of unknown genesis'; according to Article 13-g of Section 1 of the List of Illnesses and the Table of Additional Requirements [laid down] in the Amendment to the Regulations on Military Medical Examinations, adopted on 20 April 1995 by Decree no. 390 of the Government of the Russian Federation, [the applicant] was placed in category 'D' – temporarily unfit for medical service for a period of six months. [It was noted that he] needed a medical examination.

When drafted for military service on 16 April 1999 (record no. 8), [the applicant] did not make any complaints about the state of his health. His diagnosis: 'healthy'. On the basis of Section 1 of the List of Illnesses and the Table of Additional Requirements [laid down] in the Amendment to the Regulations ..., [he was found to belong to category] 'A' – fit for military service. [It was decided] to draft him into the army.

On 3 June 1999, when examined by doctors in the Regional Assembly Station of the Military Board in the Leningrad Region, no illnesses precluding his conscription for military service were discovered. [The applicant] was only diagnosed with scoliosis of the first degree. By virtue of Article 66-g of Section 1 of the List of Illnesses and the Table of Additional Requirements..., [the applicant] was found [to belong to category] 'B-4' – fit for military service with minor restrictions. [It was decided] to draft him into the army.

By virtue of section 28 § 7 of the Federal Military Duty and Military Service Act, a plaintiff may appeal against a decision of a military board [to draft him into the army].

On 7 December 1999 the Military Medical Commission of Medical Clinical Hospital no. 442 decided that [the applicant] was partially fit for military service... in accordance with Articles 22B and 49D of Section 2 of the List of Illnesses and the Table of Additional Requirements... [It was determined] that his illness had been acquired during his military service.

[The applicant] and his representative argue that the report of ... the Bekhterev Scientific Research Psychoneurology Institute, which states that his illness – 'organic brain disease – the result of craniocerebral traumas sustained [by the applicant] – neuroinfections, a perinatal disorder' (which means 'during or after childbirth', as the representatives explained and the doctor S. testified), should serve as a basis for quashing the decision of 3 June 1999 of the Priozersk District Military Board to conscript [the applicant].

By virtue of Article 56 of the Russian Code of Civil Procedure, each party should prove the circumstances on which he or she relies as the basis for his or her claims and complaints if a federal law does not establish another rule.

Having regard to the fact that no item of evidence has a pre-established evidentiary value for a court and that by virtue of Article 67 of the Russian Code of Civil Procedure, the court assesses the relevance, admissibility and veracity of evidence as a whole, the plaintiff's ... refusal to undergo a forensic medical examination in the course of the present judicial proceedings did not allow the court to establish that [the applicant] had those illnesses at the time of the medical examination by the Priozersk District Military Board.

The court cannot accept, as a justification for the [applicant's] claims, the reference to medical report no. 19 issued on 18 January 2001 by the forensic medical (psychological and psychiatric) expert commission, [in particular] its answers to questions nos. 7 and 8 that unhealthy organic changes in [the applicant's] central nervous system discovered during the examination were congenital or that they had occurred in early childhood because that expert examination [performed in the course of the criminal case] did not settle the contradictions and did not assess the conclusions made in the decision of the Military Medical Commission of Medical Clinical Hospital no. 442, which had found that [the applicant] had acquired those illnesses during military service, although [the court notes] the reference to that decision in the [criminal] expert examination.

It follows that, in a situation where [the applicant] had refused to undergo an additional expert examination, the court and the parties to the present case concerning [the applicant's] action did not have an opportunity to make use of their procedural rights, to solve the abovementioned contradictions, to determine how 'negative emotions experienced during military service and [the applicant's] response to the existing circumstances surrounding him could have aggravated his chronic diseases' and to assess the consequences of the deterioration of his health.

Thus, the court was not provided with evidence reliably showing that [the applicant] had had those illnesses when drafted into the army on 16 April 1999.

Moreover, it was established at the court hearing that the records of [the applicant's] complaints of a headache on 9 November 1987 and of 'hypertension' had been included in the [applicant's] medical history, which had been drawn up on 4 November 1995 and had been handed over to [the applicant's] mother in October 1998, a fact she does not dispute, and that she had not submitted [his medical history] to the medical specialists of the Priozersk District and Leningrad Regional Military Boards.

The court was also not provided with evidence reliably showing that [the applicant] had complained [about the state of his health] when he had been examined by the Priozersk District Military Medical Commission or by the Leningrad Regional Military Medical Commission; [the court] also did not establish that ... [the applicant had been] forced to produce a handwritten note stating that [he had no] complaints about the state of his health.

The court cannot agree with the applicant's representative that Ms S. did not fulfil her administrative functions as the chief doctor of the military medical commission as it was established that the conscript had not had any complaints; his mother had had [the applicant's] medical history; she could have attracted the doctors' attention [to the alleged medical problems] and could have received necessary consultations by medical specialists.

Thus, the court did not establish any violations during [the applicant's] medical examinations, either when he had been entered in the military service register or when he had been drafted into the army in compliance with Decree no. 315 on the procedure for performing military medical examinations in the armed forces of the Russian Federation, issued by the Ministry of Defence of the Russian Federation on 22 September 1995.

The court, therefore, finds manifestly ill-founded [the applicant's] claim that the decision of the Priozersk District Military Board of 3 June 1999 to draft him into the army was unlawful and that it should be quashed. [The court concludes] that [the applicant's claims] should be dismissed.

The court dismisses [the applicant's] claims for compensation for pecuniary and non-pecuniary damage as it has found that the tort action itself ... is manifestly ill-founded.

The court cannot accept the argument by the Priozersk District Military Board that [the applicant] had missed the three-month time-limit for lodging [his claims] with the court, as by virtue of Article 200 of the Russian Civil Code, the time-limit only starts to run on the date when an individual has learnt about a violation of his rights. The plaintiff and his representative only learned of the violation of [the applicant's] rights after [the applicant] had been examined by the doctors of the Bekhterev Scientific Research Psychoneurology Institute on 9 November 1999. The court thus finds that the time-limit was not missed and the request to [dismiss the applicant's claim for failure to comply with the time-limit] should be disallowed."

38. On 2 June 2004 the Leningrad Regional Court upheld the judgment, endorsing the Town Court's reasoning.

C. Criminal investigation into the applicant's complaints about beatings during his military service

39. On 6 March 2000, in response to the applicant's complaint of ill-treatment during his military service, the Military Prosecutor of the Volgograd Garrison instituted criminal proceedings against Captain Ch.

40. An investigator interviewed the applicant on a number of occasions about the circumstances surrounding his alleged beatings by Captain Ch. Similar interviews were performed with Captain Ch. and a number of conscripts who had served with the applicant. On 20 December 2000 the applicant had a confrontation interview with Captain Ch.

41. On 17 January 2001 the Military Prosecutor of the North-Caucasian Military Circuit informed the applicant's mother that her complaints of ill-treatment had been examined and "necessary measures to stop the procrastination had been taken". The applicant's mother was also informed that the criminal case had been transferred to another investigator.

42. In January 2001 a senior investigator of the Volgograd Garrison Military Prosecutor's Office authorised a complex forensic medical psychological and psychiatric examination of the applicant to be performed in the Forensic Medical Laboratory of the North-Caucasian Military Circuit of the Russian Ministry of Defence. On 18 January 2001 the experts issued the report, finding that there was no medical data confirming that the applicant had sustained any injuries or traumas in autumn 1999 as a result of the alleged use of force, as described by him. They further stressed that the applicant's illnesses discovered during the previous medical examinations,

in particular the organic brain illness, were congenital or could have developed in early childhood as a result of burdened heredity, difficult childbirth, head injuries or neuroinfections. The experts concluded that those illnesses could not have resulted from blows to the head administered either by Captain Ch. or fellow soldiers as the applicant alleged.

43. On 7 February and 23 June 2001 the criminal proceedings were discontinued because there was no indication of a criminal offence. Both decisions were quashed on 7 May and 17 September 2001, respectively, by the supervising prosecutor and the investigation was resumed.

44. On 19 September 2001 another investigator was assigned to the case.

45. A month later the criminal proceedings were closed because there was no evidence of criminal conduct. The text of that decision was similar to the previous ones and read as follows:

> "It was initially established on the basis of the material in the case file that, as follows from [the applicant's] complaints, on 5 September 1999, at approximately 4 p.m., in the headquarters of the military unit, Captain Ch., being dissatisfied with [the applicant's] service in the duty unit, had hit [the applicant] at least four times in the head with a metal artillery gun shell.
>
> According [to the applicant], because of those beatings he left the military unit on 25 October 1999 without permission and travelled to the place of his residence in the Leningrad Region.
>
> However, in the course of the investigation Captain Ch. firmly and consistently denied having participated in the beatings of [the applicant] and having caused [the applicant] any injuries.
>
> In the course of the pre-trial investigation [the investigating authorities] started doubting the veracity of [the applicant's] statements; a forensic medical psychological psychiatric expert examination was ordered in the case. The experts were provided with the complete set of medical documents, [the applicant] agreed to the provision of [those materials].
>
> According to the expert findings, the medical documents submitted do not contain any evidence showing that [the applicant] had sustained any injuries or [had acquired] any illnesses as a result of allegedly having been hit in the head or neck with a heavy object. The unhealthy organic changes in [the applicant's] central nervous system discovered during the examination were congenital or had occurred in early childhood as a result of his burdened hereditary history, difficult childbirth, possible head traumas and the presence of neuroinfection in his childhood and youth. Negative emotions which [the applicant] sustained during the military service could have aggravated the existing chronic illnesses. Having regard to the foregoing, the experts made the unambiguous finding that [the applicant's] illnesses were congenital or had occurred in early childhood. They could not have resulted from the alleged beating on the head by Captain Ch.
>
> Moreover, as follows from statements by [the applicant's] fellow conscripts, soldiers A., Ba. and P., whom [the applicant] identified as eyewitnesses to his alleged beatings by Captain Ch., the latter did not use any physical force against [the applicant]. [The applicant] did not tell [those soldiers] about [the beatings].

As follows from the statements which [the applicant] gave during the pre-trial investigation, Captain Ch. hit him at least five times in the head; after the first blow the applicant could no longer stand on his feet and, leaning against a wall, he started sitting down. Captain Ch. administered the remaining blows when [the applicant] was already near the wall. A forensic investigative simulation was performed in order to reconstruct [the applicant's] statements and verify the possibility of administering blows with a metal gun shell through a wooden partition. The environment in which, according to [the applicant], Captain Ch. had beaten him up was reconstructed before the forensic investigative simulation. Assistants who anthropologically resemble [the applicant] and Captain Ch. took part in the simulation. As a result of the simulation it was established that a blow could only be administered through the wooden partition when a person stood very closely to it. Owing to the large distance, the assistant who anthropologically resembled Captain Ch. could not even once hit the assistant who anthropologically resembled [the applicant] when the latter was standing on his feet or was sitting down, leaning on the wall. From the above-mentioned facts it can be concluded that the statements made [by the applicant] during the pre-trial investigation are false."

46. On 10 January 2002 the Military Prosecutor of the North-Caucasian Military Circuit quashed the decision of 19 October 2001 and authorised an additional investigation, finding that the applicant's additional complaint that he had been beaten up by senior conscripts had not been investigated.

47. On 17 June 2002 the criminal proceedings were closed because there was no case to be answered. The decision comprised the text of the decision of 19 October 2001 and additional paragraphs which read as follows:

"[The applicant] explained that on 5 September 1999, at approximately 4 p.m., at the headquarters of the military unit Captain Ch, being dissatisfied with [the applicant's] service in the duty unit, had punched him in the face. Subsequently, [Captain Ch.] took [the applicant] to a barrack storeroom, where he hit him in the head at least five times with a metal artillery gun shell. Soldier A. was present in the storeroom during the beatings. [The applicant] told solders Ba. and P., who were on duty in the duty unit, about the incident.

Moreover, [the applicant] explained that in the middle of October 1999 soldier B. had offered to exchange military jackets [with the applicant] and when the latter had refused, soldier B. had hit [the applicant] in the nose with his hand or head; [the applicant's] nose had started bleeding. Soldiers P., M., Pu., Be., D. and G. were present during the beatings.

However, during the questioning Captain Ch. firmly and consistently denied having participated in the beatings of [the applicant] or having caused him any injuries.

During a confrontation interview between [the applicant] and Captain Ch., the latter confirmed his statements, whereas [the applicant] was inconsistent in his testimony and gave different answers to the same questions.

In his statements [the applicant] explained that soldier A ... had witnessed the beatings of the applicant by Captain Ch. in the storeroom. Mr A., questioned at the place of his residence in the capacity of a witness, firmly denied that Captain Ch. had used physical force against conscripts, including [the applicant], in military unit no. 22336. Moreover, he noted that he did not remember [the applicant]. At the same

time he knew Captain Ch. ... very well and had never seen Captain Ch. hit anyone. Moreover, Mr A. stated that there had never been a gun shell in the storeroom.

Furthermore, [the applicant] stated that he had told soldier Ba., who had been on duty with him in the duty unit, about the beatings by Captain Ch. However, [Mr Ba.], who was questioned at the place of his residence as a witness, stated that he did not remember [the applicant]. He knew Captain Ch. well and could only describe the latter in positive terms; he had never seen [Captain Ch.] hit anyone. Moreover, he had never been told that Captain Ch. had beaten anyone. As to the gun shell, he had never seen one in the barrack storeroom.

[The applicant] also listed another reason for his unauthorised leave from military unit no. 2236, noting that in the middle of October 1999 soldier B. had offered to exchange military jackets with him; however, [the applicant] had refused. In response [to the refusal] soldier B. had hit [the applicant] in the nose with his hand or head; [the applicant's] nose had started bleeding. However, Mr B., questioned as a witness, stated that he knew [the applicant]. ...he had rarely met him, as [the applicant] had served in another division of military unit no. 22336. [Mr B.] explained that he had never applied unlawful means of pressure to conscripts; moreover, he had never asked [the applicant] about anything and had not beaten him up when [the latter] had allegedly refused [to comply with the request]. His military jacket was in order and he did not need to change it.

[According to the applicant], soldier D. was present during the alleged beatings by soldier B. ... However, Mr D., questioned as a witness, stated that he had never used unlawful means of pressure against [the applicant] and had not seen [the applicant] being beaten.

During a confrontation interview between [the applicant] and Mr D., the latter gave consistent and unambiguous answers, fully confirming his statements.

Moreover, [the applicant] stated that when soldier B. had beaten him up, soldier P. had been in the duty room with them. Soldier P., having been questioned as a witness, stated that he had never beaten [the applicant] up and had not seen anyone hit [the applicant]. Moreover, Mr P. explained that his fellow conscript, Mr Pu., had told him that in May 2000, when he had been on leave from the service, [the applicant] and his mother had come to his house and had asked to sign papers confirming that [the applicant] had allegedly been beaten up in the military unit by conscripts of Kalmyk ethnic origin.

During a confrontation interview between [the applicant] and Mr P., the latter gave consistent answers which fully corroborated his statements.

Mr M. and Ba., who, according to [the applicant], had been present during the beatings, when questioned [by an investigator] stated that they had never applied force to [the applicant] and had never seen anyone beating him."

The Government provided the Court with copies of the records of the applicant's, Captain Ch.'s and witnesses' questioning and copies of the records of the confrontation interviews.

48. On several occasions the applicant unsuccessfully complained to higher-ranking prosecutors that the proceedings had been discontinued.

49. On 27 August 2002 the applicant was informed that the case file had been sent to the Priozersk Town Court for an examination in the course of the civil proceedings instituted on the applicant's tort action.

50. On 11 February 2003 the applicant asked the Priozersk Town Court to inform him about what had happened to the criminal case file. On an unspecified date the Town Court President informed the applicant that the Town Court needed the file in connection with the applicant's tort action pending before it.

51. On 20 August 2003 the military prosecutor of the North-Caucasian Military Circuit informed the applicant that his complaints about the decision of 17 June 2002 had been examined and dismissed. The relevant part of the letter of 20 August 2003 read as follows:

> "The preliminary investigation established that Captain Ch. and soldier B. had never caused injuries to [the applicant].
>
> As follows from the report of the composite complex forensic medical psychological psychiatric examination, the complete set of [the applicant's] medical documents does not contain any information that he sustained any injury or illness as a result of blows to the head or neck with a heavy object. The discovered organic symptoms of an illness of the [applicant's] central nervous system are congenital or were acquired in early childhood as a consequence of heredity, difficult childbirth, possible head traumas and neuroinfections in his childhood or youth.
>
> Negative emotions during military service could have aggravated [the applicant's] chronic diseases.
>
> Experts made the unconditional finding that [the applicant's] illnesses were congenital or had been acquired in early childhood and could not have been caused by blows to the head allegedly inflicted by Captain Ch."

D. Expert opinion of 4 May 2006

52. On 28 April 2006 an assistant to the Chief Military Prosecutor sent a letter to the Main State Centre of Forensic Medical and Criminological Examinations in Moscow (hereinafter "the Expert Centre"), asking it to examine the applicant's medical history, including the three expert reports: of 9 November 1999 by the Bekhterev Scientific Research Psychoneurology Institute, of 7 December 1999 by the Military Medical Commission of Medical Clinical Hospital no. 442, and of 18 January 2001 by the Forensic Medical Laboratory of the North-Caucasian Military Circuit of the Russian Ministry of Defence, and to reply to a number of questions.

53. On 4 May 2006 the Expert Centre issued a report which, in so far as relevant, read as follows:

> "The experts were asked to reply to the following questions:

1. What were [the applicant's] illnesses discovered during his military service (explain the diagnosis): how does impairment of the functioning of organs manifest itself, what are the symptoms of the illness, etc.?

2. What are the causes and processes of the development of those illnesses and do they result from a trauma (traumas) sustained by [the applicant]? If yes, when were those traumas received?

3. How long does it take those illnesses to manifest themselves and what is the relationship between them and heredity?

4. Did [the applicant] have those illnesses when drafted into the army? If so, how were those illnesses discovered and could [the applicant] have been drafted into the army [if he had those illnesses]?

...

Conclusions

1. According to the medical documents, during his military service [the applicant] had symptoms of 'organic brain disease, the result of craniocerebral traumas, neuroinfections, a perinatal disorder in the form of cerebral arachnoiditis with apparent hypertensive syndrome, cerebral angiodystonia, epileptiform paroxysms ..., bilateral pyramidal signs, psycho-organic and astheno-psychic syndrome'.

The above-mentioned illness was not accompanied by impairments of motor, sensory or coordination functions or any other functions of the nervous system. The main symptoms of the illness were headaches, fatigability, irritability, and decrease in attention and memory concentration.

2. The [applicant's] above-mentioned organic brain illness occurred in his childhood or youth. The causative factors leading to the development of that condition were neuroinfection, acute infectious inflammatory diseases accompanied by high fever response and intoxication, and numerous head traumas which, jointly, served as a basis for the process of the development of that illness. The alleged head injury sustained on 5 September 1999 during [the applicant's] military service (June to October 1999) does not belong to the priority factors in the development of that polysymptomatic, residual organic disorder of the brain.

3. The duration of the [applicant's] brain illness corresponds to repeated exposure to the pathological factors listed in answer no. 2, and observed in the period preceding his conscription for military service. As follows from the medical documents, [the applicant] exhibits signs of a mentally burdened hereditary history in the form of his father's mental illness, accompanied by the abuse of alcohol and his death as a result of suicide. [The applicant] himself exhibits signs of depression in its hereditary aspect ('periods of low mood').

4. The symptoms of the 'organic brain disease, the result of craniocerebral traumas, neuroinfections, a perinatal disorder in the form of cerebral arachnoiditis with apparent hypertensive syndrome, cerebral angiodystonia, epileptiform paroxysms ..., bilateral pyramidal signs, psycho-organic and astheno-psychic syndrome' were present at the time of [the applicant's] conscription for military service (June 1999). At the same time, having regard to the conclusions of the medical experts of the military

board that [the applicant] had had no complaints about [the state of his health], the neurological symptomatology could not be identified in its clinical aspect. According to the explanation and application of Article 22 of the List of Illnesses ('Regulations on Military Medical Examinations', adopted on 20 April 1995 by Decree no. 390 of the Government of the Russian Federation), the identification of such an illness and the category of its intensity, 'a conclusion on the category of individual fitness for military service during initial registration for military service, conscription for military service and recruitment for contractual military service is made after the in-patient examination'."

II. RELEVANT DOMESTIC LAW

A. Regulations on military service

1. Constitution of the Russian Federation

54. On 12 December 1993 the Constitution of the Russian Federation was adopted. Article 59 of the Russian Constitution imposes a "duty and obligation" on each citizen of the Russian Federation to protect his or her fatherland. Paragraph 2 of Article 59 provides that Russian citizens are to perform military service in compliance with a federal law.

2. The Military Service Act

55. Russian law gives detailed guidelines for the various stages of the conscription process. These guidelines, found in Federal Law no. 53-FZ on Military Duty and Military Service (hereafter "the Military Service Act"), enacted on 28 March 1998, are applicable without exception to all young men of conscription age. In particular, section 9 of the Military Service Act sets out the procedure for initial registration of citizens for military service. In the year he turns seventeen, a male citizen is entered in the military register. At this time, a preliminary (initial) determination is made as to whether he is fit for military service or has grounds for an exemption. A military commission must organise a medical examination of each individual, must determine, with regard to the state of his health, whether he is fit for military service and must decide whether the individual should be included in the military service register, placed on the reserve list, considered partially fit for military service or excused from serving in the army if considered unfit for military service (section 9 § 6).

56. Section 16 of the Military Service Act regulates medical examinations, monitoring and treatment of individuals at the stage of their initial registration for military service. In particular, it provides that a medical examination should be performed by a group of medical specialists, comprising a general practitioner, a surgeon, a neurologist, a psychiatrist, an

oculist, an otolaryngologist, a dentist and other doctors, if necessary. When the commission is unable to reach a firm conclusion as to the individual's fitness for military service, the individual is sent to a medical institution for an outpatient or in-patient medical examination. In certain cases, the individual should be admitted to such an institution for treatment.

57. By virtue of section 23, men who have been declared unfit or partially unfit for military service on health grounds are excused from service. A deferral of military service for up to one year is granted to individuals found to be temporarily unfit for service on account of the state of their health (section 24).

58. When he turns eighteen, a Russian male receives a summons to appear before his local drafting military commission for the conscription procedure. According to the regulations on conscription, he must be directly handed the summons and must sign it (section 31 § 2). If a young man is handed a draft summons and signs but subsequently does not appear for conscription proceedings, he is considered to be a draft-dodger and is prosecuted under the Criminal Code (section 28 § 2 and section 31 § 4 of the Act). If officials are unable to physically hand a young man a summons, the drafting military commission may request the local police precinct in writing to help "ensure" his presence during the conscription procedure (section 31 § 2).

59. Section 28 lays down the list of responsibilities imposed on the drafting military commission at the stage of conscription for military service. In particular, the commission must organise a medical examination for each individual and must take one of the following decisions: (a) draft the individual into the army; (b) send him for alternative civilian service; (c) grant him a deferral of military service; (d) excuse him from being drafted to the army; (e) place him on the reserve list; or (f) relieve him of the obligation to serve in the army. It also assigns the candidate to a specific branch of the armed forces.

60. Section 30, in terms similar to those of section 16, establishes the procedure for the medical examination and monitoring of individuals who are to be drafted into the army. In addition, section 30 indicates that, taking into account the results of the medical examination, the head of the military medical commission should issue a decision identifying the individual's fitness for military service according to the following five categories:

A – fit for military service;

B – fit for military service with minor restrictions;

C – partially fit for military service;

D – temporarily unfit for military service;

E – unfit for military service.

Section 30 also provides that the procedure for organising and performing medical examinations of individuals liable to be drafted into the

army is set out in detail in the Regulations on Military Medical Examinations adopted by the Government of the Russian Federation.

3. *Regulations on Military Medical Examinations (in force until 1 July 2003)*

61. On 20 April 1995 the Government of the Russian Federation issued Decree no. 390, adopting the Regulations on Military Medical Examinations (hereinafter "the Regulations"). The relevant provisions of the Regulations read as follows:

> "20. On the basis of a military medical commission's decision, an individual may be sent to a State or municipal medical institution for an outpatient or in-patient medical examination to confirm the diagnosis or to undergo treatment... After such a medical examination (treatment) a record of the examination of the state of the individual's health should be drawn up...
>
> 21. At the stage of the initial registration for military service or when a decision on conscription is to be taken, in cases where it is necessary to perform a lengthy (for more than three months) [additional] medical examination (treatment) of the individual, the commission should issue a record noting the temporary unfitness of the individual for military service for a period from six to twelve months. After the [additional] medical examination (treatment) is completed, the individual should be subjected to a renewed medical examination by the military medical commission and may be drafted into the army.
>
> If the [additional] medical examination (treatment) of the individual can be completed before the military commission concludes its work (within the current drafting campaign), the report on the individual's temporary unfitness for military service should not be issued. In that case a specialist doctor draws up a record, noting that an [additional] medical examination (treatment) of the individual is necessary, and indicates the date on which the individual should attend the renewed medical examination by the commission.
>
> After the period of the individual's temporary unfitness for military service expires, the commission issues the final decision on the category defining his fitness for military service.
>
> 22. If an individual who was considered to be temporarily unfit for military service during his initial registration for service or at the stage of conscription into the army refuses to undergo or evades the [additional] medical examination (treatment), he should be subjected to a renewed medical examination by the commission no later than six months after the decision on temporary unfitness was taken. If during the renewed medical examination by the commission no signs of deterioration of the individual's health are discovered or there are no apparent injuries (wounds, traumas, contusions) or illnesses which prevent conscription for military service, the individual is considered completely fit or fit with minor restrictions for military service.
>
> 23. Administrations of various divisions of the public health services, heads of State and municipal medical institutions and military commissions should take measures to ensure timely [additional] medical examinations (treatment) of individuals."

62. The Regulations also contained the List of Illnesses, on the basis of which a military medical commission could identify to which of the five categories (A to E) of fitness for military service the individual belonged. In particular, Section 22 of the List dealt with illnesses of the nervous system. Clinically apparent hydrocephalus and fluid hypertension were listed among illnesses of the nervous system which placed an individual suffering from them in the category "E – unfit for military service". Section 22 imposed an obligation to make the final determination of the diagnosis on the basis of medical documents, results of clinical and specific medical examinations and other evidence confirming the diagnosis and showing the negative impact of the illness on the individual's ability to work or perform military service.

4. Instruction on Military Medical Examinations

63. On 22 September 1995 the Ministry of Defence of the Russian Federation issued Decree no. 315, adopting the Instruction on Military Medical Examinations in the Armed Forces of the Russian Federation (hereinafter "the Instruction"), which, while incorporating the provisions of the Regulations, set out even more detailed rules for military commissions in the field of medical examinations of conscripts. The Instruction (in force at the material time), in so far as relevant, read as follows:

> "114. Individuals who were considered in need of an additional medical examination (treatment) at the stage of their initial registration for military service should be included by the military commission in one of the two registers:
>
> In register no. 1 – temporarily unfit for military service;
>
> In register no. 2 – fit for military service with minor restrictions.
>
> No later than five days after the military commission has finished its work, the above-mentioned registers should be sent to the public health service authorities and medical institutions which perform additional medical examinations (treatment) of individuals liable for military service.
>
> The individual is served with a card directing him to an additional medical examination (treatment) at the same time when he is notified about the decision of the commission [pertaining to his fitness for military service]. The card should contain the name of the medical institution to which the individual is sent, the diagnosis, the purpose of the additional medical examination and the date when the individual should present himself for the renewed medical examination by the military commission. The individual should be given an explanation as to why it is necessary to perform an additional medical examination.
>
> ...
>
> A military commission should ensure that [additional] and repeated medical examinations are performed in good time."

B. Investigations into criminal offences

64. The Code of Criminal Procedure of the Russian Federation (in force since 1 July 2002 – “the CCrP”) provides that a criminal investigation can be initiated by an investigator or a prosecutor on a complaint by an individual or on the investigating authorities' own initiative, where there are reasons to believe that a crime has been committed (Articles 146 and 147). A prosecutor is responsible for overall supervision of the investigation (Article 37). He can order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. If there are no grounds to initiate a criminal investigation, the prosecutor or investigator issues a reasoned decision to that effect which has to be notified to the interested party. The decision is amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction within a procedure established by Article 125 of the CCrP (Article 148). Article 125 of the CCrP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

III. RELEVANT INTERNATIONAL NON-GOVERNMENTAL ORGANISATION REPORTS

Human Rights Watch

1. Report: “Russia: Conscription through Detention in Russia's Armed Forces”

65. The relevant extracts from the Human Rights Watch report of November 2002 (vol. 14, no. 8 (D)) entitled “*Russia: Conscription through Detention in Russia's Armed Forces*” read as follows:

> **“Draft Quota Problems**
>
> Due in part to conscription's unpopularity and in part to the deteriorating health of Russia's youth, recruitment authorities in many cities throughout Russia cannot meet draft quotas, and many of those drafted have been described as in poor health.
>
> ...
>
> The deteriorating health of Russia's youths has compounded the conscription crisis. Poor health has disqualified about 50 percent of Russia's young men for military service each year in recent years. A Ministry of Defence official told a press conference in April 2002 that in 2001, doctors on draft boards found no less than 54 percent of the young men tested unfit for military service. Another official said that

for the 400,000 young men drafted some 600,000 young men are declared unfit each year.

Because Russia's youth is wracked with poor health, and because many of Russia's most healthy and educated young men successfully manage to avoid military service, recruitment officials are often left to select conscripts from a group of young men with low education levels and sometimes serious health problems. An unidentified Russian lawmaker told *The Moscow Times* that, in a speech to the State Duma, Defence Minister Sergei Ivanov said the young men drafted in the fall of 2001 were a 'pathetic lot, afflicted with drug addiction, psychological problems and malnutrition'. Ministry of Defence statistics indicate that every second conscript had an alcohol problem prior to entering service, and that every fourth had been a drug user.

...

Accelerated Conscription Proceedings

Draft boards failed to process the young men interviewed for this report diligently and fairly. In violation of Russian conscription regulations, medical examinations were superficial, and draft boards frequently refused to consider possible grounds for exemption or deferral. In some cases, local draft boards processed cases of young men whose residence permits were for elsewhere.

...

Medical Examinations

All young men interviewed for this report said the medical examinations at the local and municipal level were conducted in a cursory manner. The doctors refused to listen to their assertions of serious medical conditions, and in some cases the young men did not even see all the required doctors."

2. Report: "Serve without Health? Inadequate Nutrition and Health Care"

66. The relevant extracts from the Human Rights Watch report of November 2003 (vol. 15, no. 9 (D)) entitled "*To Serve without Health? Inadequate Nutrition and Health Care in the Russian Armed Forces*" read as follows:

"Since the collapse of the Soviet Union, a profound public health crisis has plagued Russia. General health in all parts of the population has deteriorated and life expectancy in Russia lags far behind that in Western Europe. A recent countrywide paediatric health study found that 67 percent of 31.6 million Russians eighteen years old and under suffer from health problems, with bronchial and respiratory illnesses being particularly common...

Violations of the rights to adequate nutrition and medical care in the Russian armed forces must be seen in this context. The privations many conscripts suffer may exacerbate the fragile health they were in when they entered the military...

Military medical commissions that determine whether candidate conscripts are fit for military service typically declare more than 30 percent of those examined unfit. Yet, in a crunch to fulfil draft quotas, each year the commissions also declare many young men fit for service despite health problems that, under Russian law, should disqualify them. Human Rights Watch research in the archives of soldiers' rights organizations in Moscow, St. Petersburg, Volgograd and other Russian cities found numerous cases of young men who were discharged from the armed forces for health conditions that predated their draft order. In interviews, dozens of conscripts told Human Rights Watch that the medical examinations they underwent had been superficial and that physicians had failed to pay due attention to their health problems.

The violent hazing of first-year conscripts that is endemic in many units of Russia's armed forces further ruins the health of conscript soldiers. Numerous conscripts described to Human Rights Watch how senior conscript soldiers, known as *dedy*, systematically bullied them in their first year of service, making them perform degrading chores and physical exercises, and demanding money, alcohol, food, and cigarettes from them. Refusal to comply led to beatings, which most said were routine throughout their first year of service. Many conscript soldiers also said that, at times, they faced far more serious ill-treatment or even torture, both in retribution and gratuitously, including beatings with heavy objects, beatings while they were suspended in painful positions, scorching of skin with lit cigarettes, and sexual abuse.”

3. Report: “The Wrong of Passage: Inhuman and Degrading Treatment of New Recruits in the Russian Armed Forces”

67. In October 2004 Human Rights Watch published a report entitled “*The Wrong of Passage: Inhuman and Degrading Treatment of New Recruits in the Russian Armed Forces*” (vol 16 no. 8 (D)), documenting abuses under a system called *dedovshchina,* or “rule of the grandfathers”, which hundreds of thousands of new recruits in the Russian armed forces faced at the hands of more senior conscripts. The report resulted from the three years of research in several regions across Russia, including Volgograd. The relevant parts of the report read as follows:

“Under a system called *dedovshchina*, or 'rule of the grandfathers', second-year conscripts force new recruits to live in a year-long state of pointless servitude, punish them violently for any infractions of official or informal rules, and abuse them gratuitously. Dozens of conscripts are killed every year as a result of these abuses, and thousands sustain serious – and often permanent – damage to their physical and mental health. Hundreds commit or attempt suicide and thousands run away from their units. This abuse takes place in a broader context of denial of conscripts' rights to adequate food and access to medical care, which causes many to go hungry or develop serious health problems, and abusive treatment by officers...

Dedovshchina exists in military units throughout the Russian Federation. It establishes an informal hierarchy of conscripts, based on the length of their service, and a corresponding set of rights and duties for each group of the hierarchy. As in militaries around the world, newcomers have essentially no rights under the system—they must earn them over time. At the beginning of their service, conscripts are 'not eligible' to eat, wash, relax, sleep, be sick, or even keep track of time. Thus, any

restrictions placed on these functions are considered permissible. The life of a new recruit consists of countless obligations to do the bidding of those conscripts who have served long enough – a year or more – to have earned rights in the informal hierarchy. Second-year conscripts, called the *dedy*, have practically unlimited power with respect to their junior colleagues. They can order them to do whatever they like, no matter how demeaning or absurd the task, while remaining beyond the strictures of the Military Code of Conduct or any other set of formal rules. If a first-year conscript refuses to oblige or fails in the assigned task, the senior conscript is free to administer whatever punishment he deems appropriate, no matter how violent.

Dedovshchina is distinguished by predation, violence, and impunity. During their first year of service, conscripts live under the constant threat of violence for failing to comply with limitless orders and demands of *dedy*. Many conscripts spent entire days fulfilling these orders, which range from the trivial, like shining the seniors' boots or making their beds, to the predatory, such as handing over food items to them at meal time, or procuring (legally or illegally) money, alcohol or cigarettes for them. First-year conscripts face violent punishment for any failure – and frequently not only for their own individual failure, as punishment is often collective – to conform to the expectations of *dedy*. As a rule, punishment happens at night after officers have gone home. *Dedy* wake the first-year conscripts up in the middle of the night and make them perform push-ups or knee bends, often accompanied by beatings, until they drop. First-year conscripts also routinely face gratuitous abuse, often involving severe beatings or sexual abuse, from drunken *dedy* at night. *Dedy* sometimes beat new recruits with stools or iron rods.

Dedovshchina has all the trappings of a classic initiation system; indeed, it likely emerged as one several decades ago. Such systems, which exist in many social institutions around the world, including schools, athletic clubs, and especially the armed forces of many countries, can play a legitimate role in military structures by enhancing group cohesion and esprit de corps. Initiation systems license the group to erase a certain degree of individuality in its members, and the possibility of abuse is inherent in that license.

While *dedovshchina* may once have served the purpose of initiation, it has in the past twenty years degenerated into a system in which second-year conscripts, once victims of abuse and deprivation themselves, enjoy untrammelled power to abuse their juniors without rule, restriction, or fear of punishment. The result is not enhanced esprit de corps but lawlessness and gross abuse of human rights. The collapse of *dedovshchina* as an initiation system has occurred at both the command level and at the conscript level.

At the command level, abusive practices associated with *dedovshchina* have persisted due to an almost universal failure on the part of the officers' corps to take appropriate measures. Our research found that the vast majority of officers either chose not to notice evidence of *dedovshchina* or, worse, tolerate or encourage it because they see *dedovshchina* as an effective means of maintaining discipline in their ranks. Indeed, we found that officers routinely fail to send a clear message to their troops that abuses will not be tolerated, reduce existing prevention mechanisms to empty formalities or ignore them altogether, and fail to respond to clear evidence of abuse.

The perversity of this attitude toward 'maintaining discipline' in the short run is that it so clearly undermines the effectiveness of Russia's armed forces over time. Horror

stories about *dedovshchina* motivate tens of thousands of Russian parents every year to try to keep their sons out of the armed forces. As the most affluent and educated families do so most successfully, the armed forces increasingly draw recruits from poor segments of the population, and many of the recruits suffer from malnutrition, ill-health, alcohol or drug addiction, or other social ills even before they start to serve. Moreover, as mentioned above, thousands of the young men who are drafted each year run away from their units, and hundreds commit suicide.

At the conscript level, the degeneration of the system is more contemptible than perverse: instead of initiating new recruits into their new role of soldiers, *dedy* use *dedovshchina* primarily as a means of avenging the abuses they themselves faced during their first year of service and of exploiting new recruits to the fullest extent possible, both materially and otherwise...

Although international law requires the Russian government to take immediate measures to end these abuses, it has thus far failed to take the appropriate steps. Instead of taking a clear and public stance against the abuses, government officials have largely ignored the issue in their numerous speeches about military reform. The government has yet to adopt a clear and comprehensive strategy to deal with the abuses. Instead of vigorously examining the reasons why first-year conscripts flee their units, military officials routinely threaten runaways with prosecution for unauthorized departure from their bases. Military commanders and the military procuracy routinely shield their perpetrators from justice, rather than investigate reported incidents of abuse."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S CONSCRIPTION FOR MILITARY SERVICE

68. The applicant complained that his conscription to the armed forces, despite his being seriously ill, constituted inhuman and degrading treatment in violation of Article 3 of the Convention, which reads as follows:

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

A. Submissions by the parties

69. The Government submitted two lines of argument. Firstly, they argued that the applicant had not appealed against the decision of the Priozersk District Military Board to draft him into the army. In the alternative, the Government, relying on the expert findings made on 4 May 2006, submitted that the applicant's organic brain illness diagnosed after his

unauthorised leave from military service had been "present at the time of the applicant's conscription for military service in June 1999", being of a congenital nature or having been acquired in childhood. However, the doctors of the military medical commission who had examined the applicant and found him fit for military service could not possibly have diagnosed the illness given the absence of evident clinical symptoms at the time of the conscription, the lack of health complaints on behalf of the applicant and the latter's failure to undergo any specific medical examinations and provide the commission with medical documents showing the presence of the illness. The Government stressed that specific medical in-patient examinations were required to diagnose the illness. Furthermore, neither the investigating authorities nor the courts had established that the military medical commission had deliberately disregarded the state of the applicant's health in authorising his conscription for military service.

70. The Government also submitted that there was no evidence that the State authorities had openly disregarded the basic principles of humanity in violation of Article 3 of the Convention. In particular, the Government drew the Court's attention to the fact that from December 2000 to December 2001 the applicant had received a monthly disability pension of approximately 25 euros. However, owing to the applicant's failure to undergo a medical sanitary examination the payments had been cancelled.

71. The applicant averred that the domestic authorities had completely disregarded his medical history. They paid no attention to the fact that in 1987 he had been diagnosed with hypertension. Relying on the Sosnovo hospital's letter of 4 December 2001, he insisted that the military medical commission had been served with a copy of his medical record and that it should therefore have been aware of his having been diagnosed with hypertension. Furthermore, despite the fact that in February 1997 the military medical commission had established that the applicant suffered from hypotrophy and that an additional medical examination was necessary, no steps had been taken to confirm the diagnosis or determine the nature of the health problem. He stressed that he should have been admitted to a public health institution for an in-patient examination or treatment, in compliance with the requirements of the domestic legislation. However, not having been served with any medical documents directing him to such an institution, he did not have access to "medical proceedings capable of effectively monitoring the state of his health".

72. The applicant further submitted that both the report of 9 November 1999 by the Bekhterev Scientific Research Psychoneurology Institute and the expert report issued on 4 May 2006 had confirmed the presence of a serious brain illness which could have been detected at the conscription stage by an in-patient examination. The illness was a ground for exemption from military service. The applicant stressed that the Government had not argued otherwise. In the applicant's opinion, the military medical

commission, before drafting him, should have ordered an in-patient medical examination to make the final assessment of the state of his health. He pointed out that the medical and military officials who in 1999 had made the final determination of his fitness for military service had been aware of his inability to serve effectively in the armed forces. The consequences of his exposure to military service had been foreseeable at the very least for the medical personnel involved in the consideration of his eligibility for service. The applicant concluded that military service was ordinarily accompanied by hardships of a physical and psychological character which soldiers faced in their everyday life. While military service itself in general did not constitute inhuman and degrading treatment, his conscription for military service in a very poor state of health went beyond the suffering ordinarily connected with military service and reached the threshold of treatment prohibited by Article 3.

B. The Court's assessment

73. The Court refers to the Government's argument pertaining to the applicant's alleged failure to appeal against the decision of 3 June 1999 to draft him into the army and their further submissions concerning the payment of the disability pension, which appear to raise the issue of the applicant's victim status. While finding the Government's arguments surprising, particularly in view of the Priozersk Town Court's judgment upholding the decision of 3 June 1999 (see paragraph 37 above), and the Government's admission that the pension payments were cancelled, the Court does not consider it necessary to examine those arguments in detail, as it in any event finds the present complaint manifestly ill-founded for the reasons set out below.

1. Establishment of the facts

74. The Court firstly considers it necessary to reiterate the facts relating to the applicant's conscription for military service. It observes that the facts are not, in general, in dispute between the parties. It therefore finds it established that on 12 February 1997 the applicant was examined for the first time by the Priozersk District Military Medical Commission with a view to making a preliminary determination of his ability to serve in the army. As a result of the examination he was diagnosed with "hypotrophy of unknown genesis" on account of his disproportionately low weight in relation to his height and was found to be "temporarily unfit" for military service. An examination by an endocrinologist was to be performed (see paragraph 8 above). Despite the applicant's argument to the contrary, it transpires from his medical record submitted to the Court that such an examination was carried out within a week, with the applicant being diagnosed with a diffuse enlargement of the thyroid gland conditioned by

his age. At the same time the applicant's state of health was found to be satisfactory (see paragraph 9 above).

75. In October 1998, after the applicant had reached the conscription age of eighteen, the military medical commission re-examined him and, having established no signs of hypotrophy, found him fit to serve in the army (see paragraph 10 above). Another medical examination of the applicant was carried out in April 1999 when the final decision on his conscription was taken. The applicant, having made no complaints, was found to be in good health and ready to be conscripted into the armed forces (see paragraph 11 above).

76. The applicant's military service began on 3 June 1999, when he was assigned to unit no. 22336 in Volgograd. Almost five months later he deserted the army and travelled to St Petersburg, where he applied to the Bekhterev Scientific Research Psychoneurology Institute, alleging serious health problems caused by the poor conditions of his military service and numerous incidents of ill-treatment by senior conscripts and officers (see paragraph 15 above). Following a medical examination in the Institute, during which the applicant was subjected to a number of complex medical tests, he was diagnosed with a serious brain illness occasioned by a perinatal disorder, neuroinfections and childhood craniocerebral traumas. According to the expert report, the illness manifested itself through severe headaches, from which the applicant had been suffering since 1987 (see paragraphs 6 and 15 above). In December 1999 the applicant, on the authorisation of the St Petersburg Military Prosecutor's Office, was examined by the Military Medical Commission of the Medical Clinical Hospital, which confirmed the diagnosis and concluded that the illness had been acquired during his military service and that he was no longer fit to serve (see paragraph 17 above). He was discharged from the army on account of his poor health. In December 2000 the applicant was registered as having a third-degree disability.

77. Subsequently, two additional medical examinations were performed with a view to identifying the origin of the applicant's illness. In particular, in January 2001, in the course of the criminal proceedings instituted upon his ill-treatment complaints, a forensic medical laboratory of the Russian Ministry of Defence carried out a complex psychological and psychiatric examination of the applicant. The experts concluded that his brain illness, discovered during the previous examinations, was congenital or could have originated from a difficult childbirth or childhood head traumas and neuroinfections (see paragraph 42 above). The same finding was made by medical experts during the most recent examination on 4 May 2006 (see paragraph 53 above). The experts established that the illness had developed prior to the applicant's conscription for military service. In addition, they reached the unambiguous conclusion that the illness did not have clear clinical symptoms as it was not accompanied by any physical impairment. It

manifested itself through headaches and a general decrease in physical and mental strength and could only have been detected through specific in-patient medical examinations.

2. General principles and their application to the present case

78. The Court notes the applicant's complaint that the failure of the military medical authorities to diagnose him with the brain illness before he was drafted into the army exposed him to the hardships of military service. In the applicant's opinion, the usual difficulties of military service, which do not impose a particularly heavy burden on healthy conscripts, reached the threshold of inhuman and degrading treatment in his case as he was seriously ill and was not fit to meet the challenges of the army. Accordingly, the Court's task is to examine whether the facts as established above disclose a violation of the guarantee against torture, inhuman and degrading treatment or punishment under Article 3 of the Convention.

79. The Court reiterates that 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 or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

80. According to the Court's settled approach, treatment is considered "inhuman" if it is premeditated, applied for hours at a stretch and causes either actual bodily injury or intense physical or mental suffering (see, as a classic authority, *Kudła v. Poland* [GC], no. 30210/96, § 92, ECHR 2000-XI, and *Yankov v. Bulgaria*, no. 39084/97, § 104, ECHR 2003-XII (extracts)). Treatment has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance (see *Hurtado v. Switzerland*, Commission's report of 8 July 1993, § 67, Series A no. 280), or when it was such as to drive the victim to act against his will or conscience (see, for example, the Greek case, cited above, and *Keenan v. the United Kingdom*, no. 27229/95, § 110, ECHR 2001-III). 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 *Peers v. Greece*, no. 28524/95, § 74, ECHR 2001-III).

81. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of

suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Kudła*, cited above, §§ 92-94). Mandatory military service often involves such an element (see, *mutatis mutandis*, *Engel and Others v. the Netherlands*, 8 June 1976, § 57, Series A no. 22).

82. The Court further observes that it has already on a number of occasions addressed the unique nature of military service. In particular, it has found that the State has a duty to ensure that a person performs military service in conditions which are compatible with respect for his human dignity, that the procedures and methods of military training do not subject him to distress or suffering of an intensity exceeding the unavoidable level of hardship inherent in military discipline and that, given the practical demands of such service, his health and well-being are adequately secured by, among other things, providing him with the medical assistance he requires (see, *mutatis mutandis*, *Kılınç and Others v. Turkey*, no. 40145/98, § 41, 7 June 2005, and *Álvarez Ramón v. Spain* (dec.), no. 51192/99, 3 July 2001). The State has a primary duty to put in place rules geared to the level of risk to life or limb that may result not only from the nature of military activities and operations, but also from the human element that comes into play when a State decides to call up ordinary citizens to perform military service. Such rules must require the adoption of practical measures aimed at the effective protection of conscripts against the dangers inherent in military life and appropriate procedures for identifying shortcomings and errors liable to be committed in that regard by those in charge at different levels (see *Kılınç*, cited above, § 41 *in fine*).

83. The present complaint, however, relates not so much to the State's obligation to ensure particular conditions in which a person is to perform military service as to the specific duties of the State at the very moment of conscription for such service, which inevitably exposes individuals to legitimate suffering and humiliation. In this respect, the present case may be compared to that of *Taştan v. Turkey* (no. 63748/00, 4 March 2008), in which the Court found that the conscription of the applicant at the age of seventy-one for military service, which was reserved for much younger conscripts, and his performance of such service constituted a "particularly painful ordeal" for him and "an attack on his dignity". The Court concluded that they had caused anguish to the applicant of an intensity exceeding the unavoidable level of suffering inherent in military service, and amounted to degrading treatment in violation of Article 3 of the Convention (ibid., § 31).

84. Accordingly, the first question arising within the scope of the present complaint is whether the conscription for military service of the applicant, a seriously ill person, exposed him to suffering which attained the Article 3 threshold. In this connection, the Court observes that the Government did not dispute that the applicant's military service in the health condition with which he was diagnosed in November 1999 could have exposed him to pain and suffering which reached a level of severity sufficient to fall within the

scope of Article 3 of the Convention. The applicant's discharge from the army on health grounds appears to support that conclusion. Although the applicant did not claim that during his military service he had had any medical emergencies or had otherwise been exposed to severe or prolonged pain connected to his illness or experienced considerable anxiety flowing from his awareness of his health condition and the health risk to which he was exposed at all times on account of the nature of military service (see, *mutatis mutandis, Sarban v. Moldova*, no. 3456/05, §§ 86-87, 4 October 2005), the Court is prepared to proceed on the assumption that the suffering he may have endured reached the level of severity prohibited by Article 3.

85. It remains to be determined whether the State bears the responsibility, under Article 3, for the treatment sustained by the applicant.

86. The Court reiterates that 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. These measures should provide effective protection, in particular, of vulnerable persons, such as military conscripts, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (see *Abdullah Yılmaz v. Turkey*, no. 21899/02, §§ 67-72, 17 June 2008, and, *mutatis mutandis*, *Osman v. the United Kingdom*, 28 October 1998, § 116, *Reports of Judgments and Decisions* 1998-VIII).

87. The Court accepts that it is generally for a State to determine the standards of health and fitness for potential conscripts, having regard to the fact that the role of the armed forces differs among States. However, conscripts should be physically and mentally equipped for challenges related to the particular characteristics of military life and for the special duties and responsibilities incumbent on members of the army. While completing military service may not be in any way overwhelming for a healthy young person, it could constitute an onerous burden on an individual lacking the requisite stamina and physical strength owing to the poor state of his health. Accordingly, given the practical demands of military service, States must introduce an effective system of medical supervision for potential conscripts to ensure that their health and well-being would not be put in danger and their human dignity would not be undermined during military service (see, *mutatis mutandis*, *Taştan*, cited above, § 30). State authorities, in particular drafting military commissions and military medical commissions, must carry out their responsibilities in such a manner that persons who are not eligible for conscript military service on health grounds are not registered and consequently admitted to serve in the army.

88. Turning to the circumstances of the present case, the Court is unable to conclude that the Russian authorities, in conducting the medical examinations of the applicant, finding him fit for military service and eventually drafting him into the army, performed their duties in a negligent manner. The Court does not lose sight of the fact that prior to his conscription at least three medical examinations of the applicant were performed by a group of specialists in various fields of medicine, whose qualifications and experience he did not contest. In addition, the examination by an endocrinologist was carried out when the medical commission was unable to establish the origin of the applicant's hypotrophy. Following the preliminary assessment of his ability to serve in the armed forces, the applicant was granted a deferral to improve his health. More than eighteen months later, when the initial diagnosis of hypotrophy was no longer an issue, the Priozersk District Military Medical Commission found him fit for military service. Furthermore, it was not until June 1999 that the applicant was eventually drafted into the army.

89. The Court attributes particular weight to the fact, which was not in dispute between the parties, that the applicant did not make any complaints about the state of his health during the three medical examinations. Furthermore, there is no evidence that he applied to any independent medical institution with any health problem between 1996, when he was registered for compulsory military service, and June 1999, when he was drafted. The Court also observes that, as follows from the expert opinions, the organic brain illness on the basis of which the applicant was discharged from the army and registered as having a third-degree disability, did not have any clinical symptoms and could not be detected through a mere visual examination. Various complex medical tests, including an MRI scan, a transcranial scan with Doppler apparatus and an ultrasound scan, were required to diagnose the applicant's illness.

90. In these circumstances the Court is not convinced by the applicant's argument that the Priozersk District Military Medical Commission should have authorised an in-patient medical examination, which could have led to his being diagnosed with the brain illness before his conscription and being excused from military service altogether. The applicant supported his argument with a reference to his medical record, which allegedly had been seen by the district commission. In his opinion, the military medical authorities did not attach the necessary weight to his suffering from headaches and hypertension in 1987. The Court, however, entertains doubts that the applicant's medical history was brought to the attention of the military medical commission. As follows from the Town Court's judgment of 18 March 2004, the applicant's mother was in possession of his medical record, failing to submit it to the military medical authorities (see paragraph 37 above). This conclusion is not negated by the letter from the Sosnovo village hospital which was sent to the Town Court on 4 December 2001 and

on which the applicant strongly relied in support of his argument (see paragraph 26 above). The letter confirmed that conscripts' medical records were, as a general practice, sent to drafting military commissions. However, the hospital was unable to produce evidence showing that the applicant's medical history had, in fact, been handed over to the military authorities.

91. In any event, irrespective of the finding made in the previous paragraph, the Court does not consider that the applicant's suffering from headaches and his being diagnosed with hypertension ten years prior to his conscription inevitably imposed an obligation on the authorities to perform an in-patient examination of him, particularly in the absence of complaints on his part about the state of his health and the lack of any medical data showing that the illness had persisted or that after 1987 he had applied for medical treatment in connection with the same health problems. The Court is therefore not able to establish that on the date of the applicant's conscription the Russian authorities had substantial grounds to believe that, if drafted into the army, the applicant, owing to the state of his health, would face a real risk of treatment proscribed by Article 3 (see, for similar reasons, *X. v. Austria*, no. 5560/72, Commission decision of 18 December 1973).

92. Furthermore, in assessing the applicant's complaint, the Court takes into account the conduct of the Russian authorities during the applicant's military service and following his unauthorised leave. In particular, the Court observes that the applicant did not argue that there had not been an adequate system of health care in the military unit or that he had been denied access to medical assistance on any occasion. In fact, it appears that the applicant did not request medical services or raise any health complaints while in the army. Furthermore, there is no evidence that the applicant informed his commanding personnel of his inability to comply with the requirements of military service on account of the state of his health. It was not until his unauthorised leave and his examination in the Bekhterev Institute that the military authorities became aware of the applicant's health problems. In this connection, the Court is mindful of the authorities' reaction to the results of the applicant's medical examination in the Bekhterev Institute. He was admitted to a military hospital, a medical examination was performed and he was immediately discharged from military service, after the medical experts had confirmed that he was no longer fully fit to serve. The Court also does not lose sight of the fact that the applicant was not criminally prosecuted for having deserted the army, although liability for such an offence was envisaged by Russian law.

93. In these circumstances the Court concludes that the Russian authorities complied to a sufficiently thorough extent with the medical standards for judging the applicant's fitness for military duty and took all feasible precautions, taking into account all circumstances obtaining at the time, to safeguard his health and to prevent him from being exposed to

treatment prohibited under Article 3 of the Convention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF BEATINGS IN THE ARMY

94. The applicant complained that on 5 September and 17 October 1999 he had been subjected to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation of those events, amounting to a breach of Article 13. The Court will examine this complaint from the standpoint of the State's negative and positive obligations flowing from Article 3 of the Convention, cited above.

A. Submissions by the parties

95. The Government argued that the applicant had failed to exhaust the domestic remedies available to him under Article 125 of the Russian Code of Criminal Procedure. They stressed that he had not appealed against the decision of 17 June 2002 to the competent domestic court. In the alternative, the Government submitted that there was no objective evidence showing that the applicant had been subjected to treatment contrary to the requirement of Article 3 of the Convention. In particular, the expert medical reports, including the most recent one of 4 May 2006, confirmed that the applicant's illnesses were congenital or had been acquired in childhood. The illnesses could not have resulted from traumas allegedly caused during his military service. At the same time the Government acknowledged that one of the expert reports, namely the one issued by the Military Medical Commission of Medical Clinical Hospital no. 442, stated that the applicant had “acquired the illness during his military service”. However, the Government, relying on Regulation 46 of the Regulations on Military Medical Examinations, provided the following interpretation of the expert finding. They insisted that by virtue of Regulation 46, a military medical commission issued a conclusion that an illness had been acquired during military service even if that illness had been present before conscription for military service, but had been diagnosed during military service. In the Government's opinion the phrase “acquired during military service” did not mean that the individual, in the present case the applicant, had been injured (or felt sick) during military service.

96. The Government further stressed that the investigating authorities had taken all necessary steps to verify the applicant's statements. They had instituted criminal proceedings immediately after the applicant had applied

to the prosecutor's office and had authorised an expert medical examination of him. They had interviewed the applicant on a number of occasions, had identified and questioned all individuals who, according to the applicant, had witnessed or had been aware of the alleged beatings, and had performed confrontation interviews between the applicant and accused individuals and witnesses. The investigators had also commissioned an additional examination of the applicant to settle the difference of opinion emerging in the previous expert reports. They had even carried out a forensic investigative simulation of the alleged beatings, attempting to reconstruct the alleged crime scene and verify the statements by the parties to the criminal proceedings. The Government also stressed that the fact that a number of decisions on discontinuation of the criminal proceedings had been quashed did not alter the conclusion that the investigation had been effective as the quashing had been carried out for the purpose of ensuring the best representation of the applicant's interests.

97. The applicant, relying on reports of various international and domestic non-governmental organisations, including Human Rights Watch, argued that the armed forces in the Russian Federation were built on a system of endemic abuses and human rights violations. According to the applicant, various forms of torture, beatings, humiliation and violations of the right to health were experienced on a daily basis by the majority of Russian conscripts. In addition to physical abuse, first-year conscripts were subjected to extortion of their military allowance and financial aid sent from home, routine confiscation or restriction of their food rations, denial of medical assistance and forced labour. Regard being had to the existence of the endemic practice of physical and psychological abuse against first-year conscripts, the applicant, being one of them, could not have avoided being subjected to it.

98. The applicant further drew the Court's attention to the alleged defects in the investigation. In particular, he noted that the first medical examination had been performed more than fourteen months after the institution of criminal proceedings, that is, on 18 January 2001. As a result of the substantial delay, the experts had been unable to establish any physical traces resulting from the beatings. Furthermore, the examination had been psychological and psychiatric in nature, thus having the primary purpose of detecting abnormalities in the applicant's behaviour and his inability to interact adequately with the investigating authorities. The applicant pointed out that the expert examination performed by the Military Medical Commission of Medical Clinical Hospital no. 442 had unequivocally established that his health had seriously deteriorated during his military service as the experts had concluded that he had "acquired the illnesses during his military service". That finding had been made in compliance with the requirements of Regulation 46 of the Regulations. However, the applicant disagreed with the Government's interpretation of

the phrase "acquired during military service". He argued that the illness had developed during his military service.

99. The applicant stressed that the investigators had failed to collect evidence of the ill-treatment to which he had been subjected in the army. He explained that the investigators had not questioned important witnesses. Moreover, as a result of the delay in the institution of the criminal proceedings, the witnesses who were in fact questioned had been unable to recall the details of the incidents of ill-treatment or did not even remember him. The applicant noted that it was not until 1 June 2001 that the investigators had questioned soldier B. about the events in October 1999. In the applicant's view, all those omissions or defects clearly represented indifference or unwillingness on the investigating authorities' part to find out what had really happened during his military service.

B. The Court's assessment

100. The Court is mindful of the Government's argument that the applicant, by failing to appeal to a court against the decision of 17 June 2002 by which the criminal proceedings had been discontinued, did not make use of an effective domestic remedy open to him by virtue of Article 125 of the Russian Code of Criminal Procedure (see paragraph 64 above). The Court, however, does not need to address the non-exhaustion argument, as it will, in any event, dismiss the present complaint for the following reasons.

1. Establishment and evaluation of facts

101. The Court reiterates that on 9 November 1999, following the applicant's unauthorised leave from the military unit, he was examined in the Bekhterev Scientific Research Institute in connection, *inter alia,* with his complaints about the beatings on 5 September and 17 October 1999. The experts diagnosed the applicant with an organic brain illness resulting from a complex set of factors, such as childhood craniocerebral traumas, neuroinfections and a perinatal disorder. The diagnosis was confirmed during the two subsequent expert examinations performed in the course of the criminal proceedings. The most recent expert opinion, issued on 4 May 2006, likewise did not deviate from the previous findings as to the origin of the applicant's illness.

102. The Court observes that none of the four in-depth expert examinations, including the first one, performed by a civilian medical institute, recorded any physical traces which could have resulted from the applicant's having been subjected to physical violence during his military service. The expert reports provided a detailed description of the applicant's health problems and laid down a consistent account of their causes, among which recent head injuries were not listed. While the Court finds it

regrettable that none of the expert opinions directly addressed the issue of the consistency of the applicant's health problems with his allegations of ill-treatment, it is satisfied that the expert findings did not provide any degree of support to the alleged history of military violence. In this connection, the Court attributes particular weight to the fact that the applicant did not challenge the impartiality and competence of the medical experts who had been entrusted with the duty of performing the examinations.

103. The Court, however, does not lose sight of the applicant's allegations that the experts from the medical clinical hospital who examined him in December 1999 partly confirmed that acts of violence in the army had been the cause of his brain illness. The applicant stressed that the experts had concluded that the illness had been acquired during his military service. The Court, however, is not convinced by the applicant's assertion. Having studied the complete text of the expert opinion issued on 7 December 1999 in the light of the remaining three expert reports, the Court is more inclined to accept the Government's interpretation of the expert finding as mere confirmation that the illness had been diagnosed during the applicant's military service, making him ineligible to serve in the army. In addition, the Court cannot overlook the contradictory nature of the applicant's submissions. For instance, while raising his complaint that he had been unlawfully conscripted for military service the applicant did not dispute that his brain illness was congenital or had been acquired in early childhood and thus had been present at the time of his conscription. That assertion was at the heart of his tort action against the military authorities. However, in his comments on the Government's observations pertaining to his alleged ill-treatment in the army, the applicant described his brain illness as resulting from the beatings by Captain Ch. or senior conscripts.

104. The Court's conclusion that the applicant's illness was not related to his military service is not altered by the fact that in adjudicating on the applicant's tort action, the domestic courts relied heavily on the December 1999 expert report, finding that his illness had been acquired during military service. In contrast to the Court, the domestic courts did not have all the four expert reports before them to reconcile the somewhat contradictory wording of the first two reports. It is particularly worth noting that the courts precisely cited the applicant's refusal to undergo an additional expert examination and the ensuing absence of expert evidence which could have allowed them to make a conclusive finding as to the origin of the applicant's illness.

105. The Court further observes that the evidence collected in the course of the investigation into the applicant's allegations of ill-treatment and submitted to the Court also corroborates the non-violent nature of the applicant's illness. In particular, as follows from statements by the applicant's former fellow soldiers, they had not witnessed any acts of violence against him. The Court attaches particular weight to the fact that

those witnesses repeated their statements during the subsequent questionings and confrontation interviews with the applicant when they were no longer serving in the army. Furthermore, the forensic investigative simulation of the incident produced the conclusive finding that no blows could have been administered to the applicant in the circumstances as described by him. The Court considers it important that the applicant did not argue that the investigation simulation had been compromised through the movement of exhibits or the destruction, loss or addition of evidence.

106. The Court further reiterates the applicant's argument that, even if the evidence before it does not support his allegations of ill-treatment, the generally drastic situation in the Russian armed forces characterised by the endemic practice of abuses and human rights violations against first-year conscripts unavoidably made him the subject of such a practice. In this connection the Court observes that it has no intention of putting the entire Russian military system on trial and only has to concentrate on the particular facts of the present case. In the circumstances of the present case, however, the Court does not find it established that during his military service the applicant was subjected, by officers or fellow soldiers, to treatment contrary to Article 3 of the Convention.

2. Procedural obligation under Article 3 of the Convention

107. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all 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 (see, among many authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports* 1998-VIII).

108. Turning to the circumstances of the present case, the Court considers that the applicant's allegations of an existing systematic practice of physical abuse in respect of first-year conscripts in the Russian army, documented by a prominent international human rights organisation (see paragraphs 65-67 above), and his complaints of serious ill-treatment during his military service, as well as the existence of the expert opinion, which, to some extent, contained a confusing conclusion as to the time when the applicant's brain illness had been acquired, together raise a reasonable suspicion that his illness could have resulted from his being subjected to violence in the army. The applicant's complaint in this regard is therefore "arguable". The authorities thus had an obligation to carry out an effective investigation into the circumstances which led to the applicant acquiring the illness (see *Krastanov v. Bulgaria*, no. 50222/99, § 58, 30 September 2004).

109. In this connection, the Court notes that the prosecution authorities, who were made aware of the applicant's alleged beating, carried out a preliminary investigation which did not result in criminal prosecution. In the Court's opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there was one, but whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was "effective".

110. The Court will therefore first assess the promptness of the prosecutor's investigation, viewed as a gauge of the authorities' determination to identify and, if need be, prosecute those responsible for the applicant's ill-treatment (see *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V). In the present case the applicant complained of ill-treatment to the prosecution authorities on 12 November 1999 (see paragraph 16 above). The Court is mindful of the fact that the prosecutor's office opened its investigation immediately after being notified of the alleged beatings. On 15 November 1999 the applicant was admitted to the neurology unit of a military hospital, where he was subjected to a medical examination authorised by the investigating authorities. Further steps were taken in the aftermath of the applicant's release from the hospital. In particular, following the results of the preliminary inquiry into the applicant's ill-treatment complaint, on 6 March 2000 the prosecution authorities instituted criminal proceedings. While the Court is aware that a certain period elapsed between the applicant's release from the hospital and the decision to institute criminal proceedings, it is, however, of the opinion that the prosecution authorities needed that time to gather evidence and make their preliminary assessment in order to identify the procedural avenues for proceeding with the applicant's complaint. The Court accepts that even where an investigation is carried out expeditiously, considerable time may elapse between the different phases of the investigation, for instance, to ensure that the evidence collected is of a sufficient quality to be

used for criminal prosecution of the alleged perpetrators of the offence and to corroborate or disprove any allegations to the required standard of proof.

111. In the months following the opening of the criminal proceedings the authorities took significant investigative measures, including questioning of the applicant, the accused Captain Ch., and the applicant's fellow soldiers, performing confrontation interviews to settle the differences in the parties' accounts of events and obtaining an additional expert opinion. They also performed a forensic investigative simulation of the incident which allegedly took place between the applicant and Captain Ch., providing the former with an opportunity to participate in the reconstruction of the events at the scene of the alleged incident. Furthermore, the Court does not find the fact that the three investigators' decisions were annulled by a higher-ranking prosecutor owing to certain procedural defects to be evidence of the inefficiency of the investigation, since from the material in the case file it follows that the investigating authorities made diligent efforts to establish the circumstances of the events and to reconcile their conflicting accounts. In particular, they persistently tried to identify and interview additional witnesses who could have shed light on the events in question. They also further questioned the known witnesses in order to eliminate or explain the discrepancies which had arisen in their previous statements. The Court is also mindful that the authorities' task was complicated by the fact that the applicant's complaints related to two incidents of alleged ill-treatment involving the officer and senior conscripts. In this connection, while regretting that there was a certain delay before the investigators interviewed the senior soldiers who had allegedly ill-treated the applicant or could have witnessed the beatings, the Court considers that such a delay did not affect the efficiency of the investigation as it did not lead to a loss of opportunities for the collection of evidence and did not prevent the inquiry from establishing the principal facts of the case.

112. The Court is also of the opinion that from the start of the investigation the authorities thoroughly evaluated the medical evidence before them, attempting to draw conclusions from it, without accepting too readily the version of events put forward by the accused. The Court observes, and it was not disputed by the applicant, that the investigation was carried out by competent, qualified and impartial experts, who were independent of the suspected perpetrators. It was also undisputed that the investigators had unrestricted access to all necessary information, documents and persons, budgetary resources and technical facilities to investigate fully all aspects of the applicant's complaints. Once the investigation was completed, the applicant was given a reasoned decision in writing which set out the evidence as well as the finding, explaining why the investigator had reached his conclusion to drop the charges. Furthermore, the conduct of the investigation was reviewed by a higher-ranking prosecutor (see paragraph 51 above).

113. Accordingly, the Court does not find it established that the investigating authorities failed to look for evidence that corroborated the applicant's allegations or showed the existence of a pattern of possible ill-treatment practices in the military unit, or that they displayed a deferential attitude towards the suspected persons. The Court also finds that the authorities may be regarded as having acted with sufficient promptness and having proceeded with reasonable expedition. The Court therefore considers that the domestic investigation was effective for the purposes of Article 3 of the Convention.

3. Summary of the findings

114. Having regard to its findings in paragraphs 102-106 and 110-113 above, the Court finds that the applicant's complaint concerning the alleged incidents of ill-treatment in the army and the ineffective investigation into them is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that it must be rejected pursuant to Article 35 § 4.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE TORT PROCEEDINGS

115. The applicant complained that the length of the tort proceedings had been incompatible with the "reasonable time" requirement laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Submissions by the parties

116. The Government submitted that the applicant's complaints about the excessive length of the proceedings were manifestly ill-founded. They stressed that the overall length of the proceedings had an objective justification. A number of stays in the proceedings had been granted following requests from the applicant's representative. Furthermore, the defendants had failed to appear on several occasions, causing additional delays in the proceedings. In the Government's opinion, the domestic courts had acted diligently, taking every possible step to ensure the fair and thorough examination of the applicant's claims.

117. The applicant averred that the delays in the proceedings occasioned by his representatives' requests had been insignificant as opposed to the delays caused by the domestic courts' inability to act diligently or the defendants' failure to attend hearings. The applicant noted the long periods it had taken the Town Court to schedule hearings. He also drew the Court's attention to the Town Court's consistent failure to discipline the State

authorities when they had failed to respond promptly to its requests for provision of evidence or to take measures to ensure the defendants' presence at the hearings. Another delay had been caused by a change in the Town Court's composition, when the new presiding judge had been assigned to the case.

B. The Court's assessment

1. Admissibility

118. The Court observes, and it was not disputed by the parties, that the period to be taken into consideration began on 19 January 2000, when the applicant brought his action against the military commissions. It ended on 2 June 2004 with the final judgment of the Leningrad Regional Court, dismissing the action in full. It thus lasted approximately four years and four months before two levels of jurisdiction.

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

B. Merits

120. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

121. The Court notes that the parties did not argue that the case was complex.

122. As regards the applicant's conduct, the Court is not convinced by the Government's argument that the applicant should be criticised for requesting the adjournment of hearings in order for additional evidence to be obtained or to be able to study the evidence submitted by the defendants. It has been the Court's consistent approach that an applicant cannot be blamed for taking full advantage of the resources afforded by national law in the defence of his or her interests (see *Skorobogatova v. Russia*, no. 33914/02, § 47, 1 December 2005). The Court further observes, and this was not disputed by the parties, that one hearing was rescheduled in the period of more than four years during which the proceedings were pending, because the applicant's representative failed to appear. Irrespective of the reasons for the representative's behaviour, the Court finds that the delay

incurred through her absence was negligible, having regard to the overall length of the proceedings.

123. The Court observes, on the other hand, that substantial periods of inactivity, for which the Government have not submitted any satisfactory explanation, are attributable to the domestic authorities. It took the District Court several months to fix hearings. For example, a period of almost nine months elapsed between 19 January 2000, when the Town Court received the applicant's statement of claims, and 4 October 2000, when the presiding judge delivered the first decision, accepting the case for adjudication (see paragraphs 20 and 22 above). Nor were any hearings held between December 2000 and 26 September 2001 (see paragraphs 23 and 24 above).

124. Furthermore, the Court observes that the composition of the Town Court hearing the case changed in 2002, causing another delay in the proceedings (see paragraph 30 above). When the presiding judge resigned, the proceedings recommenced, which involved scheduling new hearings, rehearing the parties and re-examining evidence. In this connection the Court notes that Article 6 § 1 of the Convention imposes on Contracting States the duty to organise their judicial systems in such a way that their courts are able to fulfil the obligation to decide cases within a reasonable time (see, among other authorities, *Löffler v. Austria (No. 2)*, no. 72159/01, § 57, 4 March 2004). In addition, the Court considers it striking that it took the Town Court over a year to obtain evidence, in particular the applicant's personal file of a conscript, which was necessary for the examination of the action (see paragraphs 22 and 29 above). The Court does not lose sight of other delays in the proceedings which resulted from a similar failure by the Town Court to discipline the authorities responsible for the delays in the provision of documents (see paragraph 26 above).

125. The Court furthermore notes that the conduct of the defendants, who were State officials, was one of the reasons for the prolongation of the proceedings. In the Court's opinion, the domestic authorities failed to take adequate steps in order to ensure their attendance. The defendants failed to appear on at least five occasions, which resulted in a delay of approximately seven months. While the Court does not lose sight of the letter which the Town Court sent on 13 March 2003 to the defendants, reacting to their failure to attend and warning about the consequences of such conduct, it is nevertheless mindful of the fact that despite the warning the defendants failed to attend another hearing scheduled for 16 October 2003. No steps were taken by the Town Court to implement the warning in order to avoid future delays in the proceedings. Accordingly, the Court considers that the domestic courts did not make use of the measures available to them under national law to discipline the participants in the proceedings and to ensure that the case was heard within a reasonable time (see *Rybakov v. Russia*, no. 14983/04, § 32, 22 December 2005).

126. Finally, the Court reiterates that the dispute in the present case concerned compensation for health damage allegedly resulting from negligence on the part of the State military and medical authorities. The Court reiterates that the nature of the dispute called for particular diligence on the part of the domestic courts (see *Marchenko v. Russia*, no. 29510/04, § 40, 5 October 2006).

127. Having regard to the overall length of the proceedings, the Court concludes that the applicant's case was not examined within a reasonable time. There has accordingly been a violation of Article 6 § 1 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

128. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

129. 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

130. The applicant, without providing further details or submitting documents in support of his claims, claimed 256,000 Russian roubles (RUB) in respect of pecuniary damage. He further claimed RUB 1,320,000 in compensation for non-pecuniary damage.

131. The Government submitted that the applicant's claims were confusing and manifestly ill-founded. They maintained that in any event, the applicant should be awarded "a symbolic sum" of 1,000 euros (EUR) if the Court found a violation of his Convention rights.

132. The Court observes that the applicant did not provide any explanation as to the amount claimed in respect of pecuniary damage and did not submit any documents in support. Consequently, there is no cause to make an award under that head.

133. On the other hand, the Court considers that the applicant suffered distress, anxiety and frustration because of the unreasonable length of the proceedings pertaining to his tort action. Making its assessment on an equitable basis, it awards the applicant EUR 2,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on the above amount.

B. Costs and expenses

134. The applicant did not make any claims for the costs and expenses incurred before the domestic courts and before the Court.
135. Accordingly, the Court does not award any sum under this head.

C. Default interest

136. 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 complaint concerning the excessive length of the tort proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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

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

Done in English, and notified in writing on 11 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President