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

FIRST SECTION

CASE OF ANDREYEVSKIY v. RUSSIA

(Application no. 1750/03)

JUDGMENT

STRASBOURG

29 January 2009

FINAL

06/07/2009

This judgment may be subject to editorial revision.

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

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 1750/03) 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 Vasiliy Konstantinovich Andreyevskiy ("the applicant"), on 27 November 2002.

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

3. 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).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1982 and is now serving a prison sentence in the correctional facility USh/382/10 in the Saratov Region.

A. The applicant's arrest and alleged ill-treatment

1. The alleged ill-treatment

6. On 21 May 2002, at 9 a.m., the applicant was arrested on suspicion of having murdered M., the mother of his girlfriend, and was brought to the Severnoye Medvedkovo police station in Moscow. The arrest record indicated that the applicant had been arrested on suspicion of murder. The applicant countersigned the record, noting that he had been notified of his rights and had understood them. The applicant's detention was subsequently extended by prosecutors and courts.

7. According to the applicant, upon arrival at the police station on 21 May 2002, he was placed in the office of Officer Mus. The latter and another officer started beating him up. They hit and kicked him in the solar plexus, on the head, in the kidney area and the groin with a view to extracting a confession to the murder. After their prolonged beatings the applicant was placed in a cell. After a while Officers S. and L. started beating him up again. They hit him on the head, on the body and in the groin, insisting that he confess to the murder. Despite the ill-treatment, he did not confess. Only when they threatened to rape his mother and girlfriend, the applicant's psychological resistance was broken and he confessed.

8. On 21 May 2002, at 10 p.m., the applicant was examined by a forensic medical expert in the presence of the investigator in charge of the criminal case and two attesting witnesses. The expert detected and noted in the examination record the following injuries on the applicant's body: a pinkish-bluish bruise on the left ear measuring 1.2 cm, two reddish-purple bruises on the left side of the thorax measuring around 2×2.25 cm and 2.2×0.6 cm and a cut on the back of the left wrist. According to the record, the persons present at the examination were apprised of their right to make declarations and objections in connection with the examination. The applicant made no observations and countersigned the examination record.

9. On 22 May 2002 the investigator questioned the applicant about the murder but he denied all accusations. Later on the same day he wrote a statement confessing to the murder. He noted that the confession had been made without any "moral or physical pressure" and that he had no complaints about police officers.

10. On 23 and 30 May 2002 the investigator questioned the applicant in the presence of his two lawyers. The applicant maintained the confession and described in detail how he had committed the murder. He again confirmed the confession while being questioned during a video-recorded inspection of the crime scene where he was also assisted by his lawyers.

11. At a questioning on 2 August 2002 the applicant retracted his previous statements and submitted that his confession of 22 May 2002 had been extracted from him by force and that he had not murdered M.

12. On 24 September 2002 the applicant requested the prosecutor's office to institute criminal proceedings against Officer "Marat" who had allegedly beaten him up on 21 May 2002.

2. Statement by witness A.

13. The applicant submitted a written statement by witness A. dated 26 July 2003 which, in its relevant parts, reads as follows:

> "...I was detained on 21 May 2002 ... at the [applicant's] flat... together with [the applicant]....We have been together since 11 a.m. on 20 March 2002...The fact that we had spent that time together can be confirmed by Z., D., A. and K.... All those persons who could have confirmed [the applicant's] alibi ... had been known to the investigation but were never questioned.... Since we were sleeping in the same flat, I saw [the applicant's] underwear; there had been no traces of blood on it. Thus, the blood [stains] found on the applicant later could have appeared on his clothes only after we had been separated at the police station. [The applicant] was clam and reacted adequately. I am convinced in his innocence..."

B. Investigation into the alleged ill-treatment

14. On 2 August 2002 an investigator with the Babushkinskiy district prosecutor's office of Moscow launched an inquiry into the applicant's allegations of ill-treatment which he had submitted on the same day (see paragraph 11 above). According to the records of interview submitted by the Government, the investigator questioned Officer Mur. on 19 August 2002, Officer S. on 3 September 2002 and Officers L. and Mus. on 20 September 2002. The investigator also ordered a forensic expert examination of the applicant's injuries. The examination was carried out on 18 September 2002.

15. By a decision of 20 September 2002, the investigator refused to institute criminal proceedings against them for lack of evidence of a criminal offence. The decision was based on the applicant's forensic medical examination and the statements of Officers Mus., Mur., L. and S. According to the expert's report, the bruises to the applicant's chest and ear had been caused by a blunt object two to three days before his arrest on 21 May 2002 and the incised wound on his left hand could have been caused on 19 May 2002, the date when he had allegedly committed the murder. Officers Mus., Mur., L. and S. submitted that the applicant had confessed voluntarily and that they had never forced or threatened him. The applicant was given a copy of the decision in the presence of his lawyers on 11 October 2002.

16. By a decision of 3 October 2002, the investigator refused to institute criminal proceedings against Officer "Marat", because no such person had ever served at the Severnoye Medvedkovo police station.

17. On 24 September and 9 October 2002 the applicant lodged further complaints with the Moscow City Prosecutor about the alleged beatings.

18. On 11 October 2002 the applicant complained to the Babushkinskiy District Court of Moscow about the prosecutor's refusal to establish the persons who could have witnessed the victim on the date of the presumed murder. He also complained about the decisions of 20 September and 3 October 2002 refusing to institute criminal proceedings against the police officers. In particular, the applicant submitted that the colour of his bruises (rose and blue and not yellow and brown) had indicated that they were freshly inflicted and that the expert's conclusion as to the date of their infliction had thus been wrong. The applicant further claimed that witness A. could have confirmed that he had not had any bruises on his body before his arrest. On 14 October 2002 the Babushkinskiy District Court disallowed the complaints for lack of territorial jurisdiction.

19. On an unspecified date the applicant lodged similar complaints with the Ostanskinskiy District Court.

20. On 24 October 2002 the Ostankinskiy District Court dismissed the complaints, finding that the inquiry case file had, at the applicant's own request, been enclosed in the case file in the criminal proceedings against him and that the criminal case had been sent for trial to the Babushkinskiy District Court. Accordingly, the ill-treatment complaint was to be examined by the trial court. The applicant appealed, alleging that he had not been summoned to the hearing on 24 October 2002.

21. On 22 November 2002, the Moscow City Court heard the applicant's counsel and upheld the decision. It found that since the applicant had complained in essence of inadmissibility of evidence in relation to the charge against him, the Ostankinskiy District Court had not been entitled to examine the issue, given that the case had been about to be tried by another court. It further noted that the applicant's lawyer had been present at the hearing on 24 October 2002 and had submitted arguments on his behalf and that the applicant had never asked to be brought to the hearing.

C. Trial

22. On an unspecified date the applicant's criminal case was transferred for trial to the Babushkinskiy District Court. On court hearing days the applicant was allegedly not provided with food.

23. On 8 December 2004 the District Court found the applicant guilty of murder and sentenced him to fifteen years' imprisonment. The judgment referred to statements from twenty-nine witnesses, in particular a person who had found and identified the knives with which the applicant had allegedly stabbed the victim; three post-mortem examinations of the victim, several DNA tests establishing a match between the samples of the victim's blood and the bloodstains found on the applicant's clothes; statements from experts, and further material evidence. It did not refer to the applicant's

confession dated 22 May 2002. However, it took into account his statements of 23 and 30 May 2002 and the video record of the crime scene inspection.

24. The trial court dismissed as unfounded the applicant's allegations of ill-treatment. It noted that Officers Mur., Mus.,, S. and L., when questioned in open court, denied having beaten the applicant up. In the same vein, attesting witnesses present during the crime scene inspection and the applicant's medical examination on 22 May 2002 testified to the court that the applicant had not complained about the alleged ill-treatment in their presence. Furthermore, his submissions were contradicted by statements from independent witnesses A. and N., who had been arrested, brought to the police station and detained there together with the applicant, and who had testified to the court that nobody had beaten him up or threatened him in their presence. According to the forensic examination, the applicant's injuries had been sustained two to three days before his arrest. Furthermore, the court considered that he had waited for several months before complaining about the alleged ill-treatment and, when questioned about it by the court, made contradictory statements about the circumstances in which he had sustained the injuries. Thus, he alleged once that he could have sustained the ear injury in a scuffle with skinheads prior to his arrest, on another occasion he claimed that nobody had beaten him up. Moreover, witness V. testified to the Court that he had seen the applicant on 19 May 2002 sleeping under a bench at a subway station in a state of intoxication.

D. Conditions of detention at the police station

25. According to the applicant, from 9 a.m. on 21 May 2002 until 6 a.m. on 24 May 2002 he was held in a cell at the Severnoye Medvedkovo police station. Throughout his detention there he was not given food or drink and had nowhere to sleep because the cell had no sleeping place.

26. On an unspecified date an investigator with the Babushkinskiy District prosecutor's office requested the head of the temporary detention ward of the Losinoostrovskiy police station to provide him with information on, among other things, the date of the applicant's admission to the ward. In response, the head of the ward certified that on 21 May 2002, at noon, the applicant had been placed in the Severnoye Medvedkovo police station and that on 23 May 2002, at 10.40 p.m., he had been admitted to the temporary detention facility of the Losinoostrovskiy police station.

27. On 24 September and 9 October 2002 the applicant complained to the Moscow City prosecutor's office that from the moment of his arrest on 21 May 2002 he had been detained for more than two days at the Severnoye Medvedkovo police station without food or drink. His complaints were left without reply. Complaints in similar terms were raised by the applicant's relatives in their open letter to the State Duma dated 27 January 2005.

28. According to the Government, from 21 to 23 May 2002 the applicant was held in the temporary detention facility of the Losinoostrovskiy police station and was brought to the Severnoye Medvedkovo police station for investigative action. On their completion he was brought back to the Losinoostrovskiy police station.

E. Conditions of detention in Moscow IZ-77/1 remand centre

29. The applicant was detained in Moscow IZ-77/1 remand centre from 30 May 2002 to 28 March 2005.

1. The applicant's account

30. For most of the period the applicant was held in cell no. 106 measuring around 50 square metres. It had thirty two-tier bunks and accommodated seventy-five to one hundred inmates. Two bunks were always occupied by the inmates' bags, leaving twenty-eight sleeping places for the inmates. Detainees had to sleep in shifts, on the floor, under the bunks and under the table. Three or more inmates had to share one bunk. The cell space per detainee was reduced to 0.5 to 0.6 square metres. The situation was the same in other cells where the applicant was detained. The administration only once provided him with bedding and even when his relatives brought him bedding the wardens always seized it.

31. Cell no. 106 had two windows with metal bars and until November 2003 the windows were covered with metal shutters which barred natural light and airflow. The windows were glazed only in winter and sometimes detainees had to stuff them with wet linen, which served as a replacement for glass when it was frozen, permitting them to maintain the air temperature at around 0.5 ºC. The stuffing was routinely removed by the wardens. The lights and TV were on day and night. As there was no ventilation, it was particularly hot in summer. Allegedly, the administration seized the electric fans provided by the detainees' relatives and then leased them to the inmates for money.

32. The sanitary conditions in the cells were unsatisfactory. The toilet was 60 cm high. It was separated from the living area by a partition measuring one metre in height and the inmates had to use the bedding supplied by their relatives to secure at least some privacy. The wardens routinely removed their hand-made partitions so that the applicant had to answer the needs of nature in view of other inmates. Moreover, because of the overcrowding the toilet was always occupied and he could not always have access to it in case of need. The toilet was two metres from the table at which the inmates had their meals. The food was of poor quality and had an unpleasant smell. The inmates went on hunger strike several times in protest at the poor quality of the food.

33. Detainees were allowed to take showers only once every eight to ten days, in a communal shower. Seventy-five to one hundred inmates were at the same time given half an hour for a shower while only ten to twelve taps were working properly. They could not wash themselves or their clothes properly and had to negotiate with wardens who agreed for money to extend the shower time to one hour.

34. The applicant received no medical treatment, in particular in respect of his acute tooth pain. He was first given dental treatment only when he arrived at the correctional colony in June 2005.

35. Once a day the applicant was allowed to take a forty-minute walk in a stone courtyard measuring 20-25 square metres, at the same time as up to ninety others.

36. On many occasions the applicant complained about the conditions of detention to the administration of the remand centre but his complaints were left without reply.

37. In support of his description of the conditions of detention the applicant produced written statements by Messrs N., D., Po. and Pe. who had been detained in the same remand centre at the relevant time and confirmed his submissions concerning, in particular, overcrowding, lack of individual sleeping places and bedding and inadequate medical assistance. The applicant also submitted sketched plans and photographs of cell no. 106 and the courtyard. He also furnished an article dated 28 December 2005 and published on the internet site newsru.com, summarising the results of the checks carried out by the Moscow City Prosecutor's office in 2005 and concerning conditions of detention at remand centres in Moscow. With reference to the results of the check-ups, it was stated that although the overall number of inmates held in the six remand centres of Moscow had decreased over a five-year period, it was still twice the design capacity. A considerable number of detainees were not provided with individual sleeping places.

2. The Government's account

38. According to the Government, throughout his detention in the remand centre the applicant was held in the following cells:

- cell no. 106 measuring 57.8 square metres, having 34 bunks and accommodating 34 inmates;
- cell no. 118 measuring 32.3 square metres, having 34 bunks and accommodating 35 inmates;
- cell. No.122 measuring 52.7 square metres, having 20 bunks and accommodating 20 inmates;
- cell no. 146 measuring 46.57 square metres, having 22 bunks and accommodating 22 inmates;
- cell no. 238 measuring 21.31 square metres, having 6 bunks and accommodating 6 inmates.

39. The cells had central heating, water supply and drainage; each cell was equipped with a toilet and a wash basin. The toilet was separated from the living area by a brick partition not less than one metre in height and fully securing the necessary privacy. Depending on their size, the cells had one or two windows with bars; the windows were glazed and permitted the inmates to read and work by natural light. The artificial lighting conformed to the relevant standards and at night its brightness was reduced to a level permitting supervision of the detainees. During the applicant's detention there had been no artificial ventilation in the cells of the remand centre, but it was introduced subsequently. The air temperature, the humidity level and the quality of water in the applicant's cells conformed to the relevant standards.

40. The applicant was properly fed and a medical assistant regularly checked the quality of food and the compliance with the requirements in force as regards its storage. The applicant was regularly examined by the medical staff of the facility and received adequate medical assistance.

41. The medical unit was equipped with all necessary medications. According to an excerpt of the applicant's medical record submitted by the Government, he was examined by a dentist on 17 February 2005 and his condition was assessed as satisfactory. He was diagnosed with chronic caries of two teeth but no need for urgent medical intervention was established. Upon arrival at the correctional colony, the applicant was treated for caries of two teeth, which were filled.

42. To support their submissions, the Government furnished a number of certificates issued by the head of remand centre IZ-77/1 in April 2006 and several excerpts from the applicant's medical record.

II. RELEVANT DOMESTIC LAW

43. Section 23 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be kept in conditions which satisfy health and hygiene requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell. Detainees should be given free of charge sufficient food to maintain them in good health in line with the standards established by the Government of the Russian Federation (Section 22).

44. The 1993 Judicial Review Act (Federal Law No. 4866-1 on challenging acts and decisions infringing individual rights and freedoms), as amended in 1995, provides for a judicial avenue for claims against public authorities. It states that any act, decision or omission by a state body or official can be challenged before a court if it encroaches on an individual's rights or freedoms or unlawfully vests an obligation or liability on an individual. In such proceedings the court is entitled to declare the disputed

act, decision or omission unlawful, to order the public authority to act in a certain way *vis-à-vis* the individual, to lift the liability imposed on the individual or to take other measures to restore the infringed right or freedom. If the court finds the disputed act, decision or omission unlawful this gives rise to a civil claim for damages against the State.

III. RELEVANT INTERNATIONAL DOCUMENTS

45. The relevant extract from the 2nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf (92) 3) reads as follows:

> "42. Custody by the police is in principle of relatively short duration ...However, certain elementary material requirements should be met.
>
> All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.
>
> Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.
>
> 43. The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling."

The CPT reiterated the above conclusions in its 12th General Report (CPT/Inf (2002) 15, § 47).

46. The part of the Report to the Russian Government on the visit to the Russian Federation carried out by the CPT from 2 to 17 December 2001 (CPT/Inf (2003) 30) read, in so far as it concerned the conditions of detention in administrative-detention cells located within police stations, as follows:

> "25. Similar to the situation observed during previous visits, none of the district commands (RUVD) and local divisions of Internal Affairs visited were equipped with facilities suitable for overnight stays; despite that, the delegation found evidence that persons were occasionally held overnight at such establishments... The cells seen by the delegation were totally unacceptable for extended periods of custody: dark, poorly ventilated, dirty and usually devoid of any equipment except a bench. Persons held overnight were not provided with mattresses or blankets. Further, there was no

provision for supplying detainees with food and drinking water, and access to a toilet was problematic.

The CPT reiterates the recommendation made in its report on the 1999 visit (cf. paragraph 27 of document CPT (2000) 7) that material conditions in, and the use of, cells for administrative detention at district commands and local divisions of Internal Affairs be brought into conformity with Ministry of Internal Affairs Order 170/1993 on the general conditions and regulations of detention in administrative detention cells. Cells which do not correspond to the requirements of that Order should be withdrawn from service.

Further, the Committee reiterates the recommendation made in previous visit reports that administrative detention cells not be used for accommodating detainees for longer than 3 hours."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED ILL-TREATMENT

47. The applicant complained that he had been subjected to inhuman and degrading treatment after his arrest and that the investigation into the alleged ill-treatment had not been effective. The Court will examine the complaint under 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

48. The Government submitted that that the prosecutor's office and the courts had dismissed the applicant's allegations of ill-treatment after having carefully examined all relevant circumstances. Thus, the authorities had questioned both the police officers allegedly involved in the beatings and independent witnesses and had carried out a medical examination which established that the applicant's injuries had been sustained two to three days prior to his arrest. The authorities had taken into account that the applicant had waited for several months before complaining about the alleged ill-treatment and that he had given contradictory statements about the way in which the injuries had been inflicted on him. The Government invited the Court to dismiss his complaint as being manifestly ill-founded.

49. The applicant contended that in the registration log of arrested persons [*книга учета задержанных*] of the Severnoye Medvedkovo police station the entry concerning him did not contain a record of any injuries. He further claimed that according to A., who had been arrested together with the applicant and whose written statement he had submitted to the Court, the

applicant had had no bruises before his arrest. The applicant insisted on his description of the alleged beatings and claimed that although he had initially refused to confess despite the ill-treatment, his resistance had been broken when officers had threatened him to rape his girlfriend and mother. He had only been able to retract his confession when he had been transferred from the police station to the remand centre. With reference to an encyclopaedic dictionary, he argued that it was well-known that in the first hours after beatings bruises were coloured red-blue and rose-blue (the colours mentioned in the examination record of 21 May 2002) and that in two to three days they became yellow-green. He further averred that the medical examination of 18 September 2002 had been carried out five months after the alleged ill-treatment, which cast doubt on its conclusions.

50. As regards the quality of the investigation, the applicant submitted that the investigator had questioned all the police officers on 20 September 2002 and that their investigation records were identical. The investigator had not questioned the applicant himself and had not questioned witness A. The Government had not produced a full copy of the investigation file on the applicant's complaint of ill-treatment. In particular, in addition to the documents provided by them they could have furnished copies of the complaints about the ill-treatment submitted by the applicant, his lawyers and relatives.

B. The Court's assessment

1. Admissibility

51. The Court considers it appropriate, in the circumstances of the case, to start its analysis with the assessment of the investigation carried out by the domestic authorities and then to examine the applicant's complaint under the substantive limb of Article 3.

(a) The obligation to investigate

52. The Court reiterates that Article 3 of the Convention requires authorities to investigate allegations of ill-treatment when they are "arguable" and "raise a reasonable suspicion" (see *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 101-102, *Reports of Judgments and Decisions* 1998-VIII). An obligation to investigate "is not an obligation of result but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see, among other authorities, *Mikheyev v. Russia*, no. 77617/01, §§ 107 and 108, 26 January 2006).

53. The Court would note at the outset that the Government produced all relevant copies from the investigation case file relating to the applicant's complaint about the alleged ill-treatment. Apart from alleging that they could have also produced copies of the complaints about the beatings lodged by the applicant, his lawyers and relatives, the applicant did not refer to any document from the inquiry file which would have been relevant for the Court's analysis but which the Government would have withheld from it, and the Court finds no evidence to that effect. Bearing in mind the above facts and the fact that the applicant himself submitted copies of his own, his lawyers' and his relatives' complaints about the ill-treatment, the Court finds that the applicant's submission in this respect is without relevance for its analysis below.

54. Turning to the particular circumstances of the case, the Court considers that the applicant's description of the alleged ill-treatment accompanied by the medical certificate of 21 May 2002 may be regarded as raising a reasonable suspicion that his injuries had been caused during his detention after arrest (compare *Çevik v. Turkey* (dec.), no. 57406/00, 10 October 2006). An investigation into the applicant's allegations was thus required.

55. The Court observes that on 2 August 2002, that is on the same day when the applicant complained for the first time about the alleged ill-treatment, the investigator launched an inquiry (see paragraph 14 above). Hence, the Court is satisfied that the authorities reacted promptly to his complaint. At the same time, the Court cannot but note that the applicant waited for more than two months before complaining about the alleged ill-treatment. The Court has emphasised on several occasions that persons held in custody are often in a stressful situation and may be vulnerable to pressure (see *Belevitskiy v. Russia*, no. 72967/01, § 66, 1 March 2007, and *Mammadov v. Azerbaijan*, no. 34445/04, § 74, 11 January 2007). In the present case the applicant argued that he could not complain about the alleged ill-treatment before his transfer to the remand centre. However, once brought there on 30 May 2002, he still waited until 2 August 2002 before raising the matter with the domestic authorities. Even assuming that the applicant might have feared reprisals while still at the police station and despite the fact that on 22, 23 and 24 May he had access to legal advice, he offered no explanation for the following two-month delay in raising the issue after his transfer to the remand centre.

56. It is further noted that upon receipt of the applicant's complaint the investigator questioned Officers Mur., Mus., S. and L. who had investigated the murder, had apprehended the applicant and questioned him in the police station. In this connection the Court observes that, according to the records of interview and contrary to the applicant's submission, the investigator questioned the police officers not only on 20 September 2002 (see paragraph 14 above). The investigator ordered a medical examination with a

view to establishing how and when the applicant had sustained his injuries. Inasmuch as the applicant submitted that the examination had been carried out only five months after the alleged ill-treatment, the Court points out that the applicant himself had waited for more than two months before raising the complaint and it cannot find that it took the investigator an unreasonable period of time to order, and the expert to carry out, the medical examination in the present case. Having examined the applicant's submissions, the testimonies by the police officers and the conclusions of the medical examination, the investigator decided on 20 September 2002 not to institute criminal proceedings against the officers.

57. The Court further observes that, at the applicant's request, the case file on the inquiry into his ill-treatment complaint had been appended to the case file on his murder charges, which was to be examined by the trial court. The trial court questioned the applicant on several occasions about the circumstances of the alleged ill-treatment and the way he had sustained the injuries. It also questioned all police officers allegedly involved in the applicant's beatings and independent witnesses N. and A. who had been arrested and brought to the police station together with the applicant, A. being the person on whose questioning the applicant had insisted to confirm his allegations of beatings. The court also heard the attesting witnesses who had been present during the applicant's medical examination on 21 May 2002 and the crime scene inspection on 23 May 2002 and who could have furnished further information on the alleged ill-treatment (see paragraph 24 above). All the persons heard denied having seen the applicant being ill-treated or hearing him complain about beatings. Having carefully assessed the applicant's account of events, the statements from various witnesses and the conclusions of the medical examination, the trial court dismissed the applicant's complaint as unfounded.

58. Having regard to the pace of the investigation and the measures taken by the authorities to verify the applicant's submissions, the Court finds that the investigation carried out by them was prompt and thorough and satisfied the criteria established in its case-law on the matter. Consequently, it concludes that the applicant's complaint under the procedural limb of Article 3 of the Convention is manifestly ill-founded and should be rejected under Article 35 §§ 3 and 4 of the Convention.

(b) The alleged ill-treatment

59. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has generally applied the standard of proof "beyond reasonable doubt", but added that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25, and *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

Where an individual is taken into police custody or arrives otherwise under the control of the authorities in good health and is found to be injured while in detention or under their control, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Tomasi v. France*, 27 August 1992, §§ , Series A no. 241-A; *Selmouni*, cited above, § 87; and *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). The Court is sensitive to the subsidiary nature of its tasks and recognises that it must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nonetheless, where allegations are made under Article 3 of the Convention, as in the present case, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336, and *Aktaş v. Turkey*, no. 24351/94, § 271, ECHR 2003-V (extracts)), even if certain domestic proceedings have taken place (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007).

60. In the instant case the ill-treatment complained of by the applicant consisted of threats and severe beatings which, according to him, had lasted for hours. In particular, he alleged that police officers had for hours hit and kicked him in the solar plexus, on the head, in the kidney area and the groin, and had threatened him with reprisals in respect of his mother and girlfriend. However, there are some elements which cast doubt on the veracity of the applicant's claims.

61. The Court observes that the domestic authorities' decisions dismissing the applicant's complaint were based, to an important extent, on the conclusions of the medical examination of the applicant's injuries carried out by a forensic expert. He found that the bruises to the applicant's ear and chest had been sustained two to three days prior to his arrest (see, by contrast, *Tomasi*, cited above, § 110). It is noted that the conclusions of the expert, who had specific knowledge in forensic medicine, were made on the basis of the examination of the applicant, regard being had to his allegations and the relevant medical records. The applicant did not allege that the expert was not qualified, impartial or was otherwise incapable of performing the examination, and the Court finds no evidence to that effect. In the same vein, the Court considers that the applicant's reference to the encyclopaedic dictionary cannot call into question the findings in the expert report and considers that the case file contains no materials which would call into question those findings or add probative weight to the applicant's allegations (see *Garbul v. Turkey*, no. 64447/01, § 36, 19 July 2007).

62. As regards the applicant's reference to witness A., it is noted that in his written statement dated 26 July 2003 A. only claimed that the applicant had had an alibi for the time of murder and that he had not had any bloodstains on his clothes. Contrary to the applicant's submission, the

statement by A. contained no reference to the alleged ill-treatment or to the absence of any injuries on the applicant prior to his arrest. Neither is the Court persuaded by the applicant's argument with reference to the police station registration log because that document was deemed to reflect, and reflected in the applicant's case, only basic information concerning the arrested person, such as name, date of birth, address and phone number. Finally, the Court doubts that the three bruises noted in the medical record would correspond with the severe ill-treatment lasting for hours alleged by the applicant (see *Ahmet Mete v. Turkey (no. 2)*, no. 30465/02, § 33, 12 December 2006, and *Yildirim v. Turkey* (dec.), no. 33396/02, 30 August 2007).

63. The Court also has regard to certain inconsistencies in the applicant's account of events, noted by the trial court, and to the fact that the witnesses questioned by the court, including independent witnesses, contradicted the applicant's allegations (see paragraph 24 above). The Court has found above that the investigation into the applicant's ill-treatment complaint complied with the criteria established in its case-law and thus it finds no reason to doubt the findings of the domestic authorities in that respect. The applicant did not submit any evidence or refer to any circumstances which would cast doubt on the conclusions of the domestic authorities. In addition, even if the applicant was subjected to threats and/or verbal abuse as alleged, and as a result he felt apprehension or disquiet, the Court reiterates that such feelings are not sufficient to amount to degrading treatment within the meaning of Article 3 (see, in particular, *Hüsniye Tekin v. Turkey*, no. 50971/99, § 48, 25 October 2005, and *Çevik v. Turkey* (dec.), no. 57406/00, 10 October 2006).

64. The Court concludes that the applicant's complaint under the substantive limb of Article 3 is manifestly-ill-founded and should be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

(c) Recapitulation

65. The Court concludes that the applicant's complaints about the alleged ill-treatment on 21 May 2002 and the quality of the investigation are manifestly ill-founded and should be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION AT THE POLICE STATION

66. The applicant further complained that the conditions of his detention at the Severnoye Medvedkovo police station in Moscow from 21 to 24 May 2002 had been in breach of Article 3.

A. Submissions by the parties

67. The Government argued that the applicant had not complained about the allegedly appalling conditions of his detention under the 1993 Judicial Review Act and thus had failed to exhaust domestic remedies. With reference to the Court's judgment in the *Rytsarev* case, they submitted that such an application to a court would have been an effective remedy for the purposes of the Convention. On the merits, they submitted, with reference to the information provided by the Prosecutor General's Office, that from 21 to 23 May 2002 the applicant had been held in the temporary detention facility of the Losinoostrovskiy police station in Moscow and that on those days he had been transported to the Severnoye Medvedkovo police station for all investigative actions. The Losinoostrovskiy temporary detention facility had been put into operation in 2002 and conditions of detention there conformed to all relevant international standards. The Government were not able to produce the relevant documents concerning the Losinoostrovskiy police station, in particular the registration log of detainees, because they had been destroyed due to the expiry of their retention period. The Government produced a copy of a record of destruction of documents and case files of the Losinoostrovskiy police station dated 27 June 2005. The list of the documents to be destroyed did not contain any reference to the detainees' registration log. Finally, the Government submitted that the Severnoye Medvedkovo police station had been demolished in 2002.

68. The applicant emphasised that the fact of his detention from 21 to 23 May 2002 at the Severnoye Medvedkovo police station had been confirmed by a certificate of the head of the Losinoostrovskiy temporary detention ward, according to which he had been admitted to the latter at 10.40 p.m. on 23 May 2002. He further averred that his lawyer, his relatives and he himself had complained to various authorities about the conditions of his detention at the Severnoye Medvedkovo police station but in vain, also due to the fact that the administration of the remand centre, where he had been subsequently held, would not despatch his complaints. Despite his efforts to alert the authorities, they remained passive towards his complaints. Although the applicant did not dispute the existence of the remedy suggested by the Government, he insisted that it had not been effective, at least between 2002 and 2005. In particular, although the Court had frequently found violations of Articles 3 and 13 on account of conditions of detention in remand centres and lack of effective remedies, the situation for those detained in Russia had not changed.

B. The Court's assessment

1. Admissibility

69. With reference to the Court's judgment in the *Rytsarev* case the Government argued that the applicant should have complained under the 1993 Judicial Review Act about the conditions of his detention at the police station.

70. The Court reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time, that is to say that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). The domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR-XI).

71. The Court observes that the Government have not shown that at the relevant time there was an established line of authority in Russian law where damages were in fact awarded under the 1993 Judicial Review Act in situations analogous to the present case. The Court cannot accept their reference to the *Rytsarev* case in which the domestic courts did not rely on the provisions of the above Act when awarding the applicant non-pecuniary damages in connection with his complaint about the conditions of detention at the police station (see *Rytsarev v. Russia*, no. 63332/00, §§ 20-22, 21 July 2005). Hence, in the Court's view, the mere and unsupported possibility of being awarded damages for conditions of the applicant's detention under the Judicial Review Act in the present case is too speculative to be deemed an effective remedy (see *Zhu v. the United Kingdom* (dec.), no. 36790/97, 2 September 2000, and *Horvat v. Croatia*, no. 51585/99, § 44, ECHR 2001-VIII). Thus, the Court dismisses the Government's objection.

72. The Court notes that the applicant's 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.

2. Merits

73. The Court observes that the Government disputed that the applicant had been detained at the Severnoye Medvedkovo police station from 21 to 23 May 2002. They submitted that, according to the information provided by the Prosecutor General's office, at the relevant time he had been detained in the temporary detention facility of the Losinoostrovskiy police station.

They were, however, unable to substantiate their submissions, because the relevant logs had been destroyed after the expiry of their retention period.

74. The Court is not persuaded by the Government's submission. Firstly, it notes that the registration log of detained persons to which they refer was not listed among the documents to be destroyed in the destruction record submitted by them (see paragraph 67 above). Secondly, it seems peculiar to the Court that, the above documents being destroyed, the Prosecutor General's Office, on whose information the Government relied, was able to ascertain that the applicant had been detained at the relevant time in the temporary isolation ward of the Losinoostrovskiy police station, the Government being unable to indicate the source of that information (compare *Sudarkov v. Russia*, no. 3130/03, § 42, 10 July 2008).

75. At the same time, it follows from the certificate issued by the head of the same temporary detention facility, whose authenticity and accuracy the Government did not contest, that the applicant was detained at the Severnoye Medvedkovo police station after his arrest on 21 May 2002 until his transfer to the Losinoostrovskiy police station on 23 May 2002 at 10.40 p.m. (see paragraph 26 above). Furthermore, the applicant consistently submitted before this Court and in his complaints to the domestic authorities that during his detention at the Severnoye Medvedkovo police station from 21 to 23 May 2002 he had not been given food and drink (see paragraph 27 above). Having regard to the foregoing, the Court is inclined to accept the applicant's submission that from noon on 21 May 2002 to 10 p.m. on 23 May 2002 he was detained at the Severnoye Medvedkovo police station, without food or drink being provided to him and without the opportunity to sleep due to the lack of a proper sleeping place (see *Fedotov v. Russia*, no. 5140/02, §§ 60-61, 25 October 2005).

76. The Court reiterates that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this level is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI).

77. The Court reiterates that it has found a violation of Article 3 in a case where an applicant had been kept for twenty-two hours in an administrative detention cell at a police station without food or drink or unrestricted access to a toilet, and where the unsatisfactory conditions of his detention had been further exacerbated by the mental anguish caused by the unlawful nature of his detention (see *Fedotov*, cited above, § 67). In another case it held that the mere fact of holding the applicant in custody for three months in a detention facility designed only for short-term detention disclosed a violation of Article 3 (see *Kaja v. Greece*, no. 32927/03, §§ 49-50, 27 July 2006). The Court has also emphasised on a number of occasions

that it considers it unacceptable for a person to be detained in conditions in which no provision has been made to meet his or her basic needs (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 106, ECHR 2008-... (extracts) and that the State's obligation to adequately secure the well-being of prisoners includes the obligation to provide them with appropriate nutrition and access to drinking water (see *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 55, 4 May 2006).

78. The Court observes that the applicant's description of the conditions of his detention at the police station coincides with the findings of the Committee for the Prevention of Torture (the CPT) which inspected administrative detention cells located within several police stations in Moscow the year before. The CPT found, in particular, that there had been no provision for supplying detainees with food and drinking water, that the cells had no equipment except a bench and the persons held there overnight had not been provided with mattresses and bedding. The CPT stated that such cells were totally unacceptable for periods of custody exceeding three hours (see paragraphs 45 and 46 above). In the present case the applicant was held for almost three days in a cell unfit for overnight stay, without food or drink or the opportunity to rest. In these circumstances the Court considers that the applicant was subjected to inhuman treatment in breach of Article 3 of the Convention. There has accordingly been a violation of that Article.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION IN MOSCOW IZ-77/1 REMAND CENTRE

79. The applicant also complained that the conditions of his detention in remand centre IZ-77/1 in Moscow had amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

A. Submissions by the parties

80. The Government acknowledged the overcrowding problem in the applicant's remand centre. They argued however that there had been no violation of Article 3 because the authorities had complied with all other requirements concerning conditions of detention. At all times the applicant had been provided with an individual sleeping place and bedding.

81. The applicant did not contest the measurements of the cells as presented by the Government but claimed that the level of overcrowding was far more severe than submitted by them. He also challenged as factually incorrect the Government's description of other conditions of his detention. He averred that he had been detained in overcrowded cells for almost three years and emphasised that the overcrowding had entailed further negative

consequences. In particular, he had not had an individual sleeping place and had had to sleep in shifts and to share bedding with other inmates; the tables in the cells had always been occupied and he had not been able to prepare for trial; he had not had unlimited access to the toilet because it had been permanently occupied by other inmates.

B. The Court's assessment

1. Admissibility

82. The Court notes that the applicant's 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.

2. Merits

83. The Court observes that the parties' accounts of the conditions of the applicant's detention differ in several aspects. However, there is no need for the Court to establish the truthfulness of each and every allegation, because it finds a violation of Article 3 on the basis of the facts that have been presented or are undisputed by the Government, for the following reasons.

84. The focal point for the Court's assessment is the cell space afforded to the applicant. The main characteristic which the parties agreed upon is the size of the cells. However, whilst the Government acknowledged that the cells had been overcrowded, they submitted that the degree of overcrowding had not been as severe as was alleged by the applicant. They supported their contention with certificates issued by the remand centre in 2006. In this connection the Court notes that those certificates were not supported by any extracts from registration logs. Neither did they contain any reference to the source of information on the basis of which the head of the remand centre was able to indicate the number of inmates which had been held together with the applicant. The above certificates are thus of little evidential value for the Court (see *Sudarkov*, cited above, § 42, 10 July 2008).

85. Having regard to the foregoing, the Court is inclined to accept the applicant's detailed submissions, supported, among other things, by written statements from his co-inmates, that during his detention at the remand centre he was afforded from 0.5 to 0.6 square metres of floor space (compare *Starokadomskiy v. Russia*, no. 42239/02, §§ 40-42, 31 July 2008). The witness statements were not contested by the Government. The Court also does not lose sight of the fact that the applicant's cells were equipped with some furniture and contained such fittings as a toilet and a washbasin, which must have further reduced the floor space available to him.

86. In this connection the Court reiterates that in a number of cases in which detained applicants usually disposed of less than three and a half square metres of personal space it has already found that the lack of personal space afforded to them was so extreme as to justify, in itself, a finding of a violation of Article 3 of the Convention (see *Guliyev v. Russia*, no. 24650/02, § 32, 19 June 2008; *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005; and *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005). For two years and nine months, except for hearing days, the applicant was confined to his cell twenty-four hours a day, except for a forty-minute daily walk.

87. Having regard to its case-law on the subject, the material submitted by the parties and the findings above, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In the present case there is no indication that there was a positive intention to humiliate or debase the first applicant. Nonetheless, the Court finds that the fact that he was obliged to live, sleep and use the toilet in the same cell as so many other inmates for two years and nine months was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

88. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention because the first applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention from 31 May 2002 to 28 March 2005 in remand centre IZ-77/1 in Moscow.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

89. In addition, the applicant complained under Articles 3, 5, 6, 8 and 13 of the Convention that he had been transported to the court for trial in appalling conditions; he had been arrested without proper authorisation; had not been informed of the reasons for his arrest and the charges against him; his detention had been unlawful and unreasonable; he had been questioned in the absence of a lawyer and forced to incriminate himself; the trial had been held in camera and had been unfair; the judge in the proceedings which had ended with the final decision of 22 November 2002 had been partial and had refused to summon him to the appeal hearing; the wardens had seized his documents after trial; he had been allowed to see his mother only twice after his arrest.

90. However, having regard to all the material in its possession and in so far as the matters complained of are within its competence, the Court finds

that the applicant's complaints are unsubstantiated and 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

91. 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

92. The applicant claimed 1,000,000 euros (EUR) in respect of non-pecuniary damage on account of the alleged violation of his rights under Article 3 of the Convention.

93. The Government contested his claims as excessive and submitted that a finding of a violation would constitute sufficient redress.

94. The Court notes that it has found in the present case a violation of Article 3 on account of the inhuman and degrading conditions of the applicant's detention at the police station and in the remand centre for more than two years. It considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. At the same time, the amount claimed by the applicant appears excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 10,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

95. The applicant was represented before the Court by Ms Preobrazhenskaya, a lawyer with the International Protection Centre in Moscow. She submitted that she had represented the applicant before the Court pro bono because he was serving his sentence and had no means to pay for her services and asked the Court to award her legal costs without specifying a particular amount.

96. The Government claimed that the applicant had failed to substantiate his claims for legal costs and invited the Court to dismiss them.

97. The Court observes that the applicant in the present case was granted legal aid under Rules 91 and 92 of the Rules of Court and that he did not furnish any documents to show that he had actually incurred any expenses

under this head. Therefore, regard being had to the information in its possession, the Court rejects the applicant's claim for costs and expenses (see *Knyazev v. Russia*, no. 25948/05, §§ 124-126, 8 November 2007).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the conditions of the applicant's detention at the Severnoye Medvedkovo police station in Moscow and the conditions of detention in remand centre IZ/77-1 in Moscow admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 21 to 23 May 2002 at the Severnoye Medvedkovo police station in Moscow;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand centre IZ-77/1 in Moscow;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,500 (ten thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President