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

FIRST SECTION

**CASE OF OLEG NIKITIN v. RUSSIA**

*(Application no. 36410/02)*

JUDGMENT

STRASBOURG

9 October 2008

**FINAL**

*06/04/2009*

*This judgment may be subject to editorial revision.*

**In the case of Oleg Nikitin v. Russia,**

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

Christos Rozakis, *President*,
Nina Vajić,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyev,
Giorgio Malinverni,
George Nicolaou, *judges*,
and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 18 September 2008,

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

# PROCEDURE

1. The case originated in an application (no. 36410/02) 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 Oleg Viktorovich Nikitin ("the applicant"), on 6 September 2002.

2. The applicant, who had been granted legal aid, was represented by Centre of Assistance to International Protection, a Moscow-based human rights organisation. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 29 May 2007 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. The facts

4. The applicant was born in 1977 and is currently serving a sentence of imprisonment in penitentiary establishment UN 1612/1 of Mariinsk, the Kemerovo Region.

#### *1. The applicant's arrest and alleged ill-treatment*

5. On 31 October 2001 at 4 a.m. the applicant was arrested on suspicion of robbery and taken to the Frunzenskiy District police station, Ivanovo. He was questioned at 7.20 p.m. the same day.

6. According to the applicant, he was also questioned at 2 p.m. on 1 November 2001. During the questioning the police officers allegedly beat him on his head, chest and legs, seeking to obtain self-incriminating evidence. Afterwards the applicant was placed in a preliminary detention cell. The officer on duty was allegedly instructed not to let the applicant go to the toilet and not to give him anything to drink, notwithstanding the applicant's argument that he suffered from diabetes insipidus which, in case of dehydration, could provoke an abrupt deterioration in his health.

7. According to the applicant, on 2 November 2001 an ambulance was called by the police officers for a young man detained in the same cell as the applicant. Following the applicant's request, the ambulance doctor examined the applicant and allegedly told the police officers that he needed to be taken to the hospital. Notwithstanding the doctor's advice, the applicant was transferred to a pre-trial detention facility (*СИЗО-1 г. Иваново*), where he was again examined by a doctor.

8. The Government maintained that an ambulance was never called for the applicant.

9. On 2 November 2001 the applicant, in the presence of his lawyer, wrote a complaint to the Prosecutor's Office of ill-treatment by police officers and submitted it to the investigator. However, neither the applicant nor his lawyer ever received any answer to the complaint in question.

10. According to the Government, however, on 28 December 2001 the applicant's allegations of ill-treatment were examined by the Prosecutor of the Frunzenskiy District of Ivanovo, who did not find a prima facie case of ill-treatment and decided not to institute criminal proceedings. The Government submitted neither a copy of the above decision, nor the

material of the investigation due to the fact that they had been destroyed on 27 April 2006 as their retention period had expired.

*2. The applicant's trial*

11. On 5 February 2002 the Frunzenskiy District Court of Ivanovo convicted the applicant of robbery and sentenced him to eleven years and four months' imprisonment with forfeiture of property. Despite the applicant's objections the trial court did not obtain the attendance of Mr Sh., a prosecution witness, and relied on the testimony given by him during the pre-trial investigation. During the trial the applicant raised the issue of ill-treatment. The trial record reads as follows:

> "... In the morning I was taken to the police officers. I told them everything, but they said I was lying. Around 4 p.m. I was taken to the fourth floor. They bullied and beat me there. In the presence of my counsel I wrote a complaint and handed it to Mr Kalyagin, the investigator. However, I never got any answer. An ambulance medic examined me and said I needed to be taken to Hospital No. 7. They threatened me all the time, but never explained what charges were being brought against me. I filed the complaint on 2 November 2001."

However, the trial court left this issue unexamined.

12. The applicant appealed. In his appeal he complained that the conclusions of the trial court as regards the circumstances of the case were wrong, that the court had failed to eliminate contradictions in the evidence, that it had left certain circumstances unexamined, that it had failed to establish the applicant's participation in the robbery and had relied on some evidence received in violation of the procedural rules. He further complained that Mr Sh. had not been informed of his right not to testify against himself. The applicant's lawyer further submitted:

> "During the trial [the applicant] submitted that on 2 November 2001 he wrote a complaint addressed to the Prosecutor of Ivanovo concerning the wrongful acts of the police officers. This complaint was written in my presence. Up to the pronouncement of the conviction [the applicant] had not received any answer to his complaint."

13. On 21 March 2002 the Ivanovo Regional Court upheld the judgment on appeal. The appeal court did not investigate the applicant's allegations of ill-treatment.

14. Following the applicant's request, on 10 October 2003 the Presidium of the Ivanovo Regional Court modified the qualification of the applicant's crime by way of supervisory review and reduced the sentence to ten years' imprisonment.

## B. Documents submitted by the parties

### *1. Documents submitted by the applicant*

15. The applicant submitted to the Court an extract from his medical file dated 27 December 2001, which read as follows:

> "Suffering from diabetes insipidus of medium severity [the applicant] has been observed by an endocrinologist since his childhood. Until 1998 he had a 'category 3' childhood disability.
>
> [The applicant] needs constant and regular intake of antidiuretic hormone three times a day (nasal drops), good nutrition with sufficient liquid, availability of necessary facilities for regular and timely compliance with physiological needs (urination) in order to prevent disease decompensation (organ failure) causing increased thirst and frequent urination ..."

16. The applicant also submitted a statement by one of his co-defendants, Mr T., who had been detained in the Frunzenskiy District police station together with the applicant from 31 October to 2 November 2001. The statement was dated 20 January 2003 and read as follows:

> "... On 1 November 2001, at approximately 2 p.m., [the applicant] was taken for questioning from the preliminary detention cell where we were being held. Several hours later he was brought back to the cell all beaten up, limping on his left leg, with a haematoma on his eye. [The applicant] told me that he had been beaten up by the police officers who were seeking to obtain his confession.
>
> ... In my presence [the applicant's] request for a doctor was refused. ..."

### *2. Documents submitted by the Government*

17. The Government produced a medical reference issued by the Ivanovo ambulance unit on 2 August 2007 pursuant to the request of the Prosecutor's Office of the Ivanovo Region. The reference indicated that in the period from 30 October through 4 November 2001 an ambulance team was called to the Frunzenskiy District police station located at [the address]. Between the words "was called" an uncertified hand-made correction "not" was made. The applicant's personal information was indicated in the "name" and "age" of the patient's field.

18. The Government produced a copy of the document approved by the Prosecutor of the Frunzenskiy District of Ivanovo dated 27 April 2006 on destruction of documents with expired retention period. The reference to the applicant's case file (1 volume) is contained at number 141.

19. They further produced an information note from the Prosecutor's Office of the Ivanovo Region, from which it follows that the applicant's complaint about the alleged beatings was received by the Prosecutor's Office on 23 November 2001, and that on 28 December 2001 it was dismissed in accordance with Article 5 § 2 of the Code of Criminal Procedure.

20. Despite the Court's request the Government did not submit the medical documents showing the state of the applicant's health after the alleged ill-treatment. The Government explained that the requested information could have been retrieved from the outpatient record of the pre-trial detention facility of Ivanovo. However, on 16 July 2007 the record in question was destroyed due to the expiration of its three-year retention period.

## II. RELEVANT DOMESTIC LAW

21. The RSFSR Code of Criminal Procedure (in force until 1 July 2002, "the CCP") established that a criminal investigation could be initiated by an investigator on a complaint by an individual or on the investigative authorities' own initiative when there were reasons to believe that a crime had been committed (Articles 108 and 125). A prosecutor was responsible for general supervision of the investigation (Articles 210 and 211). He could order a specific investigative action, transfer the case from one investigator to another or order an additional investigation. If there were no grounds to initiate a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect which had to be notified to the interested party. The decision was amenable to an appeal to a higher prosecutor or to a court of general jurisdiction (Article 113).

22. On 29 April 1998 the Constitutional Court of the Russian Federation held that anyone whose legitimate rights and interests had been affected by a decision not to institute criminal proceedings should have the right to appeal against that decision to a court.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF ILL-TREATMENT OF THE APPLICANT

### A. Admissibility

#### *1. Arguments of the parties*

##### (a) The Government

23. The Government averred that the applicant had failed to exhaust domestic remedies which were effective, accessible and capable of providing redress in respect of his allegations. They argued that, being represented by an experienced lawyer, the applicant could have exercised due diligence in the matter and, not having received an answer to his complaint, inquired about its whereabouts. The Government further noted that the trial court had not been in a position to examine the applicant's allegations of ill-treatment, and therefore the applicant's having raised this issue before the trial court could not be regarded as an appropriate venue of exhaustion.

24. Finally, the Government maintained that the six-month time-limit set by Article 35 § 1 of the Convention should be counted from the date of the dismissal of the applicant's complaint on 28 December 2001 and that his application, lodged more than eight months after that date, should be rejected as inadmissible.

##### (b) The applicant

25. The applicant argued that it was not until he had received the Government's observations of 15 August 2007 on the above application that he learnt about the decision of 28 December 2001 refusing to institute criminal proceedings against the police officers. For this reason he could not appeal against the above decision and had, therefore, chosen to raise the issue of ill-treatment before the trial court and subsequently at the examination of his case on appeal. Besides, he had never been given an opportunity to study the contents of the decision of 28 December 2001.

#### *2. The Court's assessment*

26. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first

the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance, and in compliance with the formal requirements laid down in domestic law, but not that recourse should be had to remedies which are inadequate or ineffective (see *Aksoy v. Turkey*, judgment of 18 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2275-76, §§ 51-52, and *Akdıvar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1210, §§ 65-67).

27. The Court emphasises that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others*, cited above, p. 1211, § 69, and *Aksoy*, cited above, p. 2276, §§ 53-54).

28. Regard being had to the above, the Court considers that the questions of exhaustion of domestic remedies and compliance with the six-month rule are closely linked to the substance of the applicant's complaints and should be joined to the merits. Noting the arguments submitted by the parties on this question, the Court considers it appropriate to address these questions in its examination of the applicant's allegations concerning the procedural limb of Article 3.

29. The Court notes, therefore, that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

### B. Merits

30. The applicant complained that on 1-2 November 2001 he had been ill-treated by police officers and that the authorities had not carried out an

effective investigation into his allegations of ill-treatment. He relied on Articles 3 and 13 of the Convention, which read as follows:

**Article 3**

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

**Article 13**

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

*1. Arguments of the parties*

31. The Government submitted that it was no longer possible to determine whether in fact the applicant had been subjected to inhuman or degrading treatment. Neither the authorities nor the applicant were capable of providing any evidence of physical harm inflicted on the latter as a result of the alleged police brutality. The only indication of the alleged ill-treatment is contained in the submissions of the applicant's co-defendant, Mr T., who saw the applicant return from the interrogation limping on one leg and with a haematoma on his eye. The statement in question was made more than fourteen months after the alleged beatings (see paragraph 16 above).

32. The Government further maintained that the applicant did not bring his complaint to the Prosecutor's Office until 23 November 2001 (see paragraph 19 above), that is three weeks after the alleged beatings, with the effect that on 28 December 2001 when the Prosecutor of the Frunzenskiy District of Ivanovo examined the complaint it found no grounds for institution of criminal proceedings against the police officers.

33. The applicant maintained his complaint. He submitted that besides the statement of his co-defendant the allegations of ill-treatment were supported by his detailed account of events set forth in his complaint to the Prosecutor's Office, which was dated 2 November 2001 and, on the same day, in the presence of the applicant's lawyer, handed to the investigator. Besides, the applicant's allegations were reflected in the trial record and in the grounds for his appeal against conviction. The applicant explained that the statement of Mr T. had been obtained as late as January 2003, because prior to then he had had no chance to ask his co-defendant for a description of the events in question. The applicant further argued that the Government's position was not supported by any evidence that would date back to the relevant time. In addition, certain potential evidence, such as the outpatient records of the detention facility where the applicant had been

detained, had been destroyed shortly after the communication of the applicant's complaint to the Government (see paragraph 20 above).

34. The applicant further alleged that the domestic authorities had neglected their positive obligation to perform an effective investigation under Article 3 of the Convention that would meet the requirements of due scrutiny, speediness and impartiality.

*2. The Court's assessment*

**(a) Alleged failure to carry out an effective investigation**

*(i) General principles*

35. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 55, 15 February 2007; *Matko v. Slovenia*, no. 43393/98, § 84, 2 November 2006; *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3288, § 102; and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

36. The minimum standards as to effectiveness defined by the Court's case-law also include requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005, and *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-...).

*(ii) Application of the above principles in the present case*

37. The Court considers, first of all, that the applicant's testimony and complaints as regards the events of 31 October-2 November 2001 raised a reasonable suspicion that he had been ill-treated by the police. The Court further observes that the matter was duly brought before the competent authorities at the time when they could reasonably be expected to

investigate the circumstances in question. The domestic authorities were therefore under an obligation to conduct an effective investigation satisfying the above requirements of Article 3 of the Convention.

38. It appears that on 28 December 2001, that is almost two months after the alleged instance of ill-treatment, the Prosecutor of the Frunzenskiy District of Ivanovo examined the applicant's allegations and decided to refuse to institute criminal proceedings. Neither the applicant nor his representative were informed about the ongoing investigation, granted access to its materials or even provided with a copy of the decision of 28 December 2001. The contents of the above decision were not made available to the Court either (see paragraphs 10 and 18 above).

39. The Court further observes that in the course of the proceedings against the applicant, which started shortly after the alleged ill-treatment, the prosecution authorities were made aware of the fact that both the applicant and his representative remained ignorant of the outcome of the investigation into the applicant's allegations concerning police brutality (see paragraphs 11-13 above). However, they remained inactive. The issue is consequently not so much whether there was an investigation as whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible, and, accordingly, whether the investigation was effective (see *Krastanov v. Bulgaria*, no. 50222/99, § 59, 30 September 2004).

40. In the light of the foregoing the Court is unable to establish the scope and the nature of the investigation of the applicant's allegations. In particular, the Court is unable to establish whether the domestic authorities took the necessary measures to gather medical evidence about the applicant's injuries, what assessment, if any, was made of that evidence, whether the domestic authorities took the necessary steps to identify the alleged perpetrators and to question them, and whether any external authorities were involved in the investigation. It therefore considers that the investigation carried out in the instant case did not comply with the requirements of Article 3 of the Convention.

41. The Court considers that, never having been notified of the decision of 28 December 2001 to refuse to institute criminal proceedings against the police officers, the applicant could not have pursued a judicial appeal against it and could not have been expected to lodge his complaint to the Court within six months of the above date. By applying to the Court on 6 September 2002, within six months of the termination of the criminal proceedings against him, the applicant complied, in the circumstances of the present case, with the six-month rule.

42. The Court therefore dismisses the Government's objections as regards exhaustion of domestic remedies and compliance with the six month time-limit (paragraphs 23-24 above) and holds that there has been a violation of Article 3 in that the authorities failed to conduct a thorough and

effective investigation of the applicant's arguable claim that he had sustained injuries at the hands of the police.

43. Having regard to the grounds on which it has found a violation of the procedural aspect of Article 3, the Court considers that no separate issue arises under Article 13 of the Convention (see *Jasar*, cited above, § 62; *Kazakova v. Bulgaria*, no. 55061/00, § 70, 22 June 2006; and *Bekos and Koutropoulos v. Greece*, no. 15250/02, § 57, ECHR 2005-... (extracts)).

**(b) Alleged ill-treatment in police custody**

*(i) General principles*

44. The Court reiterates that "where an individual, when taken into police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention" (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

45. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 34, and *Salman v. Turkey* [GC], no. 21986/93, pp. 25-26, § 100, ECHR 2000-VII).

46. In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Selmouni*, cited above, § 99). The requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals (see *Tomasi*, cited above, § 115, and *Ribitsch*, cited above, §§ 38-40).

*(ii) Application of the above principles in the present case*

47. In the present case the applicant alleged that on 1-2 November 2001 he had been ill-treated by the police while he was in custody at the police station. The Court observes at the outset that the applicant had consistently

maintained in full his assertions of ill-treatment (see paragraphs 9, 11 and 12). The Court further observes that the applicant's account of events was corroborated by the written depositions of the applicant's co-defendant, Mr T., who had been detained in the Frunzenskiy District police station together with the applicant from 31 October to 2 November 2001. The latter confirmed that the applicant was subjected to beatings by police officers and was denied medical assistance following his requests (see paragraph 16 above). The Government did not challenge the above statement.

48. The Court further observes that apart from an extract from the applicant's medical file (see paragraph 15 above), the applicant could not supply any other relevant medical documents since, as confirmed by the Government (see paragraph 20 above), it so happened that the records of the applicant's medical examination contained in the detention facility's outpatient log were destroyed on 16 July 2007 due to the expiration of their three-year retention period. In this connection, the Court observes that the evidence in question was kept for almost twice as long as the declared three-year retention period and was destroyed shortly after the communication of the present case to the Government.

49. The Court considers that the above circumstances, as well as the Court's finding as regards the ineffectiveness of the investigation carried out by the domestic authorities in the present case, created an unrebutted presumption of fact that the applicant was subjected to ill-treatment at the hands of the police and required the Government to provide for a satisfactory and convincing explanation as to why the use of physical force had been necessary.

50. On the basis of all the material placed before it, the Court finds that neither the authorities at the domestic level, nor the Government in the present proceedings have discharged the burden of proof or advanced any convincing explanation in this respect. The Court concludes therefore that the Government have not satisfactorily established that the recourse to physical force was strictly necessary due to the applicant's conduct.

51. As to the seriousness of the acts of ill-treatment, the Court considers that the acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. The existence of physical pain or suffering is attested by the applicant's statements regarding his ill-treatment in custody and statements of his co-defendant from which it follows that the pain and suffering were inflicted on the applicant intentionally.

52. Having regard to all the circumstances of the case, such as the duration of the treatment, its physical or mental effects, the sex, age and state of health of the victim (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 120, ECHR 2004-IV (extracts)), the Court concludes that, taken as a whole and having regard to its purpose and severity (see, for

example, §§ 6 and 7 above), the ill-treatment at issue amounted to inhuman and degrading treatment.

53. Accordingly, there has been a breach of Article 3 of the Convention on account of this ill-treatment.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. The applicant further complained under Article 6 §§ 1 and 3 (d) of the Convention that he had not been given an opportunity to examine a witness against him.

55. The Court observes that the applicant had failed to raise the above issue in his grounds for appeal and had therefore failed to comply with the rule on exhaustion of domestic remedies. It follows that this complaint must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government contested the applicant's claims as contradictory to the Court's case-law. In any event, they considered that the finding of a violation would constitute sufficient just satisfaction.

59. The Court observes that it has found the authorities of the respondent State to be responsible for the breach of Article 3 as regards the applicant's ill-treatment in the police custody and on account of their failure to investigate the applicant's allegations of police brutality. The Court believes that the applicant must have suffered frustration and anguish as a result of the lack of concern on the part of the domestic authorities with respect to his complaint. Making an assessment on an equitable basis, it awards the applicant the sum of EUR 8,000, plus any tax that may be chargeable.

### B. Costs and expenses

60. The applicant did not claim any costs and expenses and, accordingly, there is no call to award him anything under this head.

### C. Default interest

61. 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. *Joins* to the merits the Government's objection as to the exhaustion of domestic remedies and the six-month rule, and *rejects* them;

2. *Declares* the complaints concerning the alleged ill-treatment and the failure of the domestic authorities to carry out an effective investigation admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's complaints that he had sustained injuries at the hands of the police;

4. *Holds* that there has been a violation of Article 3 of the Convention as regards the ill-treatment in police custody;

5. *Holds* that that there is no need to examine the complaint under Article 13 of the Convention;

6. *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 8,000 (eight thousand 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;

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

Done in English, and notified in writing on 9 October 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President