CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF DENISENKO AND BOGDANCHIKOV v. RUSSIA

(Application no. 3811/02)

JUDGMENT

STRASBOURG

12 February 2009

FINAL

12/05/2009

This judgment may be subject to editorial revision.

In the case of Denisenko and Bogdanchikov 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 Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 3811/02) 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 two Russian nationals, Mr Aleksandr Nikolayevich Denisenko and Mr Vitaliy Vladimirovich Bogdanenko ("the applicants"), on 17 January 2002 and 24 June 2003 respectively.

2. The applicants were represented by Ms K. Kostromina, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. On 25 June 2005 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 first applicant, Mr Denisenko, was born in 1982 and the second applicant, Mr Bogdanchikov, was born in 1979. The applicants are serving

their prison sentences in correctional colonies USh 382/3 and USh 382/2 respectively, in the Saratov Region.

A. Criminal proceedings against the applicants

1. The applicants' arrest and placement in custody

6. On 1 March 2001 patrol officers from Khamovniki police station in Moscow arrested the applicants and a certain Mr Nikitin on suspicion of attempted murder and robbery by an organised gang.

7. On 2 March 2001 the applicants were questioned. The interview record contains a handwritten statement by the first applicant to the effect that he had been apprised of his "rights and obligations" and required no legal assistance at that stage of the proceedings.

8. On 4 March 2001 the Khamovniki district prosecutor of Moscow authorised the first applicant's pre-trial detention on the ground that he had been arrested at the crime scene, was suspected of particularly dangerous crimes and, if released, could abscond and interfere with the establishment of the truth. The prosecutor's decision referred to Articles 90-92 and 96 of the Code of Criminal Procedure.

9. On 12 March 2001 the first applicant was charged with attempted aggravated murder and several robberies committed in concert. The decision was served on him on the same day in the presence of a legal-aid lawyer.

10. On an unspecified date the first applicant's mother asked the district prosecutor for permission to visit her son, without success. On 21 March 2001 the first applicant's mother was allowed to visit him in custody for the first time. It appears that the first applicant did not complain about the refusal of visits by his mother to the competent authorities.

2. Extension of the first applicant's pre-trial detention

11. On 27 April 2001 the Khamovniki district prosecutor extended the first applicant's and his co-accused's detention until 2 June 2001. The prosecutor noted that on 2 March 2001 the first applicant and his co-accused had been arrested on suspicion of committing several robberies and an attempted murder in concert, and that their placement in custody had been authorised on 4 March 2001. On 12 March 2001 the first applicant had been charged with the crimes of which he was suspected and the preventive measure had been upheld.

12. The prosecutor further referred to the fact that the first applicant and his co-accused had been arrested at the crime scene and that the victims of the attempted murder and the robberies had identified them as their assailants. The prosecutor considered that the first applicant and his co-accused should not be released because, once at large, they could interfere with the establishment of the truth and abscond. It was further

noted that the term of detention of the accused expired on 2 May 2001, but that it was impossible to complete the investigation by that date because it was necessary to obtain forensic reports from expert examinations initiated earlier, to carry out formal identifications and confrontations between the victims and the accused and to provide the accused with access to the case file. Finally, it was noted that during that phase of the investigation the investigators had questioned the victims, the accused and the officers who had arrested them, organised confrontations between the accused and the victims, carried out a fingerprint examination and ordered four medical examinations to establish the nature of the injuries sustained by the victims, as well as three forensic biological examinations of the physical evidence.

13. The first applicant complained to the courts, alleging that the prosecutor's decisions authorising his placement in custody and extending his detention had been unlawful and unreasonable.

3. Judicial review of the lawfulness and reasonableness of the first applicant's detention

14. By a decision of 7 May 2001 the Tverskoy District Court of Moscow rejected the first applicant's complaints, finding as follows:

> "...There were no serious breaches of the law on criminal procedure which could have called for the annulment of the decisions to place the accused [the first applicant] in custody and to extend his pre-trial detention. The placement in custody of the accused and the extension of [his] detention were ordered by a competent authority.
>
> The court has had regard to the personality of the [first applicant], who has no criminal record, is being prosecuted for the first time, has a permanent place of residence in Russia, has produced positive references from his school and employer and is of a young age (19 years old); the court has also had regard to other circumstances mentioned in the complaints of the accused and his lawyer.
>
> However, taking into account the nature and the level of danger represented by the acts imputed to the [first applicant], the number of the accused, and the fact that pre-trial detention may be imposed on the sole ground of the dangerousness of the offence, the court concludes that, in bringing charges against [the first applicant], the investigators had collected sufficient information to justify prosecuting him and imposing this preventive measure on him. The decisions concerning the [first applicant's] placement in custody and extension of his detention are lawful and justified and the court sees no reason to annul them."

15. On 17 July 2001 the Moscow City Court dismissed an appeal against the above decision for the following reasons:

> "...In examining the question of the lawfulness and reasonableness of the placement in custody and extension of the detention of [the first applicant], the [District] court verified whether the prosecutor had complied with all the requirements of the law on criminal procedure with regard to application of a preventive measure in the form of detention to [the first applicant]. The court had at its disposal the relevant materials from the case file and information on [the applicant's] personality and his state of health. Having studied the materials, the court arrived at the well-founded conclusion that the preventive measure and its extension until 2 June 2001 had been lawful and

> well-founded because this measure had been applied and extended by a competent person within the prescribed time-limits, with regard being had to the gravity of the charge and the information on the personality of the detainee."

16. The first applicant's detention was subsequently extended by the prosecutor and the Khamovnicheskiy District Court. The applicant did not challenge the prosecutor's decisions before the courts, nor did he challenge the District Court's decisions before the court of appeal.

4. Trial

17. On an unspecified date in September 2001 the applicants' criminal case was listed for trial before the Khamovnicheskiy District Court. The first applicant was represented by a lawyer and a lay representative.

18. On 4 July 2002 the Khamovnicheskiy District Court convicted the first applicant and his co-accused of several counts of aggravated robbery, infliction of grievous bodily harm and hooliganism committed in concert. The court established that on 1 March 2001 the defendants had violently attacked M. with the intention of stealing her possessions but had discovered that she had no articles of value. Immediately thereafter, they had attempted to rob A., had kicked and punched him, and had stabbed him numerous times with a knife in the chest and back. The defendants had tried to escape once they had seen O. and N. approaching. On seeing A. bleeding on the ground, O. and N. had attempted to stop the defendants and a violent fight had ensued. In the fight N. had been kicked and punched and O. had been kicked, punched and stabbed several times with a knife. At about that moment the passing police patrol had intervened and arrested the defendants.

19. The court based the finding of the applicants' guilt on oral testimonies by the four victims (M., A., O. and N.) who identified the applicants as their attackers, oral testimony by police officers G. and K., reports on identification parades, records of confrontations between the victims and defendants, forensic reports and physical evidence (knife and bloodstained clothing). The first applicant was sentenced to twelve years' imprisonment.

20. On 27 December 2002 the Moscow City Court upheld the applicants' conviction on appeal.

B. The first applicant's alleged ill-treatment

1. The alleged ill-treatment

21. According to the first applicant and his mother, in the night following his arrest (that is, on 2 March 2001) police officers from Khamovniki police station had ill-treated him with a view to extracting a confession. They had hit him on the head with a pile of books and a plastic

bottle. They had also hit him on the body with a wooden board, injuring his coccyx. They had kicked him in the area of the kidneys, as a result of which he had had pain in the kidneys afterwards and, finally, had handcuffed him to a radiator, causing burns on his wrist. Being unable to stand the ill-treatment, the applicant had confessed.

22. On 2 March 2001 at 8.40 a.m. a medical assistant at Moscow narcotics clinic no. 17 examined the first applicant with a view to establishing whether he was drunk. According to his report (no. 1904), the first applicant was sober and calm, did not make any complaint, his clothing was clean and he had a burn on his right wrist. The first applicant countersigned the report.

23. On 5 March 2001 the first applicant was transferred to remand centre IZ-48/2 (subsequently renamed IZ-77/2, hereafter "IZ-77/2") in Moscow.

2. The prosecutor's inquiry

24. On 8 March 2001 the first applicant complained of the alleged ill-treatment to the Khamovniki district prosecutor. His mother sent numerous telegrams to prosecutors at various levels, complaining that her son had been ill-treated at the police station and requesting them to initiate criminal proceedings against the police officers or, if they refused to do so, to provide her with a decision to that effect.

25. On 28 April 2001 investigator S. of the Khamovniki district prosecutor's office decided not to institute criminal proceedings against the police officers, giving the following reasons:

> "...On 28 March 2001 the Khamovniki district prosecutor's office received the complaint[s] by Mr Denisenko [the first applicant]... and his mother about the use of unlawful methods of investigation against [the first applicant]...
>
> According to the complaint of [the first applicant], ... police officers of Khamovniki police station used unlawful methods of investigation against him; in particular, [they] inflicted bodily injuries on him [and] forced him to give untrue statements, threatening him with reprisals...
>
> The statement by [the first applicant] is refuted by the following evidence:
>
> Officer G. of Khamovniki police station in Moscow, when questioned as a witness, submitted that on 1 March 2001 he had been patrolling the area... together with [officers] M. and K. At around 11.25 p.m. [G.] had observed three persons attempting to escape after they had seen [the police officers]. One of the persons, who had subsequently turned out to be [the second applicant], had thrown away a knife which had red spots on it. [The second applicant] and [the first applicant] had resisted their arrest and [police officers] had used martial art techniques against them... Subsequently, citizens O., A., M. and N. had approached G. and stated that [the second applicant] and [the first applicant] had assaulted them and had inflicted bodily injuries on them.
>
> Officers M. and K. of Khamovniki police station, when questioned as witnesses, made statements similar to that given by G.

> According to the explanation given by Kh., head of Khamovniki police station, on 1 March 2001 at around 11.20 p.m. an on-duty officer informed him of a robbery on Komsomolskiy Avenue in Moscow. Approximately twenty minutes later [the second applicant], [the first applicant] and Mr Nikitin were brought to Khamovniki police station with a view to verifying whether they had been involved in the above crime... The [second applicant] and the [first applicant] were questioned by officers of Khamovniki police station. Following the arrival of investigators from the Khamovniki district prosecutor's office the detainees were transferred to them with a view to carrying out the investigative measures. Kh. did not see any bodily injuries on [the first applicant]. No physical force or moral pressure was used against the arrestees and they did not complain about infliction of bodily injuries either to Kh. or to the on-duty officer of Khamovniki police station. On completion of the necessary investigative actions, [the second applicant] and [the first applicant]... were brought to the temporary detention wing of Zamoskvorechye police station. On their admission to the wing, [the second applicant] and the [first applicant] ... did not have bodily injuries and did not complain that unlawful methods of investigation had been used.
>
> According to a certificate obtained by the Khamovniki district prosecutor's office of Moscow from [remand centre] IZ-48/2 [subsequently IZ-77/2], no bodily injuries were found on [the first applicant] on his arrival at IZ-48/2.
>
> Having regard to the foregoing, the investigator concludes that [the first applicant] complained of unlawful methods of investigation in order to mislead the investigation and to escape criminal responsibility; accordingly, there is no *corpus delicti* in the acts of the officers of Khamovniki police station..."

26. It was further stated that a copy of the decision was to be sent to the Khamovniki district prosecutor.

27. By telegrams of 15 May and 10 and 27 June 2001 and 23 March, 9 August and 23 September 2002, the first applicant's mother requested prosecutors at various levels to provide her with a copy of the decision not to initiate criminal proceedings into the alleged ill-treatment of her son. She averred that she needed the decision in order to challenge it before the courts. It appears that her requests were unsuccessful.

3. Letter of 7 June 2002

28. By a letter of 7 June 2002, sent in response to a query from the first applicant's mother, the authorities of remand centre IZ/77-2 informed her as follows:

> "...On his arrival at the remand centre from Khamovniki police station your son was found to have the following bodily injuries: injury of the left elbow joint; first-degree thermal burn to the skin in the area of the right wrist joint; skin abrasion in the lumbosacral area."

4. Examination of the first applicant's allegations of ill-treatment by the courts during his criminal trial

29. The first applicant raised the ill-treatment issue at trial and requested the court to exclude his confession as having been obtained under duress. He provided the following details of the alleged ill-treatment:

"...I ran to Komsomolskiy Avenue and [then] stopped. A patrol car with police officers stopped nearby. An officer got out of the car and knocked me down. He searched me and asked me why I was running away. I was handcuffed and put in the car ... then they put me in a different car and took me to the police station. They put me against the wall, took away all my belongings and started beating me up. They told me that I was a murderer and that I had killed three people... Then they took me to the fourth or fifth floor and [again] questioned me ... I told them what had happened. They beat me up and attached me to the 'cage' [the fenced-in area within the police station used for holding suspects]. They cuffed me to the radiator and beat me up, told me that if I did not tell them what they were asking me to tell they would fake my escape and kill me. They also told me that they would put me in a cell and rape me. I withdraw all my depositions made on 1 and 2 March 2001 because they are all distorted and do not reflect my statements accurately...

When I was questioned ... on 2 March 2001 ... I felt unwell. I told those who were questioning me but they laughed at me. I did not get medical assistance. The burn occurred because I was handcuffed to a radiator and was held [like that] for five hours. The persons who questioned me saw the traces of my bodily injuries."

30. The trial court rejected the first applicant's request for exclusion of evidence as premature and accepted the above letter dated 7 June 2002 for inclusion in the file. It appears that the investigator's decision of 28 April 2001 was also appended to the case file.

31. While being questioned about the circumstances concerning the charges of robbery and infliction of bodily harm on the victims, the first applicant stated as follows:

"... I saw [my co-defendants] involved in a scuffle with somebody. I decided to help ... and ran closer. I was grabbed by the shoulders and thrown backwards onto [the second applicant]. Then somebody started hitting me but I did not see who it was."

32. The court examined officer G., who had participated in the arrest of the defendants. He testified that the person whom he had arrested had not offered any resistance and that he did not know whether the other arrestees had offered resistance to his colleagues.

33. In their final pleadings, referring to the letter of 7 June 2002 and the prosecutor's decision of 28 April 2001, the first applicant's lawyer and lay representative stressed that the investigator and the court had failed to examine properly his complaint concerning ill-treatment. They also averred that the investigator had disregarded the first applicant's requests for a medical examination made shortly after the alleged ill-treatment. They claimed that the first applicant had confessed under duress to the crimes of which he stood accused.

34. On 4 July 2002 the District Court convicted the first applicant as charged and dismissed his allegations of ill-treatment, giving the following reasons:

"It was established at the court hearing that the defendants' arguments that they were pressurised at the pre-trial investigation stage by police officers, whose surnames, first names, ranks and appearance they could not provide, were unfounded; the materials in the case file also refute them..."

35. On 27 December 2002 the Moscow City Court upheld the applicants' conviction. It noted that the applicants' allegation of ill-treatment had been duly examined and rejected by the trial court.

5. Statement by officer K.

36. The Government submitted a written statement dated 16 August 2005 made by officer K. of Khamovniki police station to an officer of the Internal Security Department of the Ministry of the Interior. The statement, in its relevant parts, reads:

> "... I was on duty on the night of 2 March 2001... That night I joined the car patrol team including officers G. and M...
>
> At around midnight we drove past house no. 48 on Komsomolskiy Avenue. The house had an archway. G. told us that three persons were leaving through the archway and that we should check their identity...
>
> Our car stopped and the persons also stopped. Subsequently, I learnt that they were Mr Denisenko [the first applicant], Mr Bogdanchikov and Mr Nikitin.
>
> When I opened the door I saw the persons run away from our car [the first applicant] ran along Komsomolskiy Avenue... I ran after him...
>
> I caught up with him and grabbed his shoulder. He did not fall, I turned him round and asked 'Why are you running?'. He answered that he did not have a valid registration in Moscow. I asked him to show his passport. He handed it over to me and I saw that he did have a valid registration. I became suspicious. While trying to understand why he was lying to me I noticed that his knuckles were covered with blood. His jacket was also covered with blood... I asked him where the blood had come from and why his hands were bruised. He started mumbling something about a scuffle...
>
> I decided to arrest [the first applicant] to verify all the circumstances. At that moment [officer] M. told me by walkie-talkie that several victims had been discovered in the courtyard of the house and that I should bring the apprehended persons [to the car]. [The first applicant] did not resist his arrest even after having heard the message. I think that he was frightened by my appearance because he is skinny and shorter than me and it would not have been difficult for me to prevent him from escaping... I put a handcuff on [the first applicant's] right hand...
>
> I did not use physical force against him during his arrest because he did not resist and, in my view, was depressed.
>
> Together with [the first applicant] I approached [officer] M. who was in the courtyard of the house where the victims had been discovered.
>
> I saw ... two men.. One of them had numerous bruises and abrasions on his head. On his clothing ... I saw numerous slits and traces of blood. On seeing [the first applicant], ... he pointed to him and said 'That is one of the men who stabbed me'...
>
> Then [officers] G., M., myself and one of the arrestees (I don't remember which) drove to the police station.
>
> On our arrival ... I removed the handcuffs from [the first applicant] ...in my presence the on-duty officer searched the arrestees and drafted the necessary documents,. I drafted the report on their arrest. I don't remember which detainee started shouting,

requesting a lawyer, a prosecutor and his own immediate release. None of the police officers reacted to the shouting, everybody waited for the arrival of the investigators. After being checked out [the first applicant] and Bogdanchikov were put in cells for administrative detainees at the police station until the arrival of the investigator.

On the arrival of the investigation team, G. and I were sent to look for the knife with which the detainees had injured the victims.

During the time I spent at the duty unit ... I did not hear the detainees complain about their health. Neither I nor other officers of [Khamovniki] police station in my presence used physical force against the detainees, humiliated or tortured them...

The cells at the police station are separated from the other area by bars [through which one could see inside the cells]. The whole area of the duty unit on the first floor did not at the relevant time and does not now have uncovered radiators, i.e., the radiators are covered ... with chipboard with round holes. That's why I can reliably state that [the first applicant] could not have been handcuffed to a radiator. I did not see anybody handcuff [the first applicant] to the bars of the cell or beat him.

In my presence nobody questioned ... [the first applicant], but after a while I was given an address where Nikitin might be hiding.

When we brought Nikitin [to the police station], I saw [the first applicant] and Bogdanchikov in the cell for administrative detainees, that is, after their conversation with police officers. I would say that they were calm, did not complain and looked the same as when we had brought them there, i.e., they did not have bruises or abrasions.

Later, at around 11 a.m. on 2 March 2001, an investigator from the prosecutor's office and the deputy prosecutor A.R. arrived. Until their arrival the detainees were held in the cells.

Some time later an investigator from the prosecutor's office questioned me; his questions concerned only the evidence in the criminal case. The investigator did not question me about the use of physical force against the detainees or the use of special methods or weapons [against them], from which I concluded that the detainees had not complained about us.

Then I left and did not see what happened with the detainees subsequently...

I did not give any explanations to anybody concerning the above events and I did not know that Denisenko had complained about ill-treatment at Khamovniki police station until the [present] summons to the Internal Security Department of the Ministry of the Interior."

C. Conditions of the applicants' detention in remand centre IZ-77/2 in Moscow

37. From 5 March 2001 to 15 July 2002 the applicants were held in remand centre IZ-77/2 in Moscow.

1. The first applicant's account

38. The cells where the first applicant was held contained thirty-two sleeping places in sixteen two-tier bunk beds and accommodated up to

eighty inmates during the relevant period. The inmates had to sleep in shifts and rarely slept more than three hours a day.

39. The first applicant was not provided with bedding and had access to a shower only once a week. The cells had little or no ventilation and were each lit by one fluorescent lamp twenty-four hours a day. The windows were not glazed, the cells were extremely cold in winter and the inmates had to stuff blankets in the window frames to keep the warmth inside. The sanitary conditions were unsatisfactory. The first applicant was kept together with inmates suffering from tuberculosis or infected with HIV. On two occasions the occupants of the first applicant's cell were placed in quarantine because of jaundice.

40. In support of his submissions the first applicant presented a written statement from Mr Syngayevskiy, who had been detained in the same remand centre from 18 September 2000 to 19 January 2005, in particular in cell no 121. In his statement Mr Syngayevskiy confirmed the first applicant's submission that there was severe overcrowding and a lack of individual beds.

41. The second applicant submitted that the conditions of his detention in remand centre IZ-77/2 were the same as those described by the first applicant.

2. The Government's account

42. Relying on certificates issued by remand centre IZ-77/2 on 12 July and 4 and 23 August 2005, the Government presented the following description of the first applicant's conditions of detention.

43. The first applicant was held in cell no. 6 (from 5 March to 29 June 2001) and cell no. 121 (from 29 June 2001 to 15 July 2002). Both cells measured 57.7 square metres and had forty-eight beds. At the relevant time cell no. 6 accommodated forty-two to fifty inmates and cell no. 121 had between twenty-eight and forty-two inmates. Although the remand centre was overcrowded, the first applicant was at all times provided with an individual bed and bedding.

44. The windows in the cells were glazed and the air temperature and humidity level were in conformity with the relevant standards. The cells had no artificial ventilation system at the time of the first applicant's detention; this was introduced only in 2003. In accordance with the applicable regulations, the first applicant had access to a shower once a week.

D. Conditions of the first applicant's confinement at the Khamovnicheskiy District Court

1. The first applicant's account

45. On the days of court hearings, that is, on at least six days, according to the hearings transcript submitted by the first applicant, he was woken up at 5 a.m. He had no breakfast and was not given any ration. Although the Khamovnicheskiy District Court had a café, the applicant's relatives were not allowed to buy him food there or otherwise supply him with food. The first applicant returned to the remand centre at between 8 and 10 p.m. and had to wait for a further three to four hours to be escorted to his cell. Thus, he had no dinner at the remand centre on those days.

46. In the courthouse convoy cells he was not given anything to drink and could drink tap water only when he visited the toilet. The cell measured around five square metres and accommodated eight to ten detainees. The cell was gloomy because it was lit by a twenty-watt bulb. It lacked ventilation and when other detainees were smoking the first applicant had to endure the smoke. A visit to the toilet was possible only twice a day as directed by the warden. Of the six hearings referred to in the court hearings transcript, one started at 11 a.m., one at 1 p.m., two at 3 p.m., one at 5 p.m. and one at 6 pm. Occasionally, the first applicant would spend more than ten hours a day in the courthouse cell.

47. At a hearing on 25 June 2002 the applicant complained to the trial judge in the following terms:

> "I ask the court to note that I am not being given any food or rest. I cannot participate adequately in the trial. This is a statement, not a request. I ask the court to include it in the case file and to oblige the management of the remand centre [unclear]".

The court rejected the request, finding that it was not within its jurisdiction. The applicant also raised the complaint about the lack of food on appeal. The appeal decision was silent on that point.

2. The Government's account

48. With reference to the letter of the President of the Khamovnicheskiy District Court dated 19 October 2005, the Government submitted that the sanitary conditions in the convoy cells were in conformity with the domestic regulations. In its relevant parts the letter reads as follows:

> "The convoy premises... are in conformity with the requirements, including sanitary... Defendants are held at the court's premises after their transfer by the remand centre escort service for the period of examination of the case in court and also during the breaks in the examination of the case.
>
> On hearing days the court regularly orders a lunch break. According to Article 17 of the Federal Law of 15 July 1995 no. 103-FZ, defendants have the right to be provided

with meals free of charge; however, implementation [of this right] is ensured by the Federal Service for the Execution of Sentences".

49. With reference to the above letter and a certificate issued by the head of remand centre IZ-77/2, the Government submitted that on the dates of his transfers to the District Court the applicant had received a dry ration (bread, tinned meat and fish, tea, salt, sugar and disposable tableware), in accordance with the applicable regulations. The Government did not provide a copy of the certificate to the Court.

II. RELEVANT DOMESTIC LAW

A. Investigation of criminal offences

50. The RSFSR Code of Criminal Procedure (in force until 1 July 2002, "the CCrP" or "the Code") established that a criminal investigation could be initiated by an investigator on a complaint by an individual or on the investigative authorities' own initiative, where there were reasons to believe that a crime had been committed (Articles 108 and 125). A prosecutor was responsible for overall supervision of the investigation and could order specific investigative actions, transfer the case from one investigator to another or order an additional investigation (Articles 210 and 211). If there were no grounds for initiating or continuing a criminal investigation, the prosecutor or investigator issued a reasoned decision to that effect which had to be served on the interested party. The decision was amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction (Articles 113 and 209).

B. Provisions pertaining to conditions of detention and catering arrangements for detainees

51. 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).

52. On 4 May 2001 the Ministry of Justice adopted the rules on food supplies for convicted prisoners and persons detained in remand centres. According to Annex no. 3 to these rules, a daily dry ration (bread, tinned beef or fish, sugar, tea and salt) is provided to the following categories of persons: convicted prisoners on their way to a prison, remand centre or

colony; persons released from custody on the way to their place of residence; persons during their stay in patient-care institutions or convicted juveniles. Those rules were amended in 2004 and repealed in 2005.

53. On 4 February 2004 the Ministry of Justice adopted the rules on the supply of dry rations, according to which persons suspected or accused of criminal offences should be supplied with a dry ration (bread, pre-cooked first and second courses, sugar, tea and tableware) during their stay at the courthouse. Detainees were to be supplied with hot water with which to consume the ration.

C. Pre-trial detention

54. At the relevant time preventive measures (*меры пресечения*), including pre-trial detention, were governed by the CCrP, which provided as follows:

Article 11 (1) Personal inviolability

"No one may be arrested other than on the basis of a judicial decision or a prosecutor's order. ..."

Article 89 Preventive measures

"If there are sufficient reasons to believe that the accused will elude the investigation or evade justice, obstruct the establishment of the truth in the case or engage in a criminal activity..., one of the following preventive measures may be imposed: an order not to leave the place of residence, a personal security, ... placement in custody..."

Article 90 Imposing a preventive measure in respect of a suspect

"In exceptional circumstances, a preventive measure may be imposed on a suspect who has not been charged. In such cases, charges must be brought against the suspect within ten days after the preventive measure has been imposed. If no charges are brought within that period, the preventive measure shall be lifted."

Article 91 Factors to be taken into account when imposing a preventive measure

"When considering the need to impose a preventive measure and choosing one of them, ... the investigator, prosecutor or court shall take into account, in addition to the circumstances enumerated in Article 89 of the present Code, the gravity of the charges, the personality of the suspect or accused and his occupation, age, state of health, family status and other circumstances."

Article 92 Order or decision imposing a preventive measure

"A preventive measure shall be imposed by means of a reasoned order issued by an ... investigator or prosecutor or a reasoned decision by a court, which must specify the offence of which the person is suspected or with which he has been charged and the grounds for imposing the preventive measure. The person concerned must be informed of the order or decision and, simultaneously, of the procedure for bringing a complaint against the decision to impose such a measure."

Article 96 Placement in custody

"Placement in custody shall be imposed as a preventive measure ... in respect of a person suspected of or charged with having committed an offence punishable by imprisonment of more than one year. In exceptional circumstances, this preventive measure may also be applied to a person suspected or accused of an offence punishable by imprisonment of less than one year.

Persons charged with having committed the offences set out in Articles 105, ...162 §§ 2, 3 and ... of the Criminal Code may be remanded in custody on the sole ground of the dangerousness of the crime..."

The amendments of 14 March 2001 repealed Article 96 § 2, which had permitted defendants to be remanded in custody on the sole ground of the dangerous nature of the criminal offence they were charged with.

Article 97 Time-limits for pre-trial detention

"A period of detention during the investigation of offences in criminal cases may not last longer than two months. This time-limit may be extended by up to three months by a district or town prosecutor ... if it is impossible to complete the investigation and there are no grounds for altering the preventive measure. A further extension making a total of six months from the day of placement in custody may be effected only in cases of particular complexity, by a prosecutor of a subject of the Russian Federation ..."

55. Article 52 of the CCrP provided that a "suspect" (*подозреваемый*) was a person (i) arrested on suspicion of having committed a crime, (ii) against whom a criminal case had been opened or (iii) to whom a preventive measure was being applied, before he or she was formally charged with a particular crime. When an investigator was satisfied that there was sufficient evidence to press charges against a person, he or she issued a formal decision making that person a party to the proceedings as an accused (*постановление о привлечении в качестве обвиняемого*) (Article 143). From the moment of delivery of that decision the person was considered to be an "accused" (*обвиняемый*) (Article 46). The investigator had to serve the above decision on the accused in person not later than two days after its delivery and to explain to the accused the nature of the charges (Article 148).

THE LAW

I. ADMISSIBILITY OF THE SECOND APPLICANT'S COMPLAINT

56. The Court notes that the second applicant complained only about the conditions of his detention in remand centre IZ/77-2 in Moscow. It observes that the second applicant was detained in that facility from 5 March 2001 to 15 July 2002. However, he first complained to the Court about the

conditions of his detention there in his application form dated 16 March 2004, that is, more than six months after his detention in that facility had ended (see *Khudoyorov v. Russia* (dec.), no. 6847/02, 22 February 2005).

57. It follows that the second applicant's complaint was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

58. The Court will examine below the complaints lodged by the first applicant.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE FIRST APPLICANT'S ILL-TREATMENT

59. The first applicant complained that on 2 March 2001 he had been subjected to treatment incompatible with Article 3 of the Convention. In addition, the authorities had not carried out an effective investigation into those events, in breach of Article 13 of the Convention. The Court will examine these complaints from the standpoint of the State's substantive and procedural obligations flowing from Article 3, which reads as follows:

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

A. Submissions by the parties

60. The Government argued that the first applicant had not exhausted domestic remedies. Firstly, he had not complained about the alleged ill-treatment to the district department of the interior or any other subdivision of the Ministry of the Interior. Secondly, he had not appealed against the decision not to institute criminal proceedings to a higher-ranking prosecutor.

61. As to the merits, the Government relied on the statement by officer K. dated 16 August 2005 and argued that when he was apprehended the first applicant had already had an injury which appeared suspicious to K. Furthermore, the Khamovnicheskiy District Court had established in its judgment of 4 July 2002 that the first applicant had violently assaulted the victims. Hence, he could have scratched his knuckles while assaulting the victims. The Government stressed that the applicant had not resisted arrest. K. had not had recourse to physical force and had not seen anybody using force against the applicant at the police station. The investigator and the courts at two instances had carefully examined all the available evidence and had correctly dismissed the applicant's allegations of ill-treatment as unfounded.

62. The first applicant contended that he had exhausted all the available remedies by which to complain about the ill-treatment. His own detailed submissions, medical report no. 1904 and the letter of 7 June 2002 proved

that he had been subjected to ill-treatment at the hands of the police. He further insisted that the authorities' investigation had been ineffective. The investigator had confined his inquiry to questioning the police officers who had arrested him and the head of the police station. He had not questioned the first applicant and had not set up a confrontation between the first applicant and the officers who had beaten him up. The investigator had not attempted to find other witnesses who had been present at the police station at the time when the first applicant had been brought and detained there. The first applicant and his mother had not been given access to the materials of the inquiry and could not participate effectively in the investigation. Both the investigator and the trial court had disregarded the medical evidence attesting to the first applicant's injuries, and had not offered any explanation as to their cause.

B. The Court's assessment

1. Admissibility

63. As to the Government's argument concerning exhaustion of domestic remedies, the Court reiterates that the rule of exhaustion of domestic remedies set out 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 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*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

64. The Court observes that following the first applicant's complaint the investigator launched an inquiry into the alleged ill-treatment and decided not to institute criminal proceedings (see paragraph 25 above). The matter was also examined by the trial and appeal courts, which dismissed it as unfounded (see paragraphs 29-35 above).

65. Concerning the possibility of complaining to the Ministry of the Interior or its territorial department, the Court notes that the Government did not specify the legal basis for such a complaint or the applicable procedure showing that this remedy was an effective one (see *Khamila Isayeva v. Russia*, no. 6846/02, § 100, 15 November 2007). In any event, where there is a choice of remedies, the exhaustion requirement must be applied to reflect the practical realities of the applicant's position, so as to ensure the effective protection of the rights and freedoms guaranteed by the

Convention (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 56, 12 April 2007, with further references). An applicant who has used a remedy which is apparently effective and sufficient cannot be required also to have tried others that were available but probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III, and *Günaydin v. Turkey* (dec.), no. 27526/95, 25 April 2002). The Government did not claim that the authorities before whom the first applicant had raised his ill-treatment complaint had not been competent to examine it or that the avenue chosen by him was otherwise inadequate. Hence, the Court cannot find that the first applicant should have complained to the Ministry of Interior in addition to his complaints to the prosecutor's office and the courts.

66. As to the possibility of appealing against the investigator's decision of 28 April 2001 to a higher-ranking prosecutor, the Court has already held that it does not consider such hierarchical appeals an effective remedy for the purposes of Article 35 § 1 of the Convention (see *Belevitskiy v. Russia*, no. 72967/01, § 59, 1 March 2007). The Government did not present any arguments which would prompt the Court to depart from this approach in the case at hand.

67. Having regard to the foregoing, the Court dismisses the Government's objection as to non-exhaustion of domestic remedies. It further notes that the first 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

(a) Alleged inadequacy of the investigation

(i) General principles

68. The Court reiterates its settled case-law to the effect that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible.

69. The investigation of arguable allegations of ill-treatment must be thorough. That means that the authorities must always make a serious

attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates apt to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. The investigation into the alleged ill-treatment must be prompt. Finally, there must be a sufficient element of public scrutiny of the investigation or its results; in particular, in all cases, the complainant must be afforded effective access to the investigatory procedure (see, among many other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq., *Reports* 1998-VIII; *Mikheyev v. Russia*, no. 77617/01, §§ 107-108, 26 January 2006; *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 137, ECHR 2004-IV (extracts); and *Petropoulou-Tsakiris v. Greece*, no. 44803/04, § 50, 6 December 2007).

(ii) Application of the above principles to the present case

70. Turning to the facts of the case at hand, the Court considers that the complaints by the first applicant and his mother, which were accompanied by report no. 1904 attesting to his wrist injury (see paragraph 22 above) and were brought to the attention of the prosecutor's office, amounted to an "arguable claim" of ill-treatment at the hands of the police and warranted investigation by the authorities in conformity with the requirements of Article 3 of the Convention.

71. The Court is satisfied that an inquiry was opened shortly after the authorities received the applicant's complaint about the alleged ill-treatment. That inquiry was completed within a month with a decision not to bring criminal proceedings against the police officers (see paragraphs 24 and 25 above). Moreover, the applicant's complaints were also examined during his own trial and on appeal. Hence, the question before the Court is not so much whether there was an investigation but whether it was effective (see *Krastanov v. Bulgaria*, no. 50222/99, § 59, 30 September 2004).

72. The Court would note at the outset that the circumstances surrounding the first applicant's arrest and alleged ill-treatment on 1 March 2001 seem to be rather complex. The applicant was arrested shortly after a violent fight with the victims. Officer G. submitted to the investigator that the first applicant had resisted arrest and that therefore force had been used against him. According to the first applicant, in the evening after his arrest he was beaten up by police officers at the police station. Given the

complexity of these three sets of circumstances which, taken together or apart, could have been the cause of the first applicant's injuries, it was particularly important for the domestic authorities to elucidate all the circumstances preceding, accompanying and following his arrest on the evening of 1 March 2001. However, the Court is not persuaded that this was done in the present case.

73. With regard to the investigator's inquiry, the Court firstly observes that he did not consider it necessary to obtain detailed submissions from the first applicant about the alleged ill-treatment. Indeed, it transpires from the decision of 28 April 2001 that he never questioned the applicant about the events of 2 March 2001 (see paragraph 25 above). This, in the Court's view, already constitutes a serious failing.

74. Furthermore, the above decision contained no reference to report no. 1904 confirming a burn on the first applicant's wrist. The investigator thus appears to have disregarded that piece of evidence as if it had never existed, and the Government offered no explanation for that omission. A further point of concern for the Court is the fact that no attempts were made to conduct an expert medical examination of the first applicant with a view to making an accurate record of his injuries and establishing their cause. This failure on the part of the investigator is particularly striking, given that officer G. had told him that force had been used against the first applicant during his arrest, and also in view of the overall complexity of the events surrounding the first applicant's arrest and placement in custody. The Government did not dispute that the first applicant had asked to be examined by a forensic expert. However, it appears that his requests were left without reply. In the Court's opinion, the above shortcomings clearly undermined the ability of the investigation to establish the relevant facts.

75. It is further noted that the investigator confined his inquiry to questioning those officers who had participated in the first applicant's arrest and the head of the police station. It transpires from the decision of 28 April 2001 that the investigator based the decision not to open a criminal case on their testimonies. In the Court's view, this deferential attitude to their statements, accompanied by the failure to look for corroborating evidence, indicates a lack of any appearance of independence on the part of the investigator (see *Aydın v. Turkey*, 25 September 1997, § 106, *Reports* 1997-VI, and *Matko v. Slovenia*, no. 43393/98, § 90, 2 November 2006). While the investigator may not have been provided with the names of individuals who could have seen the first applicant at the police station, he could have been expected to take steps of his own initiative to identify possible eyewitnesses. Furthermore, he took no meaningful steps to determine the identity of the police officers involved in the questioning of the first applicant in the police station (see *Akulinin and Babich v. Russia*, no. 5742/02, § 53, 30 September 2008, and *Matko*, cited above, § 91).

Reiterating its considerations concerning the complexity of the events surrounding the alleged ill-treatment, the Court is further surprised that the investigator made no attempts to question at least those witnesses whose identities should have been known to him, that is, the victims of the robberies, who had witnessed the fight, and the first applicant's co-defendants, who had been taken into custody together with him.

76. Having regard to the investigator's failure to question the first applicant in connection with his complaint, the lack of any confrontations between him and the police officers and his mother's repeated unsuccessful attempts to obtain the prosecutor's decision of 28 April 2001, the Court also has strong doubts as to whether the authorities secured to the first applicant sufficient access to the investigatory procedure.

77. In addition to the above shortcomings, the Court cannot but note several discrepancies which raise further doubts as to the thoroughness of the investigation conducted by the domestic authorities. Thus, whilst the prosecutor's decision stated that no injuries had been discovered on the first applicant on his admission to remand centre IZ-77/2, a letter signed by the head of that remand centre and the head of its medical unit clearly attested that he had had a number of injuries (see paragraph 28 above). The Government did not challenge the authenticity of the letter or the information contained therein. Neither did they offer any explanation for the discrepancy between the information contained in that letter and in the investigator's decision.

78. It is further noted that, according to the investigator's decision, when questioned in connection with the first applicant's complaint of ill-treatment, officer K. presented the same account of events as that made by officer G., who submitted that force had had to be applied to the first applicant to overcome his resistance to arrest. However, according to his statement of 16 August 2005, provided by the Government, K. had not previously been questioned about the circumstances of the first applicant's alleged ill-treatment and had not resorted to force in order to arrest him, as the latter had not resisted arrest. Yet again, the Government offered no explanation for this striking inconsistency.

79. Lastly, the Court points out that the domestic courts, when confronted with the first applicant's allegation of ill-treatment, chose not to elaborate on the medical evidence attesting to his injuries and on the contradictions concerning the use of force in the statements given by officer G. Having regard to its findings above, the Court cannot but conclude that the authorities' investigation was beset by critical flaws and omissions which undoubtedly deprived it of any capacity to establish the relevant facts.

80. The Court concludes that the investigation carried out into the first applicant's allegations of ill-treatment was not thorough, adequate or

effective. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

(b) The first applicant's alleged ill-treatment

(i) General principles

81. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman and degrading treatment or punishment, irrespective of the victim's conduct (see, among many other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

82. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). 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 *Selmouni*, cited above, § 87; and *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004).

(ii) Application of those principles in the present case

83. As the Court has noted above, the circumstances surrounding the first applicant's alleged ill-treatment were rather complex. He claimed to have been beaten up after being involved in a scuffle and after an arrest which, according to some police officers, had been accompanied by the use of force against him (see paragraph 72). The Court has found that the investigation into the alleged ill-treatment was beset by critical flaws and proved to be incapable of shedding light on the cause of his injuries and the circumstances accompanying their infliction. In this connection the Court reiterates that it is sensitive to the subsidiary nature of its role 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 the Court must apply a particularly thorough

scrutiny (see, *mutatis mutandis*, *Ribitsch v. Austria*, 4 December 1995, § 32, Series A no. 336) even if certain domestic proceedings and investigations have already taken place (see *Cobzaru v. Romania*, no. 48254/99, § 65, 26 July 2007).

84. The Court notes that it was undisputed by the parties that officers from Khamovniki police station arrested the first applicant in the evening of 1 March 2001 shortly after he had attempted to rob several persons with whom he had had a scuffle. Furthermore, it is common ground between the parties that on the morning of 2 March 2001 he was found to have a burn on his right wrist and that on arrival at the remand centre from Khamovniki police station on 5 March 2001 he was found to have the same burn, as well as an injury to the left elbow joint and an abrasion in the lumbosacral area.

85. The first applicant argued that on the night following his arrest, that is on 2 March 2001, he had been beaten on the head with a stack of books and on the body with a board, kicked in the area of the kidneys and finally handcuffed to a radiator and left for several hours, resulting in a burn on his wrist (see paragraphs 21, 29 and 31 above).

86. Relying on the statement by officer K. obtained in 2005, the Government submitted that, when arresting the first applicant, K. had noticed that the arrestee's knuckles were grazed and bleeding. With reference to the findings of the domestic courts that the first applicant had violently assaulted the victims, the Government argued that he might have sustained the injury spotted by K. while committing the crimes of which he was subsequently convicted. In this connection the Court observes that neither report no. 1904, compiled some nine hours after the first applicant's arrest and recording a burn on his wrist, nor the letter of 7 June 2002 attesting to his further injuries, mentioned any injuries to the first applicant's knuckles. Hence, the Government's explanation that the injury might have been caused during the first applicant's scuffle with the victims is of no relevance to the Court's analysis.

87. At the same time the Court notes that, according to the above-mentioned documents, the first applicant was found to have several bodily injuries after he was arrested (see paragraphs 22, 28 and 84 above), and that the Government did not argue that those injuries had been sustained during his fight with the victims, his apprehension by police officers or otherwise before his arrest (see paragraph 61 above). Indeed, given the conflicting statements by officers G. and K. as to whether or not force was used during the first applicant's arrest (see paragraphs 25, 32 and 36 above), it cannot be established with the required degree of certainty whether force was used and whether he obtained those injuries when being arrested. As regards the fight, the Court is mindful of the fact that the first applicant himself confirmed before the trial court that during the scuffle with the victims he had been hit and thrown onto his back (see paragraph 31 above). However, even if it cannot be reasonably excluded that the injury to the left

elbow and the abrasion in the lumbosacral area might have been caused in the fight (compare *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, §§ 50-52, 15 February 2007), nothing in the first applicant's description of that fight or in the related findings of the domestic courts appears to provide a plausible explanation for the burn on his right wrist, recorded firstly by the narcotics specialist and then by the medical staff of the remand centre.

88. The Court further observes that whilst officer K. contended that he had been made suspicious by the first applicant's grazed and bleeding knuckles when arresting him, he stated that he had not spotted any other injuries, in particular when he had put handcuffs on the first applicant's right hand (see paragraph 36 above). Having regard to the foregoing considerations and the first applicant's submissions, the Court is led to conclude that, at the very least, the burn to the first applicant's right wrist was sustained between his arrest on 1 March 2001 at around 11.40 p.m. and his examination by the narcotics specialist on 2 March 2001 at 8.45 a.m., that is, while he was under the control of the police. Accordingly, the Government was under an obligation to provide a plausible explanation for that injury (see *Selmouni*, cited above, § 87). However, besides denying the existence of the burn, they failed to provide any explanation as to how the first applicant had acquired it. In these circumstances, bearing in mind the authorities' obligation to account for injuries caused to persons within their control in custody, and in the absence of a convincing and plausible explanation by the Government in the instant case, the Court finds it established to the standard of proof required in the Convention proceedings that the injury sustained by the first applicant was a result of the treatment of which he complained and for which the Government bore responsibility (see, among many other authorities, *Mikheyev v. Russia*, cited above, §§ 104-105).

89. The Court further reiterates that the assessment of the level of severity of a given form of treatment 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 gender, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100-101, ECHR 2001-VIII). Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita*, cited above, § 120). Treatment has been considered "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their moral resistance, or when it was such as to drive the victim to act against his will or conscience (see *Jalloh v. Germany* [GC], no. 54810/00, § 68, ECHR 2006-...). In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or

humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Labita*, cited above, § 120).

90. Applying the principles enunciated above, the Court notes that the first applicant was handcuffed to a hot radiator and left for several hours and that he sustained, as a result, a first-degree burn to his right wrist (see, by contrast, *M.-A.V. v. France*, no. 21788/93, Commission decision of 31 August 1994, Decisions and Reports (DR) 79, p. 54). In the absence of any evidence of violent behaviour on the part of the first applicant at the police station, the Court finds it difficult to understand why it was necessary to handcuff him, still less why he should have been handcuffed to a hot radiator. Having regard to the nature of the treatment, its duration and the resulting bodily injury, the Court considers that the suffering experienced by the first applicant went beyond the inevitable level of suffering connected with a given form of treatment and amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

91. There has accordingly been a violation of Article 3 of the Convention under its substantive limb.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE FIRST APPLICANT'S CONDITIONS OF DETENTION IN REMAND CENTRE IZ-77/2 IN MOSCOW

92. The first applicant complained that his conditions of detention in remand centre IZ-77/2 in Moscow had been incompatible with Article 3 of the Convention, the text of which was cited above.

A. Submissions by the parties

93. The Government argued that the first applicant had failed to exhaust available domestic remedies as he had not complained about his conditions of detention to the prosecutor's office. On the merits, they conceded that at the relevant time remand centre IZ-77/2 had been overcrowded, "as had been many other facilities in the Russian Federation". The overcrowding had been caused by "objective reasons, such as high crime rates and the lack of State funding sufficient to maintain the standard of floor space for all prisoners". However, despite the overcrowding which, moreover, had not been as severe as the first applicant alleged, he had been provided at all times with an individual sleeping place. With reference to the certificates issued by the head of the facility on 12 July and 4 and 23 August 2005, the Government stressed that the first applicant had been provided with bed linen, the cell windows had been glazed, the air temperature, humidity level, lighting and sanitary conditions in his cell had conformed to the relevant standards, and the lavatory had been separated from the living area by a

partition. At the time of the first applicant's detention the cells where he had been held had been ventilated through the windows; the artificial ventilation had been installed only in 2003.

94. The first applicant maintained his complaint. He submitted, in particular, that he had been held in overcrowded cells, had not been given an individual sleeping place and had taken it in turn to sleep. The cells had been poorly lit and ventilated and the sanitary conditions had been unsatisfactory.

B. The Court's assessment

1. Admissibility

95. The Court takes note of the Government's argument that the first applicant failed to complain to a prosecutor about the allegedly appalling conditions of his detention. In this connection it observes that it has already on a number of occasions examined the same objection by the Russian Government and dismissed it. In particular, the Court held in the relevant cases that the Government had not demonstrated what redress could have been afforded to the applicants by a prosecutor, a court or another State agency, bearing in mind that the problems arising from the conditions of the applicants' detention were apparently of a structural nature and did not concern their personal situation (see *Guliyev v. Russia*, no. 24650/02, § 34, 19 June 2008; *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; and *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts)). The Court sees no reasons to depart from that finding in the case at hand and therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

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

2 Merits

97. The parties disagreed as to certain aspects of the first applicant's conditions of detention in the remand centre. However, there is no need for the Court to establish the truthfulness of each and every allegation, since 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.

98. The Government conceded that remand centre IZ-77/2 had been overcrowded at the time of the first applicant's detention. According to the information provided by them, the first applicant was afforded from 1.4 to 2 sq. m of floor space in cell no. 6 and from 1.2 to 1.4 sq. m of floor space in cell no. 122. In this connection the Court reiterates that in a number of cases in which detained applicants usually had 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*, cited above, § 32; *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). The Court is also mindful of the fact that the cells in which the first applicant was detained contained some furniture and fittings, such as bunk beds and the lavatory, which must have further reduced the floor surface available to him. In the absence of any information as to whether the first applicant was afforded daily exercise, the Court concludes that he was detained in the cramped conditions described above day and night for one year and four months.

99. 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. Although in the case at hand there is no indication that there was a positive intention to humiliate or debase the first applicant, 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 one year and four 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.

100. 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 his conditions of detention from 5 March 2001 to 15 July 2002 in remand centre IZ-77/2 in Moscow.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE FIRST APPLICANT'S CONDITIONS OF CONFINEMENT AT THE COURTHOUSE

101. The first applicant further complained under Articles 3 and 6 § 3 (b) of the Convention about the allegedly appalling conditions of his confinement at the premises of the Khamovnicheskiy District Court of Moscow. The Court will examine his complaint under Article 3 of the Convention, the text of which was cited above.

A. Submissions by the parties

102. The Government argued that the first applicant had failed to exhaust available domestic remedies because he had not complained to the

Khamovnicheskiy District Court about the conditions of his confinement at that court's convoy premises. On the merits, they relied on the letter from the President of the Khamovnicheskiy District Court and submitted that the first applicant's conditions of detention at the courthouse complied with the requirements set out in the Detention of Suspects Act. With reference to the certificate issued by the head of remand centre IZ-77/2, they claimed that the first applicant had been provided with a dry ration on the days of the court hearings, and concluded that the conditions of his confinement at the District Court's premises had not breached Article 3 of the Convention.

103. The first applicant maintained that he had not been fed on the days of court hearings and averred that the conditions of his confinement at the premises of the District Court had been in breach of Article 3 of the Convention. In particular, the cells had been overcrowded, insufficiently lit and unventilated, and he had not had unlimited access to drinking water and the toilet.

B. The Court's assessment

1. Admissibility

104. The Court notes firstly that, contrary to the Government's assertion, the first applicant raised before the Khamovnicheskiy District Court his complaint about the lack of food on the hearing days. The court declined to examine the complaint for lack of jurisdiction (see paragraphs 47 above). The Government did not specify what type of claim or complaint to the District Court would have been an effective remedy in their view and did not provide any information as to how this could have prevented the alleged violation or its continuation or provided the first applicant with adequate redress. In the absence of such evidence, the Court considers that the Government have not substantiated their claim that the remedy the first applicant allegedly failed to exhaust in relation to his complaint about the conditions of confinement at the courthouse was effective (see *Salmanov v. Russia*, no. 3522/04, § 56, 31 July 2008). Accordingly, the Court rejects the Government's objection.

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

2. Merits

106. The Court reiterates that to be regarded as degrading or inhuman for the purposes of Article 3 of the Convention a given form of treatment must attain a minimum level of severity (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII). When assessing conditions of

detention, account must be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

107. The Court further observes that the essence of the first applicant's complaint concerned the conditions of his confinement in the courthouse and the fact that he did not receive food on the days of court hearings. In this connection the Court notes that, apart from a general submission to the effect that the conditions of the first applicant's confinement in the Khamovnicheskiy District Court had conformed to the Detention of Suspects Act, the Government failed to furnish any detailed information as to the cells in which the first applicant had been detained, their dimensions, the number of inmates held there together with the first applicant, the availability of access to a toilet and other physical conditions of his detention there. Neither did they contest the first applicant's detailed description of those conditions, in particular as regards his allegations of overcrowding, insufficient lighting and ventilation and lack of access to drinking water and a toilet (see paragraph 46 above). In the absence of specific comments from the Government, the Court is therefore inclined to accept the first applicant's submission that on the days of court hearings he was held in cells for escorted prisoners measuring 5 sq. m together with eight to ten inmates, that those cells were poorly ventilated and lit and that he only had access to the toilet as directed by the warden (compare *Starokadomskiy v. Russia*, no. 42239/02, § 57, 31 July 2008, and *Salmanov*, cited above, § 63).

108. Furthermore, it appears that the first applicant did not receive appropriate nutrition on the days when he was transported to the court. The Government did not contest the assertion that on the days of court hearings the first applicant left the remand centre before breakfast and did not return there until after dinner (see *Vlasov v. Russia*, no. 78146/01, § 96, 12 June 2008; compare *Starokadomskiy*, cited above, § 58; see, by contrast, *Bagel v. Russia*, no. 37810/03, § 69, 15 November 2007). Moreover, the Court is not convinced by the Government's unsupported assertion that the first applicant was provided with a dry ration on the days of his transfers to the court. They failed to produce a copy of the certificate to that effect from the head of the remand centre mentioned in their observations (see paragraph 49 above) or any other evidence to support that contention (see, by contrast, *Bagel*, cited above, § 69). Neither did the Government dispute the first applicant's submission that, despite his not being fed, his relatives had not been allowed to supply him with food on the hearings days. Similarly, it appears that the first applicant had access to drinking water only when the wardens let him visit the toilet (see *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 55, 4 May 2006). In connection with its findings above, the Court would emphasise that it considers it unacceptable for a person to be detained in conditions in which no provision is made for meeting his or her basic needs

(see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 106, ECHR 2008-... (extracts)).

109. According to the information provided by the first applicant and not contested by the Government, he was detained in these cramped conditions on at least six days. Occasionally, he remained in a cell for most of the day, since some of the court hearings started at 3, 5 or 6 p.m. (see paragraph 46 above). Although the first applicant's detention in these cramped conditions was not continuous, the Court considers that the overall number of times he had to endure them cannot be deemed negligible (see, by contrast, *Seleznev v. Russia*, no. 15591/03, § 61, 26 June 2008). It further should not be overlooked that the first applicant's detention in the cramped conditions described above alternated with his detention in the remand centre, which the Court has already found above to have amounted to inhuman and degrading treatment. In these circumstances, the cumulative effect of the first applicant's detention in the overcrowded, poorly ventilated and poorly lit courthouse cells, without food, drink or free access to the toilet, must have been of an intensity such as to induce physical suffering and mental fatigue. This must have been further aggravated by the fact that the above treatment occurred during the first applicant's trial, that is, when he most needed his powers of concentration and mental alertness (see *Starokadomskiy*, cited above, § 65). Having regard to the foregoing, the Court concludes that the first applicant was subjected to inhuman and degrading treatment contrary to Article 3 of the Convention.

110. Accordingly, there has been a violation of that provision.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

111. The first applicant further complained under Article 5 § 1 of the Convention that there had been no legal basis for his detention after 12 March 2001. Article 5 § 1, in its relevant parts, provides as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so..."

A. Admissibility

112. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention and is not inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

113. The first applicant argued that, under the CCrP, preventive measures, and in particular pre-trial detention, were as a general rule to be applied to an "accused", a person who had already been charged with a particular crime. Article 90 of the CCrP concerned an exceptional situation in which those measures could be applied to a person suspected of having committed a crime before charges were brought against him. The existence of that provision reflected fundamental differences in the procedural status of a "suspect" and an "accused". Hence, once the first applicant, who had been placed in custody as a "suspect", had been charged and had changed his procedural status, the authorities had been under an obligation to consider anew the issue of his detention. However, no such decision had been taken after the prosecutor had charged him on 12 March 2001 and thus his detention after that date had been unlawful.

114. The Government submitted that the first applicant's detention during the impugned period of time had been covered by the prosecutor's decision of 4 March 2001. Under Article 97 of the CCrP, the initial period of detention of a person suspected of or charged with an offence carrying a sentence of imprisonment of more than two years had been two months. Thus, the two-month period set down in that provision had not expired on 12 March 2001, when the first applicant had been charged, and would have expired only on 4 May 2001. On 27 April 2001, in accordance with Article 97 of the CCrP, the prosecutor extended the first applicant's detention for three months, that is, until 2 June 2001. The Government therefore concluded that the first applicant's detention between 12 March and 27 April 2001 had conformed to the requirements of domestic law.

2. The Court's assessment

115. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. The "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which

is to prevent persons from being deprived of their liberty in an arbitrary fashion (see *Khudoyorov v. Russia*, no. 6847/02, § 124, ECHR 2005-... (extracts)).

116. The Court observes that on 2 March 2001 the first applicant was arrested on suspicion of having committed a crime. On 4 March 2001 the Khamovniki district prosecutor authorised his placement in custody on suspicion of attempted murder and aggravated robbery on the basis of Articles 90-92 and 96 of the CCrP. On 12 March 2001 an investigator with the Khamovniki district prosecutor's office charged the first applicant with attempted murder and aggravated robbery. On 27 April 2001 the Khamovniki district prosecutor extended the first applicant's detention until 2 June 2001.

117. Relying on Article 90 of the CCrP, the first applicant argued that the fact of being charged with the crimes of which he had been suspected and the change in his procedural status from suspect to accused had called for an examination of the issue of his remand in custody and that the absence of such decision had rendered his detention after 12 March 2001 unlawful. The Government replied that the first applicant's detention had been covered by the prosecutor's initial decision of 4 March 2001 which, according to Article 97 of the CCrP, had remained a valid basis for his detention for two months, that is, until 4 May 2001.

118. The Court observes at the outset that the first applicant did not explain why the change in his procedural status from suspect to accused should have necessitated a new decision on the matter of his detention, and did not refer to any provision in the domestic law to support his submission. Indeed, no such obligation on the part of the competent authorities can be found in the text of Article 90 (see paragraph 54 above). Under that provision, the authorities were under an obligation either to charge the suspect within ten days of his arrest or to release him if no charges had been brought within that time-limit.

119. As noted above, the first applicant's placement in custody on 4 March 2001 was ordered on the basis of Articles 90 and 96 of the Code. Under Article 96, pre-trial detention could be ordered in respect of a person suspected of or charged with having committed offences punishable by more than two years' imprisonment. The first applicant was suspected of attempted murder and several robberies and the conditions set out in Article 96 were therefore met. Furthermore, the charges against the first applicant were brought eight days after the Khamovniki district prosecutor had authorised his placement in custody as a suspect, that is, within the ten-day time-limit prescribed by Article 90. Hence, the domestic authorities complied with the requirements set out in Articles 90 and 96 of the Code. Under Article 97, the initial period of pre-trial detention lasted two months. Bearing in mind that the first applicant was arrested on 2 March 2001on suspicion of having committed the above-mentioned offences, that initial

period would have expired on 2 May 2001, as noted in the prosecutor's decision of 27 April 2001 (see paragraph 12 above). Having regard to the text of Article 97, the Court is satisfied that this period of time was sufficiently foreseeable to enable the first applicant to regulate his conduct, if necessary with appropriate advice.

120. Having regard to the foregoing, the Court finds that the first applicant's detention from 12 March to 27 April 2001 was covered by the decision of 4 March 2001. The lawfulness of that decision was not called into question. The first applicant did not argue that the prosecutor was not competent to issue the decision of 4 March 2001 or that that order had expired on 12 March 2001 or had otherwise been or had become invalid. Given its considerations set out above, the Court finds no evidence to conclude otherwise. Hence, it agrees with the Government and concludes that the first applicant's detention from 12 March to 27 April 2001 was covered by the decision of 4 March 2001 and was "lawful" for the purposes of Article 5 § 1 of the Convention.

121. Accordingly, there has been no breach of that provision.

V. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION ON ACCOUNT OF THE UNREASONABLENESS OF THE FIRST APPLICANT'S DETENTION

122. The first applicant also complained under Article 5 § 1 of the Convention that his continued detention had not been based on sufficient reasons. The Court will examine this complaint under Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial."

A. Submissions by the parties

123. The Government submitted that the first applicant had appealed only against the decision of 4 March 2001 authorising his placement in custody and against the first order extending his pre-trial detention. Hence, he had failed to exhaust domestic remedies in respect of the ensuing period of his detention. On the merits, they argued that the authorities had ordered and extended the first applicant's pre-trial detention because he had been arrested at the crime scene and the victims had identified him as one of their assailants. His detention was further justified by the gravity of the charges against him, the fact that he had had neither a permanent place of residence nor permanent employment in Moscow and the possibility that he might abscond and interfere with the establishment of the truth.

124. The first applicant argued that his detention had been based solely on the gravity of the charges against him. The statement of the District Court to that effect had, moreover, been contrary to Article 91 of the Code, which provided that the gravity of the charges was only one of the circumstances to be taken into account in the assessment of whether it was necessary to remand a person in custody. In its decision of 7 May 2001 the District Court had not referred to any grounds for the first applicant's detention listed in Article 89 of the Code. The first applicant had had a temporary registration at his relatives' address in Moscow. The prosecutor had failed to substantiate the alleged risk that he would abscond.

B. The Court's assessment

1. Admissibility

125. The Government argued that the first applicant had failed to exhaust domestic remedies because he had not appealed to the courts against the decisions extending his detention after 2 June 2001. The Court reiterates that in the context of an alleged violation of Article 5 § 3 the rule of exhaustion of domestic remedies requires that the applicant give the domestic authorities an opportunity to consider whether his right to trial within a reasonable time has been respected and whether there exist relevant and sufficient grounds continuing to justify the deprivation of liberty (see *Shcheglyuk v. Russia*, no. 7649/02, § 35, 14 December 2006).

126. Following his arrest on 2 March 2001, the first applicant remained in custody continuously until his conviction on 4 July 2002. It is not disputed that, after challenging the prosecutor's decisions of 4 March and 27 April 2001 authorising his placement in custody and extending his detention until 2 June 2001, the first applicant did not challenge before a court of appeal the subsequent extensions ordered by the prosecutor before the courts and those ordered by the first-instance court. Thus, he did not give an opportunity to the competent authorities to consider whether those further extensions were compatible with his Convention right to trial within a reasonable time or to release pending trial. Therefore, the Court accepts the Government's objection of non-exhaustion of domestic remedies in so far as it concerned the first applicant's failure to appeal against the extension orders after 2 June 2001.

127. Consequently, the Court declares inadmissible the first applicant's complaint under Article 5 § 3 concerning the period of his detention after 2 June 2001. The Court further notes that, in so far as the complaint concerned the first applicant's detention before 2 June 2001, it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other ground. It must therefore be declared admissible.

2. Merits

128. The Court observes that the period of the first applicant's detention under consideration lasted for three months.

129. According to the Court's case-law, the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features (see, among other authorities, *Kudła v. Poland* [GC], no. 30210/96, §§ 110-111, ECHR 2000-XI, and *Pihlak v. Estonia*, no. 73270/01, § 41, 21 June 2005). It falls in the first place to the national authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end, they must, while paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of a public interest requirement justifying a departure from the rule in Article 5, and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the well-documented facts stated by the first applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *Labita*, cited above, § 152, and *Kudła*, cited above, § 110).

130. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see, among other authorities, *Labita*, cited above, §§ 152 and 153).

131. Turning to the circumstances of the present case, the Court observes that the domestic authorities relied on three reasons to justify the first applicant's detention. Firstly, they relied on the fact that he had been apprehended *in flagrante delicto* and that the victims had identified him as one of the perpetrators. In other words, they relied on a reasonable suspicion that he had committed the offences with which he was subsequently charged. Having regard to the fact that the first applicant was arrested at the crime scene and was identified by the victims, the Court accepts that there was a reasonable suspicion that he had committed the serious offences with which he had been charged and which could warrant his detention (see *Jasinski v. Poland*, (dec.), no 30865/96, 21 January 2003).

132. The domestic authorities further relied on the gravity of the charges against the first applicant and on the risk that he might abscond and interfere with the establishment of the truth. The Court subscribes to their view that the severity of the sentence was a relevant element in assessment of the risk

of the first applicant's absconding or otherwise jeopardising the investigation at that early stage of the proceedings (see *Galuashvili v. Georgia*, no. 40008/04, § 48, 17 July 2008; see also *Ilijkov v. Bulgaria*, no. 33977/96, § 80, 26 July 2001). The Court is not persuaded by the first applicant's submission that the mere fact that he had a temporary registration at his relatives' address in Moscow was sufficient at this stage of the proceedings to dispel the fear that he might abscond (see *A.S. v. Poland*, (dec.), no. 39510/98, 9 October 2003).

133. Moreover, the authorities justified the first applicant's detention by reference to the need to carry out further confrontations with the victims, obtain the results of several forensic examinations and secure his access to the case file. Those reasons do not seem either relevant or sufficient to the Court. Nonetheless, their existence does not undermine the validity of the reasons which it has accepted as relevant and sufficient above.

134. As regards the first applicant's submission that the District Court in its decision of 7 May 2001 unlawfully noted that his detention could have been ordered solely on the basis of the gravity of the charges against him, it is observed that the court had examined the first applicant's complaint concerning the prosecutor's order of 4 March 2001 which had been the basis for the first applicant's detention. In that order the prosecutor relied on such factors as the reasonable suspicion against the first applicant, the gravity of the charges and the risk of his absconding and interfering with the investigation (see paragraph 8 above). From the District Court's reasoning it is clear that it endorsed the reasons adduced by the prosecutor. Furthermore, the district judge had regard to the information on the first applicant's personality (see paragraph 14 above). Hence, the Court is not persuaded by the first applicant's contention that the authorities ordered his detention solely on the ground of the gravity of the charges against him.

135. Lastly, the Court notes that the first applicant was prosecuted for having committed several robberies and an attempted murder in concert with two other persons, and considers that his case was of a certain complexity. It reiterates in this respect that in cases involving numerous defendants, collecting evidence is often a difficult task, as it is necessary to obtain voluminous evidence from many sources and to determine the facts and degree of alleged responsibility of each of the co-accused (see, *mutadis mutandis*, *Łaszkiewicz v. Poland*, no. 28481/03, §§ 59 and 61, 15 January 2008). The investigation in the present case required measures involving taking evidence from various sources, confronting the alleged perpetrators with the victims and carrying out a number of forensic examinations. Having regard to the amount of work carried out by the investigating authorities in the initial three months of the first applicant's detention (see paragraph 14 above), the Court does not find any failure on their part to act with due diligence during that period of time.

136. In view of the foregoing considerations, the Court concludes that the first applicant's detention did not, in the circumstances of the present case, amount to a violation of his rights under Article 5 § 3 of the Convention (see *Guluashvili*, cited above, § 51).

137. Consequently, the Court concludes that there has been no violation of Article 5 § 3 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

138. Lastly, the first applicant complained under Articles 6 and 8 of the Convention that his conviction had been based to a decisive extent on his confession obtained under duress and after being forced to refuse legal assistance, that his mother had not been informed immediately of his arrest and that she had not been permitted to visit him until 21 March 2001.

139. Having regard to all the materials in its possession, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

140. 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."

141. The first applicant did not submit a claim for just satisfaction either in respect of pecuniary or non-pecuniary damage or in respect of costs and expenses.

142. In such circumstances, the Court would usually make no award. In the present case, however, the Court has found a combination of violations of Article 3 of the Convention on account of the first applicant's ill-treatment in police custody, the ineffectiveness of the related investigation and the conditions of his detention and his confinement at the courthouse. Bearing in mind the absolute character of the right not to be subjected to inhuman and degrading treatment and the fact that violations of that right have been established on several accounts, the Court finds it equitable, in the particular circumstances of the case, to award the first applicant 5,000 euros (EUR) in respect of non-pecuniary damage (see *Babushkin v. Russia*, no. 67253/01, § 62, 18 October 2007, and *Mayzit*, cited above, § 88), plus any tax that may be chargeable to the first applicant.

C. Default interest

143. 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 first applicant's ill-treatment; the ineffectiveness of the related investigation; the conditions of the first applicant's detention in remand centre IZ-77/2 in Moscow; the conditions of his confinement at the Khamovniki District Court of Moscow; the unlawfulness of the first applicant's detention from 12 March to 27 April 2001; and the unreasonableness of the first applicant's detention in the period from 2 March to 2 June 2001 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 failure to conduct an effective investigation into the first applicant's allegations of ill-treatment;

3. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment inflicted on the first applicant by the police;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the first applicant's detention in remand centre IZ-77/2 in Moscow;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the first applicant's confinement at the Khamovniki District Court;

6. *Holds* that there has been no violation of Article 5 § 1 of the Convention as regards the first applicant's pre-trial detention from 12 March to 27 April 2001;

7. *Holds* that there has been no violation of Article 5 § 3 of the Convention;

8. *Holds*
   (a) that the respondent State is to pay the first applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000

(five 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.

Done in English, and notified in writing on 12 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President