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

FIRST SECTION

CASE OF NADROSOV v. RUSSIA

(Application no. 9297/02)

JUDGMENT

STRASBOURG

31 July 2008

FINAL

26/01/2009

This judgment may be subject to editorial revision.

In the case of Nadrosov v. Russia,

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 3 July 2008,

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

PROCEDURE

1. The case originated in an application (no. 9297/02) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Andrey Yuryevich Nadrosov ("the applicant"), on 18 December 2001.

2. The applicant was represented by Ms K. Kastromina, a lawyer in the International Protection Centre in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been severely beaten up by police officers and that there had been no effective investigation of his complaints of ill-treatment.

4. On 22 June 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1976 and lived until his arrest in Rostov-on-Don. He is now serving his sentence in a correctional colony in the town of Bataysk.

7. On 29 October 2000 two police officers accompanied by a person in civilian clothes approached the applicant at a bus stop. According to the applicant, the civilian punched him and the police officers held his hands behind his back in an armlock, hit him with a rubber truncheon on his head and back, body searched him and pushed him into a police car. They took the applicant to the Proletarskiy District police station. The applicant submitted that the beatings had continued at the station with a view to forcing him to confess to a theft.

8. The Government, relying on similar written statements made on 2 and 8 August 2005 by police officers A. and Av. and a written statement drawn up by the applicant's co-defendant, Mr P., disputed the applicant's description of events. They alleged that on 29 October 2000 he had been arrested on suspicion of having robbed truck drivers and had been taken to a police station. The relevant part of the statements read as follows:

Statement by police officer A.

"On 29 October 2000, after midnight, on an order of an officer on duty, I drove to the following address:... due to a call about a robbery in progress. As a result of the operation, data was gathered, victims' statements and explanations were recorded, and a certain police officer arrested Mr Nadrosov and Mr P. on suspicion of the crime and brought [them] to the police station. At present, due to the remoteness of the events, I cannot recall whether I questioned them and what they stated. I would like to add that on 29 October 2000, at 8.00 a.m., my shift ended and I left the police station. I took no further part in that police case. I strongly object to Mr Nadrosov's statements that police officers injured him in the police station; at present I cannot recall whether Mr Nadrosov raised any complaints about the actions of the police officers."

Statement by Mr P.

"... after that, police officers arrived at the [bus] stop and arrested certain participants in that brawl; I was among them. After I had been taken to the Proletarskiy District police station, Rostov-on-Don, the police officers informed me that I was suspected of having committed a robbery. Of course, I denied my guilt, stating that at night I was with my friends and that I had not committed any crime... After that, the police officers placed Mr Nadrosov, whom I did not know and who was also arrested by policemen on suspicion of the robbery, in my cell. I was not present when Mr Nadrosov was searched. I would also like to note that the police officers did not beat Mr Nadrosov in my presence... As I am aware, on 29 October 2000

> Mr Nadrosov complained that he did not feel well, due to which he was sent from the Proletarskiy District Police Department to a hospital. Subsequently, I saw Mr Nadrosov in a courtroom..."

9. On 30 October 2000 an ambulance was called for the applicant. Emergency doctors drew up a report noting that he had an injury to the left kidney and a closed injury on the left side of the chest. The applicant was taken to a hospital.

10. At the hospital doctors again examined the applicant and diagnosed him with "an injury to the lumbar region and a closed chest injury". The applicant explained that he had sustained the injuries when he had fallen from "the height of his own stature" on 29 October 2000. The medical report issued in the hospital also indicated that the applicant had had numerous subdermal haematomas measuring up to 2 centimetres in diameter in the left subcostal area.

11. On the same day the applicant underwent a laparocentesis, a surgical puncture to diagnose injuries to and remove fluid from internal organs, as a result of which his diagnosis was confirmed.

12. On the morning of 31 October 2000 the applicant was discharged from the hospital and taken back to the detention unit at the police station. On his admittance to the unit the applicant was examined and the following injuries were recorded on him: "an injury to the soft tissues of the left side of the chest and stomach, an injury behind the right ear, an injury to the right leg".

13. On 2 November 2000 the applicant's mother complained to the Proletarskiy District Prosecutor that the applicant had been severely beaten up by the police. She also alleged that her requests for a forensic medical examination of the applicant had been futile. She applied for an examination which would establish the nature and cause of the applicant's injuries.

14. On 10 November 2000 an assistant of the Proletarskiy District Prosecutor issued a decision not to institute criminal proceedings in connection with the applicant's claim of ill-treatment. The reasoning of the one-page decision, in full, read as follows:

> "According to explanations by Mr Ya., on 29 October 2000 he was an investigator on duty in the police department. On an order of the head of the task unit of the Proletarskiy District Police Department of Rostov-on-Don, he received materials of a case pertaining to a robbery of truck drivers... The materials contained information requiring institution of criminal proceedings under Article 162 § 2 of the Criminal Code of the Russian Federation. He instituted criminal proceedings and began the pre-trial investigation. Mr Nadrosov... was among the suspects.
>
> [Mr Ya.] drew up an arrest record in respect of Mr Nadrosov at 7.00 p.m., when he was brought to his office. Before that [Mr Ya.] performed other investigating actions, such as questioning victims. Mr Nadrosov committed the crime on 29 October 2000, thus his arrest was carried out in timely fashion.

He questioned Mr Nadrosov as a suspect and as an accused. During all their interviews the investigator used no physical or psychological pressure. Mr Nadrosov testified willingly. [Mr Nadrosov] did not make any complaints or requests in the course of the interviews. [Mr Ya.] did not see injuries on him. [Mr Ya.] did not see the police officers beat [Mr Nadrosov] up. Nor did [Mr Nadrosov] make any requests when he was served with the bill of indictment. Moreover, during the robbery Mr Nadrosov had had a fight with the truck drivers, who had actively defended themselves, and he could have sustained injuries then.

No physical or moral pressure was applied to Mr Nadrosov during the pre-trial investigation. His guilt was completely proven.

A policeman, Mr K., also totally denied that he had used any physical or psychological pressure on Mr Nadrosov.

In connection with the above-mentioned, there is no objective evidence, save for... a complaint about Mr Nadrosov's beatings. The actions of the police officers of the Proletarskiy District Police Department do not contain any elements of a crime as prescribed by Articles 285, 288 of the Criminal Code of the Russian Federation."

15. On the same day the assistant prosecutor sent a letter to the applicant's mother informing her that her request for institution of criminal proceedings against the police officers had been refused. He also noted that the decision could be appealed against to a higher-ranking prosecutor.

16. On an unspecified date the applicant's mother complained to the Rostov-on-Don Town Prosecutor that the applicant had been ill-treated and about the refusal to institute criminal proceedings against the police officers. She once again asked for a forensic medical examination of the applicant. According to the applicant, no response followed.

17. The applicant was committed to stand trial before the Proletarskiy District Court of Rostov-on-Don.

18. The applicant's lawyer complained to the District Court that the police officers had severely beaten the applicant up and asked it to examine the applicant's medical records. He insisted that the statement which the applicant had originally made to the police about the nature of his injuries had been given in fear of reprisals and did not reflect the truth of what had happened to him.

19. On 13 April 2001 the Proletarskiy District Court of Rostov-on-Don found the applicant guilty of aggravated robbery and sentenced him to nine years' imprisonment. As to the applicant's ill-treatment complaint, the District Court refused to call for or examine medical documents pertaining to the applicant's beatings. However, it heard the truck drivers, an emergency doctor who had been called to the applicant on 30 October 2000, and the police officer who had investigated the applicant's criminal case. The truck drivers confirmed that they had been attacked by several men, including the applicant, but they did not recall hitting the applicant in defence. The emergency doctor stated that she had been called to the applicant who had been complaining of severe pain in the back as a result of

a fall from a bench. She had examined the applicant and had not discovered any visible injuries. The applicant had not complained to her of beatings by the police. The investigator testified that the applicant had complained of ill-treatment by the police and that she had examined "necessary documents" pertaining to his complaint. Relying on the witnesses' testimony, the District Court dismissed the applicant's complaint of beatings as unfounded.

20. The applicant appealed against the judgment. In his statement of appeal he alleged, *inter alia*, that he had been severely beaten up by the police officers. He also complained that the District Court had refused to examine the medical evidence corroborating his allegations of ill-treatment.

21. On 21 August 2001 the Rostov Regional Court upheld the conviction, endorsing the reasons given by the District Court. The Regional Court also found that the applicant's allegations of ill-treatment were "not convincing" because they had been refuted by the statements of the emergency doctor and the fact that the applicant had initially stated that he had sustained an injury as a result of a fall from a height.

II. RELEVANT DOMESTIC LAW

Investigation of criminal offences

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

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. The applicant complained that on 29 October 2000 he had been subjected to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation of that

incident. The Court will examine this complaint from the standpoint of the State's negative and positive 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

24. The Government argued that the complaint was manifestly ill-founded. The police officers had not subjected the applicant to inhuman or degrading treatment. The applicant had not initially linked his injuries to the police actions alleging that those injuries had resulted from a fall from "his own height". He did not complain of ill-treatment to the police officers of the Proletarskiy District Police Department or to the emergency doctors. Furthermore, his allegations of ill-treatment were thoroughly examined by the prosecution authority and domestic courts. Following questioning of the police officers, the applicant's allegations were found to be unsubstantiated.

25. The applicant insisted on his description of events on 29 October 2000. He pointed out that medical records drawn up in the hospital on 30 October 2000 indicated that he had had multiple subdermal hematomas and severe injuries to his chest and left kidney. He further submitted that the statements by the police officers A. and Av. and his co-defendant Mr P. had no evidential value. The police officers had not taken part in his arrest and had already gone off duty by the time the beatings started at the police station. As to Mr P., he merely testified that no beatings had taken place "in his presence". Moreover, those statements had been taken almost five years after the events under consideration. The applicant further noted that his complaints of ill-treatment to the domestic authorities were futile and his requests for a forensic medical examination had gone unanswered.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) Alleged ill-treatment of the applicant

i. General principles

27. 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 or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, judgment of 15 November 1996, *Reports* 1996-V, p. 1855, § 79). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3288, § 93).

28. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. In accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudla v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI).

29. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva v. Russia*, no. 4353/03, § 73, ECHR 2006-... (extracts); *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005; and *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no. 65859/01, § 59, 7 December 2006; *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, § 38; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

ii. Application of the above principles in the present case

30. 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*, judgment of 18 January 1978, Series A no. 25, pp. 64-65, § 161). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

31. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them (see *Klaas v. Germany*, judgment of 22 September 1993, Series A no. 269, p. 17, § 29). Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006). Where allegations are made under Article 3 of the Convention, however, the Court must apply a particularly thorough scrutiny (see, *mutatis mutandis*, *Ribitsch*, cited above, p. 24, § 32).

32. Turning to the facts of the present case, the Court notes with regret that the applicant was not medically examined before his admission to the unit at the police station on 29 October 2000. On the following day emergency doctors were called to him in view of his complaints of severe pain in the back. The doctors recorded an injury to the left kidney and a closed injury to the left side of the chest (see paragraph 9 above). The applicant was transferred to the hospital where the preliminary diagnosis was confirmed. According to the medical record drawn up in the hospital, the applicant had also sustained multiple subdermal haematomas measuring up to two centimetres in diameter in the left subcostal area (see paragraph 10 above). Another medical report, which was issued on the applicant's return to the detention unit on 31 October 2000, indicated that, in addition, he had injuries behind his right ear and on the right leg (see paragraph 12 above).

33. In the first place, the Court observes that the Government did not claim that the injuries sustained by the applicant could have dated from a period prior to his being arrested. In response to the findings in the medical reports, the Government claimed that the applicant had been injured as a result of a fall either from a bench or from "his own height". The Court

considers that the Government's explanation sits ill with the nature of the applicant's injuries as recorded in the medical reports. While the Court does not exclude the possibility of accidents occurring in detention, it does not find it convincing that the applicant could have sustained multiple haematomas and injuries on the left side of the chest and back and at the same time received injuries of the right leg and behind the right ear through a single accidental fall from a bench or from another height. The Court notes the Government's argument that the applicant himself had cited a fall as a cause of his injuries. However, the Court has doubts about the credibility of the applicant's statements. It is not surprising that the applicant did not disclose the real cause of his injuries to the emergency doctors while still in the presence of the alleged offenders. The Court cannot rule out the possibility that the applicant felt intimidated by the persons he had accused of having ill-treated him (see *Colibaba v. Moldova*, no. 29089/06, § 49, 23 October 2007, and *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 100, ECHR 2004-IV (extracts)). The Court must also have regard to the fact that the applicant, in his complaints to the prosecution authorities and later to the district and regional courts, was unequivocal in his account that he had been ill-treated by police officers during the arrest and while in custody. The applicant consistently denied the accuracy of the statement which he had made to the police and emergency doctors (see paragraphs 13 and 20 above).

34. The Court further observes that in their submissions the Government relied on the statements by the two police officers and the applicant's co-defendant (see paragraph 8 above). In this connection the Court accepts the applicant's argument that those statements are of little evidential value in view of the period of time which elapsed between the events under consideration and the time when those statements were made and the fact that those persons were not eyewitnesses to the applicant's arrest or his subsequent questioning in the police station.

35. 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 injuries as recorded in the medical reports drawn up in the detention unit and the hospital (see paragraph 32 above) were the result of the treatment of which the applicant complained and for which the Government bore responsibility (see *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 30, 20 July 2004).

36. The Court reiterates the applicant's allegation that the police officers beat him up during the arrest and subsequently at the police station. However, the conclusion that the applicant's injuries were caused by the treatment he underwent under the control of the authorities and the fact that the Government have not furnished any arguments which would provide a

basis to explain or justify the force used make it unnecessary for the Court to inquire into the specific circumstances surrounding the use of violence against the applicant. The Court, nevertheless, considers it necessary to stress that it has never been argued that the applicant resisted arrest, attempted to escape or did not comply with lawful orders of the police officers. Furthermore, there is no indication that at any point during his arrest or subsequent detention at the police station he threatened the police officers, for example, by openly carrying a weapon or by attacking them (see, by contrast, *Necdet Bulut v. Turkey*, no. 77092/01, § 25, 20 November 2007, and *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 62, 20 June 2002). The Court therefore does not discern any necessity which might have prompted the use of violence against the applicant. It appears that the use of force was retaliatory in nature and was aimed at debasing the applicant and driving him into submission. In addition, the treatment to which the applicant was subjected must have caused him mental and physical suffering, even though it did not apparently result in any long-term damage to health.

37. Accordingly, having regard to the nature and the extent of the applicant's injuries, the Court concludes that the State is responsible under Article 3 on account of the inhuman and degrading treatment to which the applicant was subjected by the police and that there has thus been a violation of that provision.

(b) Alleged inadequacy of the investigation

38. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this

standard (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, § 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports* 1998-VIII, § 102 et seq.).

39. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 for the ill-treatment of the applicant (see paragraph 37 above). The applicant's complaint in this regard is therefore "arguable". The authorities thus had an obligation to carry out an effective investigation into the circumstances in which the applicant sustained his injuries (see *Krastanov v. Bulgaria*, no. 50222/99, § 58, 30 September 2004).

40. In this connection, the Court notes that the prosecution authorities who were made aware of the applicant's beating carried out a preliminary inquiry which did not result in criminal prosecutions against the perpetrators of the beating. The applicant's ill-treatment complaints were also a subject of the examination by the domestic courts at the two levels of jurisdiction. In the Court's opinion, the issue is consequently not so much whether there was an inquiry, since the parties did not dispute that there was one, as whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the inquiry was "effective".

41. The Court reiterates that the applicant was entirely reliant on the prosecutor to assemble the evidence necessary to corroborate his complaint. The prosecutor had the legal powers to interview the police officers, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for establishing the truth of the applicant's account. His role was critical not only to the pursuit of criminal proceedings against the perpetrators of the offences but also to the pursuit by the applicant of other remedies to redress the harm he had suffered (see paragraph 22 above).

42. The Court will therefore first assess the promptness of the prosecutor's investigation, viewed as a gauge of the authorities' determination to prosecute those responsible for the applicant's ill-treatment (see *Selmouni v. France* [GC], no. 25803/94, §§ 78 and 79, ECHR 1999-V). In the present case the applicant's mother brought the applicant's allegations of ill-treatment to the attention of the authorities by filing a complaint with the Proletarskiy District Prosecutor on 2 November 2000 (see paragraph 13 above). It appears that the Proletarskiy District Prosecutor's office launched its inquiry immediately after being notified of the alleged beatings.

43. However, with regard to the thoroughness of the inquiry, the Court notes some discrepancies capable of undermining its reliability and effectiveness. Firstly, no evaluation was carried out with respect to the quantity and nature of the applicant's injuries. The Court observes that the applicant's mother asked for the applicant to be examined by a forensic doctor. The Court reiterates in this connection that proper medical

examinations are an essential safeguard against ill-treatment. The forensic doctor must enjoy formal and *de facto* independence, have been provided with specialised training and been allocated a mandate which is broad in scope (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 55 and § 118, ECHR 2000-X). In the instant case, the Court notes with regret that the assistant prosecutor omitted to request a medical examination of the applicant or at least to take statements from the emergency and hospital doctors attending the applicant. In delivering his decision of 10 November 2000, the assistant prosecutor did not even mention the medical reports which listed injuries sustained by the applicant. In this connection the Court is concerned that the lack of any "objective" evidence - which medical reports could have been – was subsequently relied on by the assistant prosecutor as a ground for his decision not to institute criminal proceedings against the police officers (see paragraph 14 above).

44. Further, the Court finds that the applicant's right to participate effectively in the investigation was not secured. It transpires from the assistant prosecutor's decision of 10 November 2000 that the investigator did not hear the applicant in person and that he did not even consider mentioning his version of events in the decision. In fact, it is apparent from the decision of 10 November 2000 that the assistant prosecutor based his conclusions solely on the testimonies given by the police investigator who had been assigned to the applicant's criminal case and a police officer who had taken part in the applicant's arrest. The assistant prosecutor accepted too readily their denial that force had been used against the applicant. The Court also cannot but note the glaring contradictions in the assistant prosecutor's findings and his selective and somewhat inconsistent approach to the assessment of evidence. Without statements from the truck drivers or the applicant or any evidence from independent sources the assistant prosecutor, nevertheless, assumed that the applicant could have sustained injuries in the fight with the truck drivers. The Court notes that while the assistant prosecutor may not have been provided with the names of individuals who may have witnessed the applicant's arrest at the bus stop on 29 October 2000 or who could have seen the applicant at the police station, he could have been expected to take steps of his own initiative to ascertain possible eyewitnesses. Furthermore, he took no meaningful measures to determine the identity of other police officers who had taken part in the applicant's arrest and his subsequent interrogation in the police station. The Court therefore finds that the assistant prosecutor's failure to look for corroborating evidence and his deferential attitude to the police officers must be considered to be a particularly serious shortcoming in the investigation (see *Aydın v. Turkey*, judgment of 25 September 1997, *Reports of Judgments and Decisions* 1997-VI, § 106).

45. Finally, the Court notes that the applicant's complaints to a higher-ranking prosecutor produced no result. As regards the judicial proceedings,

the Court finds it striking that while dealing with the applicant's ill-treatment complaints the domestic courts considered it unnecessary to call on and take into account the medical reports pertaining to the applicant's injuries (see paragraphs 19-21 above). They concluded that the applicant's allegations were "not convincing" by endorsing testimonies given by the police investigator and an emergency doctor. Neither the District nor Regional courts manifested interest in identifying and personally questioning eyewitnesses to the applicant's arrest and hearing the police officers involved in the incident (see *Zelilof v. Greece*, no. 17060/03, § 62, 24 May 2007 and *Osman v. Bulgaria*, no. 43233/98, § 75, 16 February 2006). For the Court, this unexplained shortcoming in the proceedings deprived the applicant of an opportunity to challenge effectively the alleged perpetrators' version of the events (see *Kmetty v. Hungary*, no. 57967/00, § 42, 16 December 2003). The Court also observes that the domestic courts paid no attention to the applicant's submission that he had had no choice but to cite a fall as a cause of his injuries while still in the hands of the persons who had ill-treated him. Both the District and Regional courts relied heavily on the assistant prosecutor's decision of 10 November 2000. In fact, it appears that the domestic authorities did not make any meaningful attempt to bring those responsible for the ill-treatment to account.

46. Having regard to the above failings of the Russian authorities, the Court finds that the investigation carried out into the 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.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

47. The applicant further complained under Article 5 §§ 1 and 3 of the Convention that there had been no grounds for his arrest and subsequent detention and that his arrest had not been authorised by a court. Article 5, in so far as relevant, reads 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;
>
> ...

> 3. 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. Release may be conditioned by guarantees to appear for trial."

48. The Court observes that it is not required to decide whether or not the applicant's complaints concerning his detention disclose an appearance of a violation of Article 5 of the Convention. It reiterates that, according to Article 35 of the Convention, the Court may only deal with the matter within a period of six months from the date on which the final decision was taken. It observes that the applicant's pre-trial detention ended on 13 April 2001 when the Proletarskiy District Court of Rostov-on-Don convicted him (see *Labita v. Italy* [GC], no. 26772/95, § 147, ECHR 2000-IV). After that date his detention no longer fell within the ambit of Article 5 § 1 (c), but within the scope of Article 5 § 1 (a) of the Convention (see, for instance, *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39). The applicant lodged his application with the Court on 18 December 2001, which is more than six months after his pre-trial detention had ended.

49. It follows that this part of the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

50. The applicant complained under Article 6 of the Convention that the investigating authorities had attempted to force him to confess to the robbery, that the domestic courts had not assessed evidence correctly, had misapplied the law and misinterpreted the facts and that the trial judge had been partial and had sided with the prosecutor.

51. However, having regard to all the material 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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."

53. On 19 October 2005 the Court invited the applicant to submit his claims for just satisfaction. He did not submit any such claims within the required time-limits.

54. In such circumstances the Court would usually make no award. In the present case, however, the Court has found a violation of the applicant's right not to be subjected to the inhuman and degrading treatment. Since this right is of absolute character, the Court finds it possible to award the applicant 10,000 euros (EUR) by way of non-pecuniary damage (compare *Mayzit v. Russia*, no. 63378/00, §§ 87-88, 20 January 2005 and *Igor Ivanov v. Russia*, no. 34000/02, §§ 48-50, 7 June 2007), plus any tax that may be chargeable.

55. 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 ill-treatment of the applicant by the police officers and the ineffectiveness of the investigation into the incident admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;

3. *Holds*

   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;

   (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 31 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President