



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

FIRST SECTION

CASE OF FILATOV v. RUSSIA

(Application no. 22485/05)

JUDGMENT

STRASBOURG

8 November 2011

FINAL

08/02/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Filatov v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 22485/05) 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 Yevgeniy Mikhaylovich Filatov (“the applicant”), on 24 May 2005.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been ill-treated while in State custody and that the domestic authorities had failed to investigate the above incident.

4. On 20 March 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and is currently serving a sentence of imprisonment in a penal establishment in Irkutsk.

1. Applicant's arrest, alleged ill-treatment and investigation thereof

6. On 28 November 2002 at 7.30 a.m. the police arrived at the applicant's flat, arrested him and took him to the Pervorechenskiy District police station of Vladivostok (*Первореченский РУВД г. Владивостока*) to question him about his suspected involvement in the murder of a certain P. on 26 November 2002.

7. According to the applicant, the questioning continued for twenty-four hours at a stretch and was accompanied by severe beatings. The police officers allegedly handcuffed the applicant to a chair, put a cloth bag with a stranglehold on his head and started suffocating him and beating him at the same time on his head with heavy folders, after which he fainted. When he regained consciousness the beatings continued. The police officers slapped him on his ears and shouted in his ears. After that they put a plastic bag on top of the cloth bag and continued suffocating him and beating him. Following another loss of consciousness the police officer tortured the applicant with an electric current, during which he again fainted several times. Each time the applicant fainted, the police officers poured water over him to make him come to his senses. The applicant also alleged that a certain T. and K. had participated in the beatings.

8. According to the applicant, at 7 a.m. on 29 November 2002 the investigator took him to an administrative arrest cell (*камера административно задержанных*). However, the officer on duty allegedly refused to admit the applicant in view of his injuries.

9. At about 12 noon on 29 November 2002 the applicant was taken for forensic medical examination.

10. Having examined the applicant, the forensic medical expert found numerous injuries on his body (forensic expert report no. 5663): bruises on the superior and inferior eyelids of both eyes measuring 7 by 6 cm and 6 by 5 cm respectively, on the right cheekbone measuring 6 by 4 cm; on the forehead measuring 4 by 3 cm, on the left auricle measuring 4 by 3 cm, in the right parotid area measuring 3 by 4 cm, on the neck measuring 5 by 4 cm, on the applicant's right shoulder blade measuring 5 by 4 cm, in the infrascapular and lumbar regions measuring 4 by 3 cm and 3 by 2 cm respectively, on the left shoulder joint measuring 8 by 7 cm, in his right underarm area measuring 8 by 6 cm and 6 by 4 cm and on his stomach measuring 6 by 4 cm. The expert also recorded two abrasions on the left side of the applicant's forehead measuring 2 by 0.2 cm and 1.7 by 0.2 cm, and multiple abrasions on the applicant's left forearm and hand measuring from 0.9 by 0.7 cm to 0.5 by 0.3 cm. The expert concluded that the injuries were approximately one day old, and that the bruises could have been caused by a blow from a hard, blunt object and the abrasions by a hard object with a rough surface or with a sharp edge. The report went on to say that the injuries in question had not caused any harm to the applicant's health.

11. The applicant was subsequently taken to the temporary detention ward, from where he was released on 3 December 2002 under a written undertaking not to leave his place of residence.

12. From 5 December to 23 December 2002 the applicant underwent in-patient hospital treatment for brain concussion, thoracic spine contusion and multiple soft-tissue bruises.

13. On 17 December 2002 the applicant complained about the alleged beatings to the Primorye Regional Prosecutor's Office. His complaint contained a detailed account of the alleged ill-treatment.

14. On 20 December 2002 the applicant was questioned about the circumstances of the alleged beatings.

15. On 30 January 2003 the chief investigator of the Pervorechenskiy District Prosecutor's Office of Vladivostok refused to initiate criminal proceedings in the absence of an indication that a crime had been committed. The decision was based on statements by police officers B., V., P. and Yel. and investigator P., who denied having applied any physical force against the applicant or having seen anybody else using violence against him. Police officers B. and V. further submitted that they had seen abrasions on the applicant's face and hands and that the applicant had explained that he had received them on 26 November 2002 in a brawl with four unknown teenagers. Police officer Yel. further submitted that on 28 November 2002, at the police station, the applicant had threatened to have criminal proceedings instituted against the police officers, after which he had intentionally hit the right side of his head against the door frame.

16. On 30 April 2003 the supervising prosecutor quashed the above-mentioned decision and ordered an additional inquiry, which would require, *inter alia*, the questioning of a certain T. who, according to the applicant, had also participated in the beatings, the questioning of the officer on duty who had refused to admit the applicant to an administrative arrest cell and the assessment of the relevant medical evidence.

17. On 20 May 2003 the chief investigator of the Pervorechenskiy District Prosecutor's Office of Vladivostok again refused to initiate criminal proceedings against the police officers. The decision relied on statements by police officers, forensic expert report no. 5663 and statements by the applicant's partner and the latter's family to the effect that they had seen abrasions on the applicant's forehead and hands when he returned home in the evening of 26 November 2002.

18. On 17 June 2003 the supervising prosecutor quashed the above-mentioned decision on appeal, with an order, among other things, to question a certain T., whom the applicant alleged to have participated in the beatings.

19. On 27 June 2003 the chief investigator of the Pervorechenskiy District Prosecutor's Office of Vladivostok refused for the third time to

initiate criminal proceedings against the alleged perpetrators. The decision was made on the basis of the evidence relied upon in the previous refusals.

20. In the meantime, on 28 July 2003 the forensic medical expert finalised an additional forensic medical report. The report stated that the abrasions discovered on the applicant's face, forearm and hand during the initial forensic medical examination were approximately one to three days old, which did not exclude the possibility that they had been inflicted on him on 26 November 2002. The bruises could have been caused by the impact of blows by or collision with a hard, blunt object. The abrasions had caused mild damage to the applicant's health, whereas the remaining injuries had not caused any such harm. The diagnosis of "brain concussion" had not been confirmed since the degenerative changes in the applicant's brain cortex, as revealed during the CT scan performed on 19 December 2002, confirmed a long-lasting process which had not had any connection with the events alleged by the applicant.

21. On 20 September 2003 the supervising prosecutor quashed the decision of 27 June 2003 and ordered that the applicant be questioned with the aim of identifying T., following which the latter would be questioned on the circumstances alleged by the applicant.

22. On 23 September 2003 the chief investigator of the Pervorechenskiy District Prosecutor's Office once again took a decision to refuse the institution of criminal proceedings. Further to the evidence relied on previously, the above decision indicated that, besides the police officers, no unauthorised persons had been present at the applicant's arrest and subsequent questioning.

23. On 6 November 2003 the supervising prosecutor quashed the above-mentioned decision, finding that it was necessary to question K., who, as alleged by the applicant, had also participated in the beatings.

24. On 17 November 2003 the chief investigator of the Pervorechenskiy District Prosecutor's Office took the decision for the fifth time to refuse the institution of criminal proceedings against the police officers. In the course of the additional inquiry which led to the refusal, K. was identified and questioned, yet he denied his alleged participation in the investigation and the applicant's beatings.

25. On 24 June 2004 the supervising prosecutor quashed that decision and entrusted an additional investigation to another chief investigator of the Pervorechenskiy District Prosecutor's Office.

26. On 27 June 2004 it was decided, yet another time, to refuse the institution of criminal proceedings against the police officers. The decision summarised the history of the previous decisions, endorsed the same arguments and contained no new evidence.

27. On 12 October 2004 the supervising prosecutor quashed that decision and ordered an additional inquiry. The decision in question indicated, among other things, that the version of events according to which

the applicant had allegedly sustained the injuries in question as a result of a brawl with unidentified teenagers had been disproved by the conclusion of the (initial) forensic medical expert to the effect that the injuries discovered on the applicant's body were approximately one day old and by the statements of the applicant's partner. The decision further indicated the need to question police officer Yel. and other police officers about the circumstances of the applicant's alleged self-harm, and to adduce evidence as to the time of the applicant's arrest, his being brought to the police station and to the administrative arrest cell, and the time of his release.

28. On 18 October 2004 the chief investigator refused to initiate criminal proceedings for the seventh time. No attempt was made to explain the discrepancy between the (initial) conclusions of the medical expert as to the assessment of the applicant's injuries and the version of events advanced to the effect that the injuries had been inflicted on the applicant on 26 November 2002 by unknown young people.

29. On an unspecified date the above-mentioned decision was quashed by the supervising prosecutor and an additional inquiry was ordered. The inquiry was entrusted to the Sovetskiy District Prosecutor's Office of Vladivostok.

30. On 19 May 2006 the chief investigator of the Sovetskiy District Prosecutor's Office also refused to initiate criminal proceedings for lack of evidence of a crime in the actions of the police officers. The decision relied on statements by police officers who had denied using violence against the applicant, statements by the applicant's partner and the latter's relatives who had confirmed having seen the applicant returning home on 26 November 2002 with bleeding abrasions on his face and hands, and the results of both forensic medical examinations. It was noted in the decision that the injuries found on the applicant's body had not caused any harm to his health and that, as had been confirmed by the forensic medical expert (see paragraph 20 above), they could have been inflicted on 26 November 2002, that is, prior to the applicant's having been taken to the police station.

31. In June 2009 the applicant applied to the Sovetskiy District Court of Vladivostok, seeking to challenge the refusal of 19 May 2006. However, on 17 June 2009 the Sovetskiy District Court returned the applicant's claim without examination, citing an out-of-time appeal as the reason for such a decision. The decision in question, open to appeal, was not appealed against by the applicant.

2. Alleged stealing of the applicant's belongings

32. The applicant alleged that while he was undergoing hospital treatment for his injuries, a certain K. had stolen a TV set and a VCR from his flat.

33. The applicant sought to have criminal proceedings initiated against the alleged perpetrator. However, on 19 May 2006 the chief investigator of

the Sovetskiy District Prosecutor's Office in Vladivostok refused his request, finding no indication that a crime had been committed.

3. Applicant's conviction

34. On 12 April 2004 the Primorye Regional Court convicted the applicant of aggravated murder, robbery and stealing an official document and sentenced him to nineteen years' imprisonment.

35. On 8 December 2004 the Supreme Court of Russia excluded the stealing of an official document from the qualification of the applicant's offence, in view of the time-bar in respect of this charge, and reduced the sentence to eighteen years' imprisonment.

II. RELEVANT DOMESTIC LAW

A. Criminal Code

36. Abuse of office associated with the use of violence or entailing serious consequences carries a punishment of up to ten years' imprisonment (Article 286 § 3 of the Criminal Code).

B. Code of Criminal Procedure

37. The Russian Code of Criminal Procedure (Law no. 174-FZ of 18 December 2001, in force from 1 July 2002 - "the CCrP") states that a criminal investigation may be initiated by an investigator or prosecutor on a complaint by an individual (Articles 140 and 146). Within three days of receipt of such a complaint, the investigator or prosecutor must carry out a preliminary inquiry and make one of the following decisions: (1) to open criminal proceedings if there are reasons to believe that a crime has been committed; (2) to decline to open criminal proceedings if the inquiry reveals that there are no grounds to initiate a criminal investigation; or (3) to refer the complaint to the competent investigative authority. The complainant must be notified of any decision taken. The decision not to open criminal proceedings is amenable to appeal to a higher prosecutor or a court of general jurisdiction (Articles 144, 145 and 148).

38. The CCrP provides for judicial review of a decision or (in)action on the part of an inquirer, investigator or prosecutor which has affected constitutional rights or freedoms. The judge is empowered to verify the lawfulness and reasonableness of the decision/(in)action and to grant the following forms of relief: (1) to declare the impugned decision/(in)action unlawful or unreasonable and to order the respective authority to remedy the violation; or (2) to reject the complaint (Article 125).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

39. The applicant complained that on 28 and 29 November 2002 he had been beaten up by the police and that the investigation into his respective complaint had been ineffective. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. Submissions by the parties

41. Referring to the results of the inquiries conducted by the investigating authorities into the applicant's allegations, the Government submitted that the applicant's injuries had been sustained prior to his arrest by the police, on 26 November 2002, supposedly in a fight with unidentified young people. Accordingly, the applicant's allegations had been found to be groundless.

42. The applicant maintained his complaint.

2. The Court's assessment

(a) Alleged inadequacy of the investigation

(i) General principles

43. 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 (see *Assenov and Others*

v. Bulgaria, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

44. An obligation to investigate “is not an obligation of result, but of means”: not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant’s account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II; *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III; and *Mikheyev v. Russia*, no. 77617/01, § 107, 26 January 2006).

45. 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 (see *Mikheyev*, cited above, § 108, and *Nadrosov v. Russia*, no. 9297/02, § 38, 31 July 2008).

46. The investigation into the alleged ill-treatment must be prompt. 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, *Mikheyev*, cited above, § 109; *Maksimov v. Russia*, no. 43233/02, § 83, 18 March 2010; and *Lopata v. Russia*, no. 72250/01, § 110, 13 July 2010).

47. Finally, the investigation into alleged ill-treatment by State agents should be independent (see *Öğür v. Turkey* [GC], no. 21954/93, ECHR 1999-III, §§ 91-92; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, § 37, 20 July 2004; *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III; and *Oleg Nikitin v. Russia*, no. 36410/02, § 35, 9 October 2008).

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

48. It has not been contested by the Government that on 17 December 2002 the applicant complained to the public prosecutor’s office about the alleged beatings of 28 and 29 November 2002. The matter was, hence, duly brought before the competent authorities at a time when they could reasonably have been expected to investigate the circumstances in question. The applicant’s allegations were corroborated by reference to the results of

the medical report drawn up by the forensic medical expert on 29 November 2002, immediately following the alleged beatings, and confirming the presence of multiple bruises and abrasions on the applicant's body (see paragraph 10 above). The applicant's claim was therefore shown to be "arguable" and the domestic authorities were placed under an obligation to conduct an effective investigation satisfying the above requirements of Article 3 of the Convention.

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

50. At first glance, the Court notes that in the period between January 2003 and May 2006 the investigation authority issued eight decisions refusing to initiate criminal proceedings against the police officers. Seven of the above refusals were set aside by the supervising prosecutor because the preliminary inquiry had been found to be incomplete and inadequate. As the Court has previously held, the repeated remittals of a case for further investigation may disclose a serious deficiency in the domestic prosecution system (see *Gladyshev v. Russia*, no. 2807/04, § 62, 30 July 2009, and *Alibekov v. Russia*, no. 8413/02, § 61, 14 May 2009).

51. The Court further notes that from 2002 to 2004 the preliminary inquiry into the applicant's allegations was carried out by two different investigators of the Pervorechenskiy District Prosecutor's Office of Vladivostok, and that starting from 2004 it was entrusted to an investigator of the Sovetskiy District Prosecutor's Office of Vladivostok. In the Court's view, the repeated referrals of the inquiry material from investigator to investigator may also disclose a serious deficiency in the domestic prosecution system, as each referral would undeniably affect the thoroughness and promptness of the inquiry.

52. Looking more closely at the investigation conducted into the applicant's allegations of ill-treatment, the Court finds it striking that none of the eight refusals to initiate criminal proceedings against the police officers contained a full and detailed record of the injuries discovered on the applicant after the alleged beatings - bruises, abrasions, brain concussion, thoracic spine contusion (see paragraphs 10 and 12 above) - and, at best, contained a blank reference to the report on the applicant's forensic medical examination of 29 November 2002. The initial refusal to initiate criminal proceedings did not contain any reference at all to the available medical evidence. The Court further observes that none of the eight refusals to initiate criminal proceedings contained any objective analysis of the medical

findings as to the origin and the time of infliction with regard to each particular group of injuries. The Court also finds it hard to explain why the report on the applicant's additional forensic medical examination, finalised already in July 2003, was not taken into consideration by the investigation authority until 19 May 2006. At the same time, the Court cannot help but notice that the results of this additional report were quite important to the inquiry as they invalidated the hospital diagnosis of brain concussion, altered the supposed time of infliction of the abrasions and reviewed the assessment of the severity of the sustained injuries (in particular, the abrasions, see paragraph 20 above).

53. Furthermore, the Court finds that the investigation authority routinely neglected its duties and displayed a surprising lack of diligence, in that the instructions of the supervising prosecutor were persistently not complied with. In particular, the Court notes that the instruction to identify and question a certain T., allegedly involved in the beatings, was given on three occasions and, in any event, yielded no result (see paragraphs 16, 18, 21 and 22 above). It does not appear from the contents of the decisions refusing the institution of criminal proceedings that the instruction to question the officer on duty, who allegedly refused to admit the applicant to the administrative arrest cell in view of the latter's injuries, or the instruction to assess the available medical evidence was complied with.

54. The Court further notes that no attempt was made by the investigation authority to address the contradictions in the evidence. For example, the investigation authority could have carried out identification parades in order to identify T. who had allegedly been involved in the beatings, examinations of the police officers together with the applicant, and K. together with the applicant, or a reconstruction of the crime scene.

55. In the light of the shortcomings identified above, the Court concludes that the investigation into the alleged ill-treatment was ineffective and that the domestic authorities failed to make any meaningful attempts to bring those responsible for the ill-treatment to account.

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

(b) Alleged ill-treatment of the applicant

(i) General principles

57. The Court reiterates that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Gladyshev*, cited above, § 51; *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*, 4 December 1995, § 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004).

58. The Court further reiterates that to fall under Article 3 of the Convention ill-treatment must attain a minimum level of severity. The standard of proof relied upon by the Court is that “beyond reasonable doubt” (see *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). 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 *Gladyshev*, cited above, § 52; *Oleg Nikitin*, cited above, § 45; and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

59. 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*, 22 September 1993, § 29, Series A no. 269). Although the Court is not bound by the findings of the 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). The Court must apply a particularly thorough scrutiny where the applicant raises an arguable complaint of ill-treatment (see *Ribitsch*, cited above, § 32, and *Avşar*, cited above, § 283).

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

60. Turning to the facts of the present case, the Court notes that immediately after the alleged beatings, on 29 November 2002, the forensic medical expert discovered multiple bruises on the applicant’s face, head, neck, back and stomach, and multiple abrasions on his forehead, left forearm and hand (see paragraph 10 above). Following the applicant’s release from police custody, from 5 December to 23 December 2002 he underwent in-patient hospital treatment for the above injuries. The hospital diagnosis also included brain concussion and thoracic spine contusion (see paragraph 12 above).

61. The Court considers that the above medical evidence, together with the fact that the alleged beatings took place while the applicant was within the authorities’ control in custody, created an unrebutted presumption of fact that the applicant was subjected to ill-treatment at the hands of State

agents and required the Government to provide a satisfactory and convincing explanation as to how those injuries could have originated.

62. The Court observes that, having conducted a police inquiry, the investigation authority arrived at the conclusion that the injuries had been inflicted on the applicant on 26 November 2002, that is, before he had been taken to the police station, supposedly in a fight with unidentified young people (see paragraph 30 above).

63. The Court notes, however, that the conclusion of the domestic authorities in this respect sits ill with the medical evidence and witness statements. According to the statements given by the applicant's partner and the latter's relatives, they saw the applicant return home on 26 November 2002 with bleeding abrasions on his face and hands. The additional forensic medical expert report of 28 July 2003 confirmed that the abrasions found on the applicant's body could have been caused one to three days prior to his examination on 29 November 2002 (see paragraph 20 above). On the contrary, as regards the multiple bruises of considerable sizes, the witnesses in question did not confirm having seen them on the applicant prior to his arrest by the police. The time of the infliction of the bruises in question was determined by the forensic medical expert as one day prior to the applicant's examination on 29 November 2002 (see paragraph 10 above). In such circumstances, therefore, the origin of the bruises discovered on the applicant immediately after his alleged beatings by the police officers, cannot be considered to have been properly accounted for.

64. Regard being had to the absence of any consistent and indisputable proof supporting the account of events put forward by the domestic authorities, the Court finds it established to the standard of proof required in Convention proceedings that the bruises on the applicant's body were the result of the treatment about which he complained and for which the Government bore responsibility.

65. 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 he was subjected on 28 and 29 November 2002 by police officers of the Pervorechenskiy District Prosecutor's Office of Vladivostok.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

66. The applicant further complained under Article 6 of the Convention of a violation of his rights in the course of the criminal proceedings against him and under Article 8 of the Convention of a violation of his right to respect for his private and family life and his home.

67. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no 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 manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

69. The applicant claimed compensation in respect of non-pecuniary damage, the amount of which would correspond to the standards and the practice of the Court.

70. The Government submitted that if the Court were to find a violation, the finding of such a violation would constitute in itself sufficient just satisfaction.

71. The Court notes that it has found a violation under both the substantive and procedural heads of Article 3 of the Convention on account of the applicant's ill-treatment whilst in State custody and the failure to carry out an effective investigation into the matter. In these circumstances, the Court considers that the suffering and frustration caused to the applicant cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant 18,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

72. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

73. 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* admissible the complaint under Article 3 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 on account of the applicant's ill-treatment on 28 and 29 November 2002;
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 18,000 (eighteen 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 8 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President