



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

FIRST SECTION

CASE OF MIRONOV v. RUSSIA

(Application no. 22625/02)

JUDGMENT

STRASBOURG

8 November 2007

FINAL

08/02/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mironov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mr K. HAJIYEV,

Mr D. SPIELMANN,

Mr S.E. JEBENS, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 11 October 2007,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 22625/02) 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 Moldovan national, Mr Andrey Nikolayevich Mironov (“the applicant”), on 23 May 2002.

2. The applicant was represented by Mr G. Nedov, a lawyer practising in Tarakliya, Moldova. The Russian Government (“the Government”) were represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

3. The Government of Moldova have been notified of the application (Rule 44¹ § 1). They did not submit any written comments under Article 36 § 1 of the Convention.

4. The applicant alleged, in particular, that he was ill-treated on a number of occasions and that the conditions of his detention in remand prison IZ-50/9 were very poor.

5. By a decision of 5 October 2006, the Court declared the application partly admissible.

6. The Government, but not the applicant, filed further written observations (Rule 59 § 1). The Chamber has decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1969 and his home address is in Svetliy village, Moldova. He is currently serving a sentence in prison UY-400/5 in the town of Donskoy (Tula Region) Russia.

1. Criminal proceedings against the applicant and alleged ill-treatment by police officers

8. On 16 September 1998 criminal proceedings were instituted against the applicant for robbery.

9. In his initial submissions the applicant stated that he had been arrested on 16 September 1998. After the application was notified to the respondent Government, however, he said that he had in fact been arrested on 29 August 1998. He further alleged that he had been beaten by police officers, both on his arrest and on 19 September 1998. According to the applicant, on 22 September 1998 he had been taken by car by two police officers, purportedly in connection with the investigation, to a forest where he was forced out of the car, hung by handcuffs from a tree and given a beating. The officers had then put a plastic bag over his head, removing it only when he started to suffocate, and forced him to confess to the offence. Then he had been given a further beating and had passed out. When he regained consciousness, he found himself in the boot of the car which was approaching the remand prison. The applicant submitted that the police officers had ruptured one of his kidneys and broken five ribs and his nose.

10. The Government submitted that on 18 September 1998 the applicant had been placed in a temporary detention centre in Naro-Fominsk pursuant to a warrant for his administrative arrest. He had been released on 24 September 1998 but rearrested the same day on suspicion of robbery.

11. On 27 September 1998 an order was made for his detention as a preventive measure. According to the applicant, he received a further beating from police officers on that date.

12. On 9 October 1998 the applicant was transferred to remand prison IZ-49/4 in Mozhaysk. During a medical examination conducted the same day he complained about pain in his groin which he ascribed to the beating received in the temporary detention centre a month before. The doctor stated that owing to the time that had elapsed since the alleged assault no traces of injury could be found.

13. On 4 December 1998 the Prosecutor's Office refused to institute criminal proceedings in respect of the applicant's complaint of 21 October 1998 on the ground that there was no indication of a crime having been committed. The decision stated:

“On 26 October 1998 the Prosecutor's Office received an application from [Mr] Mironov, who alleged that [investigating] officials had exerted physical and moral pressure on him as a result of which he had incriminated himself.

The written statement of the head of the Naro-Fominsk temporary detention centre indicates that on 9 October 1998 [Mr] Mironov complained about pain in the left side of his back. However, the examination revealed no injuries. On 4 November 1998 he complained of a headache caused by a car accident. From [the statement] it follows that from 18 September to 9 October 1998 [Mr] Mironov made no complaints concerning his health.

Investigator [V.] stated that he had instituted criminal proceedings against [Mr] Mironov [on charges of robbery] on 16 October 1998. He could not remember who had effected the arrest. An identification parade had been held and other investigative actions taken on the same day. [Mr] Mironov had voluntarily made statements concerning the circumstances of the case. He had changed his statements after he was transferred to remand prison IZ-49/4 in Mozhaysk. Nobody had applied physical pressure on [Mr] Mironov, [V.] had not seen any injuries, [Mr] Mironov had not complained about the state of his health. ...

Officer [A.] of the Naro-Fominsk Directorate of Internal Affairs stated that ... after [Mr] Mironov had been identified by the victims he had voluntarily made statements. Nobody had either beaten him or tortured him with electricity. [A.] had never seen [Mr] Mironov again.

Officer [S.] of the Aprelevskiy district police department stated that he had not been present at [Mr] Mironov's arrest but had seen him during the course of the investigation. [Mr] Mironov had not made any complaints, [S.] had not seen any injuries. During the investigation nobody had sought to coerce [Mr] Mironov.

Therefore, ... [Mr] Mironov made the complaint after he had been transferred to remand prison IZ-49/4, that is three weeks after the alleged beating by police officers of the Aprelevskiy district police department. [Mr] Mironov did not complain to either the investigator or the prosecutor of having been beaten, but made his complaint at the end of the preliminary investigation. [Mr] Mironov cannot specify who applied physical coercion, the form the coercion took, where the blows were inflicted. Therefore, ... [Mr] Mironov's complaint is aimed at avoiding responsibility for having committed a particularly serious offence.”

14. According to the Government, the applicant was informed of the decision five days later.

15. In a letter of 17 December 1998 the Naro-Fominsk Deputy Prosecutor informed the applicant that an inquiry had been conducted following his complaint but that it had been decided not to bring criminal proceedings against the police officers as there was no *corpus delicti*.

16. On 26 April 2000 the Naro-Fominsk Town Court convicted the applicant of robbery and sentenced him to 12 years' imprisonment and ordered the confiscation of property belonging to him. It also found that the applicant had not been subjected to ill-treatment on the basis of the available medical documents and statements made by investigator V. and K., who had been present at the identification parade. The applicant appealed.

17. On 11 January 2002 the Moscow Regional Court upheld the Town Court's judgment.

18. On 21 June 2002 the Presidium of the Moscow Regional Court quashed the appeal judgment of 11 January 2002 following an application for supervisory review by the Prosecutor of the Moscow Region and remitted the case for re-examination. The Presidium stated that the appeal court had failed to provide the applicant with an interpreter or to address the arguments concerning the violation of his defence rights raised in his appeal.

19. On 24 September 2002 the Moscow Regional Court again upheld the Town Court's judgment of 26 April 2000. It found, *inter alia*, that the applicant's right to assistance by a lawyer and an interpreter had been respected.

20. On 24 June 2004 the decision of 4 December 1998 not to institute criminal proceedings concerning the applicant's complaint of ill-treatment was quashed on the ground that the investigation had not been complete.

21. On 26 June 2004 the Naro-Fominsk Deputy Prosecutor again refused to institute criminal proceedings into the applicant's allegations of ill-treatment on the ground that there was no indication of a crime having been committed. The prosecutor questioned investigator V. and several investigating officials and police officers who stated that no pressure had been put on the applicant during the investigation. He also questioned officials of the Naro-Fominsk temporary detention centre who stated that during his placement in the detention centre the applicant had neither alleged that physical pressure had been applied to him nor asked for medical aid. They stated, furthermore, that if he had had any injuries, he would not have been admitted to remand prison IZ-49/4 in Mozhaysk and a report would have been drawn up for the Directorate General of the Internal Affairs. The prosecutor also had regard to the certificate of the medical examination of the applicant upon his arrival at remand prison IZ-49/4, which stated that he had had no injuries.

2. Conditions of detention in remand prison IZ-50/9 (Moscow Region)

22. According to a certificate of the Federal Service of the Execution of Sentences for the Tula Region the applicant was held:

- between 9 October 1998 and 17 August 2000 in remand prison IZ-49/4 in Mozhaysk;
- between 17 August and 4 September 2000 in remand prison IZ-50/9 (Moscow Region);
- between 4 September 2000 and 15 February 2002 in remand prison IZ-49/4 in Mozhaysk.
- between 28 February and 23 May 2002 in prison UY-400/5 in the town of Donskoy (Tula Region);

- between 27 May and 5 October 2002 in remand prison IZ-50/9 (Moscow Region);
- after 17 October 2002 in prison UY-400/1 in the town of Donskoy, (Tula Region).

23. In reply to the Court's request to provide information about the applicant's detention during the periods that were not referred to in the certificate, the Government submitted that the applicant had been held:

- between 16 and 27 February 2002 in remand prison IZ-50/4 in Mozhaysk;
- between 24 and 26 May 2002 in remand prison IZ-71/1 in Tula.

24. In their subsequent submissions the Government stated that the applicant had been held in remand prison IZ-50/9 between 17 August and 4 September 2000, 9 January and 25 February 2002 and 27 May and 5 October 2002.

25. The applicant alleged that in remand prison IZ-50/9 there had on average been 60 to 70 inmates in a cell designed for 10 to 15. There were 10 beds in the cell and inmates slept in five or six shifts. They had been taken for a walk outside three or four times a month for 35 to 40 minutes at a time. In the bathroom there were 10 to 15 water jugs and the time allowed for a bath had been 20 to 30 minutes for 60 inmates. There was an "improvised" toilet in the cell around which the inmates slept on or under the beds. The cell was overrun with bed-bugs, cockroaches, lice, rats and mice, which bit the prisoners and spread disease. Some prisoners in the cell suffered from scabies and pediculosis. The cell walls were damp most of the time because of condensation. Medical aid was provided only when a prisoner could no longer walk unaided. There was nowhere to sit in the cell and not even enough standing room.

26. The Government stated that between 27 May and 20 September 2002 the applicant had been detained in cell no. 3, which measured 24.3 square metres, held 14 to 26 inmates and had 9 beds. Between 21 and 24 September 2002 he was detained in cell no. 5, which measured 14.58 sq. m, held 7 to 10 inmates and had 5 beds. From 25 September 2002 until his transfer to prison UY-400/5 he had been detained in cell no. 70, which measured 19.65 sq. m, held 2 to 4 inmates and had 4 beds. At the same time the Government submitted that between 9 and 25 September 2002 the applicant was detained in cell no. 8, which measured 31.92 sq. m and held 42 inmates. However, in the certificate issued by remand prison IZ-50/9 on 6 July 2004 it is stated that the applicant had been held in cell no. 8 between 9 January and 25 February 2002, and the number of inmates could not be established because the relevant documents had been destroyed.

27. According to the Government, inmates were prevented from taking a shower between 23 May and 13 June 2002 because of problems with the plumbing. Apart from this period bathing facilities were available at set

times, and every inmate had sufficient time to take a shower. Inmates were taken out for a daily walk for at least an hour. There had been individual cases where inmates had not been taken out for a walk because the prison had been understaffed. However, on 3 July 2002 the acting head of remand prison IZ-50/9 had been reprimanded for a breach of prison regulations. There had also been isolated cases of inmates suffering from scabies and pediculosis being admitted to the remand prison. However, they had undergone a medical examination and their clothes had been subjected to sanitary treatment. There had been no cases of inmates being infected in the remand prison. Likewise, the presence of insects, mice or rats in the cells had not been established. Sanitary conditions in the cells had been monitored on a monthly basis by a competent authority of the penitentiary system.

3. Alleged ill-treatment by police officers in remand prison IZ-50/9 (Moscow Region)

28. The applicant alleged that on 23 June 2002 several police officers had entered the cell where he was being held in remand prison IZ-50/9 and administered a beating to him and two of his cellmates. On 24 June 2002 he had lodged a complaint with the prison administration about the beating, but it had not been examined. He said that he was not examined by a doctor until a month later, by which time the bruises had already healed. It had not been possible to ascertain whether he had sustained any fractures as no X-rays had been taken. According to the applicant, on 25 June 2002 the Moscow Region Deputy Prosecutor visited the prison and asked the inmates for their comments on events and the way the prison administration had handled the inspection. However, since the inmates had not been informed of any such inspection, they only gave their account of the events of 23 June 2002, when suspects held in various cells of the remand prison had been beaten by police officers and had sustained injuries.

29. According to the Government, the applicant's complaint concerning the events of 23 June 2002 was received by the Moscow Region Prosecutor's Office on the same date.

30. In their first set of observations, the Government submitted that between 26 and 28 June 2002 the applicant had undergone a medical examination, which had not revealed any injuries. They also stated that he had not made any complaints about the alleged ill-treatment.

31. In their second set of observations, the Government submitted that in the course of the inspection conducted into the applicant's complaint all inmates who had lodged similar complaints had undergone a medical examination. Investigators of the Prosecutor's Office had questioned the inmates in all the cells of the remand prison. However, "[d]uring the visit of the cells by [the] investigators ... [the applicant] did not file [any] complaints about [the] actions of officials [at] the facility. It was also

established that [the applicant] and other persons detained ... with him in cell no. 3 were not among the ... arrested persons [who had lodged complaints]. Accordingly, any injuries of the applicant were not and could not be recorded in medical documents.”

32. The Government submitted that twenty-two medical examinations had been conducted in relation to the applications lodged by inmates of remand prison IZ-50/9.

33. On 26 June 2002 the Prosecutor's Office of the Moscow Region instituted criminal proceedings concerning the ill-treatment of detainees in remand prison IZ-50/9 on 23 June 2002.

34. On 18 July 2002 the applicant had a medical examination. He told the doctor that he had pains in his back and groin as a result of the beating he had received on 23 June 2002. Upon a visual check the doctor found no traces of injuries or oedema.

35. On 17 October 2002 the applicant was moved to prison UY-400/5 in the town of Donskoy (Tula Region).

36. On 10 November 2002 the Moscow Region Prosecutor's Office discontinued the criminal proceedings that had been instituted as a result of the events of 23 June 2002. The order read as follows:

“The present criminal proceedings were instituted on 26 June 2002 [and concerned] abuse of authority with violence and the use of special equipment by officers from units of the Ministry of Justice penitentiary department of the Moscow Region. The criminal proceedings were instituted on the basis of a complaint lodged with the regional prosecutor's office on 24 June 2002 by relatives of the detainees concerning [a] beating [they received] in facility IZ-50/9 (Moscow Region). The ... injuries to the detainees ... were confirmed in the course of the inquiry. The investigation has shown that between 10 p.m. and 12 noon on 23 June 2002 in facility IZ-50/9 (Moscow Region) officers from the facility and three officers from the special forces unit *Fakel* (A. Yu. Ivanov, Yu. N. Polunin and S. B. Serdechniy) checked the detainees' presence in the cells of the first [building]. At approximately 1_.30 [*the hour is not fully legible*] the duty assistant to the governor of the remand prison ordered the duty medical attendant to go to the first [building] to give medical assistance to the detainees. Upon her arrival, the duty medical attendant found injured detainees in cell no. 1_ [*the number is not fully legible*] who complained that during the morning roll-call they had been beaten by masked officers. In cell no. 20 a detainee, Mr I., had a fracture of his ... left arm; other detainees complained of pains in the chest.

According to the findings set out in the forensic medical examination reports the detainee I. suffered moderately serious injuries. The other [fourteen] detainees had received blows, which were not subject to medical assessment. In the course of the preliminary investigation it did not appear possible to establish who was responsible for which injuries.

Having regard to the fact that on 5 November 2002 the Moscow Region Prosecutor's Office received instructions from the Prosecutor General of Russia to discontinue the present criminal proceedings ... [the investigator] of the Moscow Region Prosecutor's Office orders the [present] criminal proceedings against [S. B.] Serdechniy ... , [A. Yu.] Ivanov ... and [Yu. N.] Polunin to be discontinued...”

37. The applicant was not named in the order as being among the injured detainees.

38. On 2 July 2004 the Moscow Region Deputy Prosecutor decided not to institute criminal proceedings in respect of the alleged ill-treatment of the applicant on 23 June 2002. The order read, in so far as relevant, as follows:

“...[A. N.] Mironov filed a complaint with the Prosecutor's Office of the Moscow Region stating that on 23 June 2002, during his detention in facility IZ-50/9, he had been beaten by police officers of the special unit.

In the course of the investigation it was established that between 27 May and 5 October 2002 [A. N.] Mironov was held in facility IZ-50/9, in particular, between 27 May and 27 September 2002 in cell no. 3. Since facility IZ-50/9 was understaffed, officers from the *Fakel* unit of the Ministry of Justice penitentiary department of the Moscow Region participated in security measures [*режимные мероприятия*] on 23 June 2003. They were wearing a uniform similar to that of the police special unit.

On 24 June 2002 relatives of the detainees held in facility IZ-50/9 applied to the Prosecutor's Office of the Moscow Region. They stated that some of the detainees had been beaten by the police special unit during the search conducted on 23 June 2002. [A. N.] Mironov was not mentioned in the application.

The Prosecutor's Office of the Moscow Region conducted an investigation into the events referred to in the application of 24 June 2002. In the course of the investigation all the detainees that had filed the complaints underwent medical examinations. All detainees held in the cells at facility IZ-50/9 were questioned. [A. N.] Mironov did not make any complaints concerning the actions of the officers of the penitentiary system. In the course of the investigation it was established that on 23-24 June 2002 41 detainees applied for medical aid as a result of having been beaten by the officers of the penitentiary system who conducted the search. Neither [A. N.] Mironov nor other detainees held in cell no. 3 were among them.

...On 26 June 2002 the Prosecutor's Office of the Moscow Region instituted criminal proceedings. In the course of the investigation all the detainees that were mentioned in the application and applied for medical aid were questioned along with witnesses. 22 medical examinations were conducted. [A. N.] Mironov was neither a witness, nor a recognised victim.

Officers of ...the *Fakel* unit [A. Yu.] Ivanov, [Yu. N.] Polunin and [S. B.] Serdechniy who participated in the security measures on 23 June 2002 in building no. 1 of facility IZ-50/9 where [A. N.] Mironov had been held denied having beaten him.

[A. N.] Mironov applied for medical aid only on 18 July 2002. He complained about pain in his groin and explained it by the beating on 23 June 2002. However, according to his medical file the doctor found no traces of injuries, no bruises ... and found that his health was satisfactory.

Since, according to the established procedure, facility IZ-50/9 has destroyed the cards [pertaining to the detainees held in] 2002, it is not possible to find and question the persons who were held in cell no. 3 with [A. N.] Mironov on 23 June 2002.

Therefore, the investigation into [A. N.] Mironov's complaint showed that he had not made any complaints directly after the date of the alleged beating, in the course of the Prosecutor's investigation conducted on 24 June 2002 he was not recognised as a victim of unlawful actions of the officers of the penitentiary system, and he did not participate as a witness in the instituted criminal proceedings either.

Having regard [to the foregoing] ... the institution of criminal proceedings following the complaint of [A. N.] Mironov should be refused...".

39. On 20 December 2005 the Deputy Prosecutor General upheld the decision of 2 July 2004.

II. RELEVANT DOMESTIC LAW

Code of Criminal Procedure of 1960 in force until 1 July 2002

40. Article 108 provided that criminal proceedings could be instituted on the basis of applications and letters from citizens, public or private bodies, articles in the press or the discovery by an investigating body, prosecutor or court of evidence that a crime had been committed.

Code of Criminal Procedure of 2001 in force from 1 July 2002

41. Article 140 provides for the institution of criminal proceedings on the basis of, *inter alia*, an application stating that a crime has been committed or a report about a crime that has either been committed or is being prepared.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

42. In their submissions following the Court's decision as to the admissibility of the application, the Government pointed out that the applicant had not challenged before a court the Naro-Fominsk Deputy Prosecutor's decision of 26 June 2004 and the Deputy Prosecutor General's decision of 2 July 2004 refusing the institution of criminal proceedings into his allegations of ill-treatment.

43. The Court reiterates that, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see, for example, *Prokopovich v. Russia*, no. 58255/00, § 29, 18 November 2004,

with further references). The Government's submissions referred to the prosecutor's decisions delivered more than two years before the Court adopted its decision as to the admissibility of the application. There are no exceptional circumstances which would have absolved the Government from the obligation to raise their preliminary objection before the adoption of that decision. Consequently, the Government are estopped from raising a preliminary objection of non-exhaustion of domestic remedies at the present stage of the proceedings.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ALLEGED ILL-TREATMENT IN THE COURSE OF THE PRELIMINARY INVESTIGATION

44. The applicant complained under Article 3 of the Convention that he had been ill-treated by police officers on his arrest and also on 19, 22 and 27 September 1998. Article 3 reads as follows:

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

A. The parties' submissions

45. The applicant clarified that his complaint concerned police and investigative officers V., A. and their subordinates, not officers from the detention facility. The applicant stated that evidence of the ill-treatment could be found in his medical records. In his view, the decision not to institute criminal proceedings was just a formal response and not a good faith attempt to conduct an investigation, since it had been issued several years after the events complained of.

46. The Government submitted that the applicant had not been removed from the detention facility on any of the dates he indicated. There was no evidence of any unlawful acts against the applicant by the detention facility's officers. Since he had neither indicated the names of the officers who had allegedly mistreated him, nor provided any other relevant evidence, it was not possible to verify whether the allegations were true. In the Government's view, the complaint was unsubstantiated.

B. The Court's assessment

(i) General principles

47. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court has adopted the standard of proof “beyond reasonable doubt”, but has added that

such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). Article 3, taken together with Article 1 of the Convention, implies a positive obligation on the States to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment (see *A. v. the United Kingdom*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2699, § 22). Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention (see *Tomasi v. France*, judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-11, and *Ribitsch v. Austria*, judgment of 4 December 1995, Series A no. 336, pp. 25-26, § 34).

(ii) Application to the present case

48. Turning to the circumstances of the present case, the Court observes that, apart from his own statements, the applicant has not produced any conclusive proof in support of his allegations of ill-treatment. It notes that, according to the applicant, evidence of the ill-treatment could be found in his medical records. However, the only relevant entry in the applicant's medical file is of the examination conducted on 9 October 1998, when the applicant complained of pain in his groin and ascribed it to the beating allegedly received in the temporary detention centre a month before. However, the doctor stated that owing to the time that had elapsed since the alleged assault no traces of injury could be found.

49. The Court observes that the applicant has not provided any other evidence, such as witness statements, to support his allegations of ill-treatment, nor any documents to show that he had in fact requested a medical examination to be conducted sooner. Furthermore, the allegations of ill-treatment were the subject of the inquiry conducted by the public prosecutor's office, which found them to be unsubstantiated and on that ground refused to institute criminal proceedings. The allegations of ill-treatment were also examined by the trial court, which likewise found them to be unsubstantiated. The applicant failed to submit any evidence to enable the Court to depart from the findings of the domestic authorities in this respect.

50. Accordingly, the Court finds that there has been no violation of Article 3 of the Convention on account of the alleged ill-treatment by police in the course of the preliminary investigation.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF ALLEGED ILL-TREATMENT IN REMAND PRISON IZ-50/9

51. The applicant complained under Article 3 of the Convention that he had been beaten in remand prison IZ-50/9 (Moscow Region) on 23 June 2002.

A. The parties' submissions

52. The applicant submitted that dozens of detainees had been officially acknowledged as victims of the beating administered on 23 June 2002 and the incident had been covered by the media. The decision not to institute criminal proceedings was just a formal response, not a good faith attempt to conduct an investigation, since it had been issued several years after the events complained of.

53. The Government maintained that the applicant had not complained to the administration of remand prison IZ-50/9 about the injuries he had allegedly sustained on 23 June 2002. On 26-28 June 2002 he had been examined by a doctor, but had not mentioned the alleged ill-treatment and no injuries had been found. The Government, however, did not enclose a copy of the medical certificate pertaining to the examination and stated that it would be submitted as soon as it had been obtained from the competent authorities. They pointed out that a decision not to institute criminal proceedings in respect of the facts complained of had been taken on 2 July 2004, and on 20 December 2005 the Deputy Prosecutor General had found that decision to be lawful.

54. In their submissions made after the Court's decision as to the admissibility of the application the Government stated that "[i]n the course of an examination of a register of injuries it was established that on 24 June 2002 A.N. Mironov had not applied to the medical and sanitary unit of facility IZ-50/9. Officers of the *Fakel* special base division who had carried out security measures in the facility denied ... beating arrested persons, including the applicant. At the same time ... the data stated in A.N. Mironov's application of 23 June 2002 were checked. In the course of the check ... a medical examination of the arrested persons who had [filed] complaints [was carried out], all cells of the investigative facilities were visited and the persons detained in them were interviewed. During the visit of the cells by investigators of the [prosecutor's] office A.N. Mironov did not file complaints about [the] actions of officials [at] the facility. It was also established that A.N. Mironov and other persons detained together with him in cell no. 3 were not among the ... arrested persons [who had lodged complaints]. Accordingly any injuries of the applicant were not and could not be recorded in medical documents". The Government further pointed

out that the applicant had applied for medical aid only on 18 July 2002 with regard to the pain in his groin, which he stated had been caused by the beating. However, the doctor had found no traces of injuries. The Government concluded that the applicant's allegations of ill-treatment were unfounded.

B. The Court's assessment

(1) General principles

55. The general principles are set out in paragraph 47 above.

(2) Application to the present case

56. Turning to the facts of the present case, the Court notes that it is not disputed between the parties that on 23 June 2002 officers of the special forces unit *Fakel* carried out certain operations in remand prison IZ-50/9. Furthermore, in the decision of the Moscow Region Prosecutor's Office of 10 November 2002 it was established that after the remand prison officers and three *Fakel* officers had "checked the detainees' presence in the cells," fifteen detainees had sustained injuries, including one detainee whose arm had been broken, and fourteen detainees who had received blows, "which were not subject to medical assessment". However, criminal proceedings against the *Fakel* officers were discontinued on the ground that "[i]n the course of the preliminary investigation it did not appear possible to establish who was responsible for which injuries."

57. The Court observes that the applicant was not listed among the injured detainees in the decision of 10 November 2002. However, taking into account the number of inmates who were found injured after the *Fakel* officers had conducted the operations in the remand prison, it considers it a realistic possibility that injuries were caused to other detainees held in the cells where the operations took place. In such circumstances the State authorities were under an obligation to conduct a medical examination of the applicant as well as of other detainees held in the premises concerned for injuries (see, *mutatis mutandis*, *Ahmet Özkan and Others v. Turkey*, no. 21689/93, 6 April 2004, §§ 307-308).

58. The Court notes that after the events of 23 June 2002 the applicant was first seen by a doctor on 18 July 2002, when he complained about pains in his back and groin which he ascribed to the beating he had allegedly received on the former date. However, the doctor found no traces of injuries or oedema.

59. The Court further notes that on 2 July 2004 the Moscow Region Prosecutor's Office refused to institute criminal proceedings with regard to the applicant's allegations of ill-treatment on the grounds that immediately

after the events of 23 June 2002 he had neither applied for medical aid nor complained about having been beaten by the *Fakel* officers and that in the decision of 10 November 2002 he was not listed among the injured detainees.

60. The Court observes, however, that it is not disputed by the Government that the applicant complained of having been beaten by the *Fakel* officers on 23 June 2002. According to them, the complaint was received by the Moscow Region Prosecutor's Office on the same date. The applicant's complaint was one of many lodged in connection with the beating administered by the *Fakel* officers in remand prison IZ-50/9 on 23 June 2002.

61. The Court notes that in their first set of observations the Government claimed that the applicant had been examined by a doctor on 26-28 June 2002, but had failed to enclose supporting documents. They stated that the medical certificate pertaining to the examination would be submitted as soon as it had been obtained from the competent authorities. However, it was never received by the Court.

62. In their second set of observations, the Government first submitted that an inspection had been carried out into the applicant's complaint and stated that in the course of the inspection the detainees who had submitted complaints had undergone medical examination. They then stated that since the applicant had not complained about the actions of officials at the facility, his injuries could not have been recorded in medical documents. The Court has difficulty comprehending this argument which, furthermore, contradicts the argument put forward in the Government's first set of observations.

63. In any event, from the materials available to the Court it appears that the applicant was one of a number of detainees who complained about having been beaten in remand prison IZ-50/9 by the *Fakel* officers on 23 June 2002. The Court found in paragraph 57 above that the authorities were under an obligation to examine inmates held in the cells where operations by the *Fakel* officers had taken place for injuries. However, no evidence was presented to the Court to show that such an examination had been conducted. The examination of 18 July 2002 does not suffice to discharge this obligation because of the time that elapsed between the events complained of and the date when it was conducted.

64. The Court finds that, although the applicant's allegations of having been beaten by the *Fakel* officers on 23 June 2002 has remained unsubstantiated by any medical evidence, in the circumstances of the case the authorities' failure to conduct a medical examination to ascertain whether the applicant had sustained any injuries as a result of the operations conducted in remand prison IZ-50/9 on 23 June 2002 amounted to a breach of the State's positive obligation to ensure that individuals are not subjected

to treatment contrary to Article 3 of the Convention (see, *mutatis mutandis*, *Ahmet Özkan and Others v. Turkey*, cited above).

65. Accordingly, there has been a violation of Article 3 of the Convention in this respect.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE CONDITIONS OF DETENTION IN REMAND PRISON IZ-50/9

66. The applicant complained under Article 3 of the Convention about the conditions of detention in remand prison IZ-50/9 (Moscow Region) between 27 May and 5 October 2002.

1. The parties' submissions

67. The applicant pointed out that the Government had admitted that in 1998-2002 remand prison IZ-50/9 had been overcrowded so that he could not possibly have been provided with an individual bed, but had had to sleep in shifts with other inmates on shared bedding. For the rest of the time the inmates had had to stand since there was not enough room in the cell. He further contended that he had not been provided with either bedding or other personal belongings. If he had been, the Government would have been able to produce copies of the prison register with an indication of the items the applicant had been provided with and his signature acknowledging receipt. Likewise, the Government had provided no proof that he had been able to bathe regularly.

68. The Government admitted that in 1998-2002 Russian remand prisons, including remand prison IZ-50/9, were overcrowded. However, by April 2003 the number of detainees had decreased and prison conditions were compatible with the provisions of the Convention. They further maintained that the applicant had been provided with a bed and bedding in accordance with the statutory requirements. All cells in remand prison IZ-50/9 had been equipped with a sewerage system. The lavatory pan had been placed in an area separated from the rest of the cell by a one-metre-high partition. The wash basin had been placed outside that area. The Government also enclosed a letter from the Ministry of Justice stating that in 2003-2004 cells nos. 3, 5 and 70 had been renovated and, therefore, it was not possible to provide information about their condition in 2002. According to the letter, the above information concerning the sewerage system and the position of the lavatory pan related to the period after the renovation works were carried out. The Government further submitted that the condition of the cells and bathrooms had been satisfactory. Repairs had been carried out as required. The inmates had been permitted a bath once every seven days and a walk of not less than one hour per day in compliance with internal regulations. The supply of medicines had also been

satisfactory. There had been no inmates infected with scabies or pediculosis in remand prison IZ-50/9 in 2002.

69. In their submissions made after the Court's decision as to the admissibility of the application the Government stated that on 1 June 2002 1,521 inmates had been held in remand prison IZ-50/9 while the maximum limit had been 670 inmates. Thus, the requirement of 4 sq. m per inmate had not been respected and each inmate had approximately 1.76 sq. m of personal space. However, the applicant's allegations that the cells' capacity had been six or seven times exceeded was unsubstantiated. By April 2003 the number of inmates had decreased to 564, which allowed the sanitary norms to be complied with. The Government concluded that individual breaches of detention standards had been rectified and, in any event, they had not attained the minimum level of severity required to constitute a violation of the applicant's rights under Article 3.

2. The Court's assessment

(i) General principles

70. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], cited above, § 119). However, to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see *Valašinas v. Lithuania*, no. 44558/98, §§ 100–101, ECHR 2001-VIII).

71. 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 (see, as a recent authority, *Labzov v. Russia*, no. 62208/00, § 42, 16 June 2005). Measures depriving a person of his liberty may often involve such an element. Nevertheless, under this provision the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92–94, ECHR 2000-XI).

72. When assessing conditions of detention, account has to 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).

(ii) Application to the present case

73. The Court notes that in the present case certain aspects of the applicant's conditions of detention at remand prison IZ-50/9 are in dispute. However, it does not consider it necessary to establish the truthfulness of each and every allegation, because it may find a violation of Article 3 on the basis of facts that have been presented or are undisputed by the respondent Government, for the following reasons.

74. The main allegation, which the parties have in principle agreed upon, is that the cells were overpopulated, although they gave different figures for the surface areas of the cells and the exact numbers of inmates held. The Court notes that the information submitted by the Government was inconsistent. Thus, according to the Government, between 27 May and 20 September 2002 the applicant was held in cell no. 3, between 21 and 24 September 2002 in cell no. 5, and between 25 September and 10 October 2002 in cell no. 70. At the same time they submitted that between 9 and 25 September 2002 he was held in cell no. 8, which is inconsistent with the above dates. Furthermore, according to the certificate issued by remand prison IZ-50/9, the applicant was held in cell no. 8 between 9 January and 25 February 2002. In any event, from the information submitted by the Government it can be seen that in cell no. 3 there was between 0.9 to 1.7 sq. m of space per inmate, in cell no. 5, between 1.4 and 2 sq. m, in cell no. 70, between 4.5 and 9.8 sq. m, and in cell no. 8, 0.76 sq. m per inmate. Therefore, at different periods of his detention in the remand prison the applicant had from 0.76 to 4.5 sq. m of space.

75. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see, in particular, *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Labzov v. Russia*, cited above, § 44 et seq.; *Mayzit v. Russia*, no. 63378/00, § 39 et seq., 20 January 2005; *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., 8 November 2005; *Novoselov v. Russia*, no. 66460/01, § 41 et seq., 2 June 2005; and *Popov v. Russia*, no. 26853/04, § 215 et seq., 13 July 2006).

76. Having regard to its case-law on the subject and the material submitted by the parties, 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. The fact that the applicant was obliged to live, sleep and use the toilet in the same cell with so many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him

feelings of fear, anguish and inferiority capable of humiliating and debasing him.

77. The Court further notes that the Government admitted that between 23 May and 13 June 2002 inmates held in remand prison IZ-50/9 could not take a shower because of problems with the plumbing. Therefore, for eighteen days from 27 May 2002, when the applicant arrived at the remand prison, to 13 June 2002, when the water supply was restored, the applicant had no access to bathing facilities.

78. In the light of the above, the Court finds that the applicant's conditions of detention amounted to degrading treatment within the meaning of Article 3.

79. Therefore, there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison IZ-50/9 between 27 May and 5 October 2002.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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.”

81. The Court notes that the applicant made no claims for just satisfaction. It holds that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage, if any, sustained by the applicant.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objection;
2. *Holds* that there has been no violation of Article 3 of the Convention on account of the alleged ill-treatment during the preliminary investigation;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the Government's failure to conduct a medical examination to ascertain whether the applicant had sustained injuries as a result of the operations in remand prison IZ-50/9 on 23 June 2002;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison IZ-50/9 between 27 May and 5 October 2002;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Done in English, and notified in writing on 8 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President