



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

FIRST SECTION

CASE OF ANTROPOV v. RUSSIA

(Application no. 22107/03)

JUDGMENT

STRASBOURG

29 January 2009

FINAL

29/04/2009

This judgment may be subject to editorial revision.

In the case of Antropov v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 8 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 22107/03) 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 Dmitriy Viktorovich Antropov (“the applicant”), on 28 May 2003.

2. The Russian Government (“the Government”) were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that during his pre-trial detention after being charged with murder the police officers had handed him over to the family of the victim, who had tortured him. He furthermore complained that his allegations of torture have not been adequately investigated. He also alleged that he had been detained in appalling conditions in the pre-trial detention facility.

4. On 26 March 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Ussuriysk, Primorye Region.

A. Criminal proceedings and the alleged ill-treatment

6. On 8 February 2001 the applicant, then a military officer, was detained on suspicion of having committed theft of spare parts for military ammunition and the murder of his accomplice G. His initial questioning was conducted without a lawyer because the applicant had signed a waiver stating that he was aware of his right to legal assistance and that his refusal was not due to financial reasons.

7. On 16 February 2001 legal aid counsel was appointed to represent the applicant in the criminal proceedings.

8. From that date the applicant was detained in the Ussuriysk IZ-25/2 detention facility. During the first months of his detention he sent a number of letters to the prosecutor's office complaining about the lack of progress in his criminal case and various procedural violations on the part of the investigator. In his letter of 1 June 2006, in particular, he indicated that the assistant of the military prosecutor of the Ussuriysk Garrison, investigator D., had made threats "to hand him over" to the family of G. to let them take revenge.

9. On 15 June 2001 at about 10 a.m. investigator D. checked the applicant out of the detention facility in order to take him to some unspecified site, allegedly for investigative actions. The applicant was transported by operative officers K. and T., both of whom were armed, and he was driven in T.'s personal car. They drove to 33 Lermontova Street on the outskirts of Ussuriysk, where the car stopped. K. and T. told the applicant that they were waiting for D. to join them before they could proceed to the place for the investigative action. While they were waiting, at 11 a.m. another car later described as a "Japanese make" pulled in. Several armed men got out, opened the door of T.'s car, forced the applicant out and loaded him into their car. K. and T. offered no resistance to their actions. According to the applicant, they even helped the men to push the applicant into their car.

10. The armed men, who, the applicant maintained, were relatives of G., took the applicant to a house in the country and tortured him there until 5 p.m. the same day. According to the applicant, he was chained to a radiator pipe while the men took turns to administer blows with various objects, such as stools, benches and tools, burned him with cigarettes and

crushed his fingers and toes. Every time the applicant passed out they would throw him under cold water until he recovered consciousness and then continued to torture him. Throughout the beatings they threatened to kill his family and demanded that he confess to the murder. At about 5 p.m. the men made an “anonymous phone call” to investigator D., telling him that he could collect the applicant from Frunze Street in Ussuriysk. The applicant was then brought to that street where D. found the applicant and took him back to the IZ-25/2 detention facility. In the detention facility the applicant underwent a medical examination which established multiple bruises, abrasions and burn marks on his body. He informed an operative officer, Major Kh., about the incident and on the following day sent a complaint, accompanied by the medical certificate, to the Ussuriysk Prosecutor’s Office.

11. On 30 September 2001 the applicant sent a complaint to the Prosecutor’s Office of the Dalnevostochniy Military Command that he had been ill-treated on 15 June 2001 and about the lack of follow-up to his complaint of 16 June 2008. He requested that criminal proceedings be instituted against the members of G.’s family and the officials who had handed him over.

12. On 19 November 2001 the applicant wrote to the Prosecutor’s Office of the Dalnevostochniy Military Command reiterating his complaints of ill-treatment on 15 June 2001 and about the absence of any follow-up to his earlier complaint.

13. On 4 February 2002 the applicant reiterated his complaint to the Prosecutor’s Office of the Dalnevostochniy Military Command.

14. On 13 February 2002 the Military Court of the Dalnevostochniy Command convicted the applicant of aggravated murder and of theft of military ammunition. He was sentenced to fourteen years’ imprisonment. The court in its judgment dismissed the applicant’s complaint of ill-treatment. The applicant appealed, claiming, *inter alia*, that the court had used the testimony obtained under duress and without a lawyer; that his detention had been extended unlawfully; and that during a considerable period of time the investigation had been inactive. He also complained of ill-treatment on 15 June 2001 and failure to investigate it.

15. On the same day the applicant received a reply from the Prosecutor’s Office of the Dalnevostochniy Military Command informing the applicant that an additional enquiry would be carried out as regards his complaint of ill-treatment. This was confirmed by another letter from the same prosecutor’s office on 22 February 2002.

16. On 8 April 2002 the Prosecutor’s Office of the Khabarovsk Garrison opened a criminal investigation into the incident of 15 June 2001.

17. On 29 April 2002 the applicant sent a complaint to the Prosecutor’s Office of the Dalnevostochniy Military Command. He complained that the investigation in the criminal case concerning his ill-treatment had been

belated and inefficient. He alleged that he still had not got access to any materials on the file and that even basic investigative steps had not been taken.

18. On 8 June 2002 the Prosecutor's Office of the Khabarovsk Garrison discontinued criminal proceedings concerning the ill-treatment, relying on the statements of the following persons, who had been questioned:

- the applicant, who reiterated the earlier submissions and the allegations against the members of G.'s family and the implicated officials, D., T. and K.;

- investigator D., who denied handing the applicant over or making any prior threats to the applicant; he confirmed that there had been one occasion when he had allowed S.G., a relative of the deceased, to talk to the applicant in the interview room, but he had made no threats;

- witness A., apparently also a member of G.'s family, who was present during the above conversation and who confirmed that S.G. did not threaten the applicant;

- operative officer T. who submitted that on 15 June 2001 he was transporting the applicant together with K.; they stopped in Lermontova Street waiting for D. and were attacked by unknown persons who abducted the applicant; he stated that they had not expected to be attacked and had therefore offered no resistance; he had not received any instructions from D. to hand the applicant over to G.'s relatives;

- S.G., the suspect in the applicant's abduction, denied any knowledge of the incident;

- witness N.K., apparently D.'s superior, submitted that D. had been negligent in having failed to organise adequate transport of the applicant, but was not responsible for him having been beaten up.

As regards D., T. and K. it was established that they had been negligent in discharging their official duties but there had been no causal link between their negligence and the applicant's injuries. Their prosecution for criminal negligence was therefore discontinued. The proceedings against S.G. and other relatives of G. were also discontinued on the grounds of lack of evidence against them.

19. On 6 December 2002 the Military Section of the Supreme Court of Russia upheld the applicant's conviction but reduced the prison sentence to twelve years. The court of appeal found that there had been no procedural irregularities during the pre-trial investigation, that the applicant had been informed about his right to legal assistance and had waived it. The testimony given by the applicant was found to have been received in compliance with the procedural rules. As to the alleged ill-treatment on 15 June 2001, the court of appeal referred to it as "acts of unidentified individuals". It held that there was no connection between this episode and the applicant's criminal conviction because the applicant had confessed to the murder before the events of 15 June 2001.

20. On 22 December 2002 the applicant lodged a complaint with a court alleging, among other complaints, ill-treatment and inaction by the prosecutor's office following his complaints.

21. On 5 February 2003 the Military Court of Ussuriysk Garrison examined this complaint and dismissed it. The court found that the prosecutor's office had conducted an investigation of the episode of ill-treatment and considered it thorough and sufficient. The applicant appealed.

22. On 18 February 2003 the applicant was informed that criminal proceedings against investigator D., operative officers T. and K. and members of G.'s family had been discontinued. He sent a complaint to the Military Prosecutor's Office of the Khabarovsk Garrison requesting access to the file relating to the discontinued criminal proceedings. In reply, on 17 March 2003, he was informed that there had been no grounds to reconsider previous decisions taken in respect of his complaints.

23. On an unspecified date the applicant challenged the closure of the criminal investigations of the ill-treatment before a court. On 14 April 2003 the court dismissed the applicant's claim, finding that the decision to discontinue prosecution of the officers and G.'s relatives had been lawful and reasonable. The applicant submitted that on 10 June 2003 he had appealed against this decision.

24. On 7 August 2003 the Military Court of the Dalnevostochniy Command examined the applicant's appeal against the decision of 5 February 2003, reversed the latter decision and decided to discontinue the proceedings on the grounds that the applicant's complaint was in fact a request for a supervisory review. On 13 March 2006 the same court examined the applicant's request for a supervisory review of the decision of 5 February 2003 and rejected it having found that the applicant's complaints were in essence an expression of his disagreement with his conviction.

25. On 17 March 2006 the same court examined and rejected the applicant's request for supervisory review of the decision of 14 April 2003. It upheld the earlier judicial assessment and the decision to discontinue criminal proceedings concerning the applicant's ill-treatment.

B. Conditions of the applicant's detention

26. The applicant was detained in the Ussuriysk no. IZ-25/2 detention facility:

- from 16 February to 15 June 2001 in cell no. 76, which measured 42 square metres;
- from 15 June 2001 to 5 March 2003 in cell no. 72, which measured 16.8 square metres (except for several short-term transfers to other facilities for the purposes of the criminal proceedings and an eight-month transfer to Moscow for the appeal hearing);

– from 27 February to 3 March 2003 in cell no. 11, which measured 21.4 square metres.

27. The conditions in the IZ-25/2 facility are partly in dispute between the parties.

28. According to the applicant, the cells were overcrowded and there was a shortage of sleeping places; the inmates slept on the concrete floor, huddled together to keep warm; there had been no, or insufficient, heating; the facility was overrun by rats; the light and water supply were often interrupted. In support of his claims he provided a copy of his letter to the Ussuriysk Prosecutor's Office dated 16 June 2001. In this letter the applicant complained that he was detained in cell no. 76, which was extremely overcrowded. He indicated that he shared the cell with thirty-eight other detainees and that there had not been enough beds or mattresses and that "everybody slept on the bare floor".

29. The Government submitted that the information on the number of inmates in the cells in the relevant period was not available because the registration logs for that period were destroyed on 5 March 2007, after the expiry of the term of their storage in archives. However, relying on the certificate by the director of the facility, issued on 28 May 2007, and by the warden reports, issued on 29 May 2007, they contended that the conditions in the facility were satisfactory and that the number of detainees in each cell did not exceed the number of sleeping places. The Government submitted that the applicant had an individual bunk and was provided with bedding. All cells were disinfected on a "regular basis". The sanitary and hygienic conditions in the facility were in conformity with the regulations. All cells were equipped with a lavatory pan and sink. The pan was separated from the living area by a one-metre-high partition wall with a curtain.

30. The Government submitted a copy of the sanitary inspection report issued on 1 July 2002 by the Department of Sanitary and Epidemiological Control of the Chief Penitentiary Department of the Ministry of Justice in respect of facility no. IZ-25/2. The report contained a detailed questionnaire filled in by the sanitary inspectors in the presence of the facility administration and, *inter alia*, stated that:

- the facility was designed for 720 inmates;
- at the time of inspection there were 1,245 inmates;
- personal living space in the cells was 2.31 square metres for male inmates (§ 4.1);
- individual sleeping facilities and bedding were available for 50% of inmates (§§ 4.12 and 4.14);
- there were insects and rodents in the facility (§ 4.18);
- sanitary facilities in living quarters were insufficient and dilapidated (§ 5.6).

II. RELEVANT DOMESTIC LAW

31. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

III. RELEVANT INTERNATIONAL DOCUMENTS

32. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in temporary holding facilities and remand establishments and the complaints procedure read as follows:

“b. temporary holding facilities for criminal suspects (IVS)

26. According to the 1996 Regulations establishing the internal rules of Internal Affairs temporary holding facilities for suspects and accused persons, the living space per person should be 4 m². It is also provided in these regulations that detained persons should be supplied with mattresses and bedding, soap, toilet paper, newspapers, games, food, etc. Further, the regulations make provision for outdoor exercise of at least one hour per day.

The actual conditions of detention in the IVS establishments visited in 2001 varied considerably.

...

45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.

...

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private 'because they know that all complaints usually pass through the colony's administration'.

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION AS REGARDS THE APPLICANT'S ILL-TREATMENT ON 15 JUNE 2001

33. The applicant complained that on 15 June 2001 he had been subjected to treatment incompatible with Article 3 of the Convention and that the authorities had not carried out an effective investigation into those events. 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. The parties' submissions

34. The Government confirmed that on 15 June 2001 the applicant was abducted and ill-treated and that he had sustained the injuries he claimed, contesting, however, any involvement of state officials in the infliction of injuries. The Government found it impossible to conclude that the applicant's rights guaranteed under Article 3 of the Convention had been violated as a result of any acts or omissions on the part of the state bodies or officials. They relied on the domestic decisions, which found no grounds for the prosecution of investigator D., or the convoy officers, or the relatives of G., at whom the applicant pointed as perpetrators. The Government considered that the authorities could not be held responsible for the assault of the "unidentified individuals".

35. The applicant maintained his allegations, pointing out that without the consent of D., T. and K. his abduction would not be possible. Moreover, he considered that the investigation of these events was entirely inadequate, as it was open more than nine months after the ill-treatment and, apart from questioning the implicated persons, did not involve any steps aiming at establishing the culprits.

B. The Court's assessment

1. Admissibility

36. 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

37. The Court has held on many occasions that the authorities have an obligation to protect the physical integrity of persons in detention. Where an individual is taken into 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 (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336; see also, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of

similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch*, cited above, § 34, and *Salman*, cited above, § 100).

38. The Court observes, and it is common ground, that the applicant in the present case sustained injuries when he was transported from the place of his pre-trial detention to take part in an investigative action, thus in the custody of the State. The circumstances of the applicant's abduction and ill-treatment, as described by the applicant, are not as such contested by the Government. What is in dispute between the parties is the existence of a link between the conduct of the officials in this situation and the infliction of injuries suffered by the applicant. The applicant maintained that the acts of ill-treatment were carried out by G.'s relatives with the consent and assistance of investigator D., who had arranged for the abduction. He also alleged negligence of the convoy officers T. and K. in that they had failed to protect him from the assault. The Government, on the other hand, did not accept responsibility on the part of these persons for the damage suffered by the applicant.

39. The Court notes that the applicant was taken out of the detention facility following the order of investigator D. who had allegedly requested the applicant's presence at some unspecified site for undisclosed investigative actions. According to D., T. and K. the attack on the convoy and the applicant's abduction had been a total surprise and that they were unable to put resistance or to track down the perpetrators. The Court, however, considers their account to lack credibility. First, the purpose of the applicant's detour from the detention facility remains unclear because D. has not explained what investigative action was intended to be carried out, at what destination, or why the convoy had to stop and wait half way. T. and K., on their part, failed to explain their lack of attempts to offer resistance to the kidnappers, or to pursue them, or to report that they had lost the detainee they convoyed. Further incoherence may be observed in the account of the applicant's return into custody later that evening. In particular, it remains unexplained why D., having received an "anonymous call" inviting him to collect the applicant at the designated address, did not seek assistance from his fellow policemen in arresting the kidnappers, but simply picked the applicant up and took him back to the detention facility.

40. The Court, however, does not need to resolve doubts as to the extent of D., T. and K.'s involvement in the applicant's abduction for the following reasons.

41. The Court notes that the existence of professional negligence on the part of these officials had been confirmed in the domestic proceedings (see

paragraph 18 above). It furthermore considers, contrary to what the Government claimed, that the omissions on the part of the impugned officers had a direct causal link with the applicant's injuries. Even assuming that the convoy fell an innocent victim of the "unidentified perpetrators", as they contended, their professional duty required them to do everything possible to rescue the inmate in their charge. However, as mentioned above, they neither pursued the kidnappers nor reported the assault, having thus failed to take even the most obvious steps to prevent the kidnappers from taking the applicant away and ill-treating him. The Court therefore considers that even the "professional negligence" in transporting him, which has been acknowledged by the authorities, was a major contributor to the damage suffered by the applicant. For this reason, without having to examine whether the officials' involvement in the abduction went further than mere negligence, the Court considers it established that there has been a failure to ensure the applicant's security and that there has been a causal link between the authorities' conduct and the applicant's ill-treatment.

42. The Court therefore considers that the Russian authorities failed to rebut the presumption of their responsibility for the injuries inflicted on the applicant while in charge of the State. Accordingly, the responsibility for the ill-treatment lies with the domestic authorities.

43. The Court shall further determine the form of ill-treatment inflicted on the applicant. In determining whether a particular form of ill-treatment should be qualified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see *Ireland v. the United Kingdom*, cited above, § 167). The fact that pain or suffering was inflicted with an intention to obtain information, inflict punishment or intimidate is a factor to be taken into account in deciding whether ill-treatment amounted to torture (see *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports of Judgments and Decisions* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83-84 and 86, *Reports* 1997-VI; *Selmouni v. France* [GC], no. 25803/94, § 105, ECHR 1999-V; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; *Salman*, cited above, § 114; and *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-IV (extracts)).

44. The Court finds that in the instant case the existence of physical pain and suffering is attested by the medical report and the applicant's statements regarding his ill-treatment at the hands of the kidnappers. The nature of injuries and the account of events indicate that the pain and suffering was inflicted on him intentionally, in particular with the view of extracting from him a confession to having committed the offence he was suspected of and of taking revenge on him.

45. In such circumstances, the Court considers that the violence inflicted upon the applicant was of a particularly serious nature, capable of provoking severe pain and cruel suffering which fall to be treated as acts of torture for the purpose of Article 3 of the Convention.

46. In the light of the above, the Court concludes that there has been a violation of Article 3 of the Convention.

(b) Alleged failure to carry out an effective investigation

47. The Court reiterates that where an individual raises an arguable claim that he or she has been seriously ill-treated by the police 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. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others*, 28 October 1998, § 102, *Reports* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the authorities concerned must act with exemplary diligence and promptness (see, for example, *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005).

48. Turning to the present case, the Court notes that immediately after the incident of 15 June 2001 the applicant lodged a complaint with the prosecutor's office, in which he alleged ill-treatment and requested a criminal investigation to be opened. This complaint was accompanied by a medical certificate attesting his injuries. On 30 September 2001, on 19 November 2001 and on 2 February 2002 he reiterated his complaint to the prosecutor's office and on 13 February 2002 he made the same complaint to the court hearing his criminal case. However, the investigation was not opened until 8 April 2002, that is more than nine months later.

49. The Court considers that the medical evidence and the applicant's complaints together raised a reasonable suspicion that his injuries could have been a result of a criminal offence against the applicant, possibly with the involvement of the officials or their failure to ensure his safety in the custody of the State. It therefore finds that a procedural obligation arose to investigate the applicant's allegation of ill-treatment as soon as he brought the matter before the authorities concerned, namely the prosecutor's office and the detention facility. However, the investigation was only opened more than nine months after the events complained of, and there is no reasonable explanation for this delay. The case was eventually investigated by the Prosecutor's Office of the Khabarovsk Garrison in criminal proceedings which, despite their lateness, were not necessarily doomed to failure, since

the file already contained ample evidence. However, this inquiry has been far from satisfactory. It does not appear that there have been any attempts to gather evidence or to clarify the circumstances of the applicant's abduction and ill-treatment. The decision of 8 June 2002 by which the criminal proceedings were discontinued contained little more than a statement that none of the persons accused by the applicant had confessed to the kidnapping. When questioned they were not required to provide any specific information relevant to the abduction. It is striking, in particular, that D., T., and K. were not questioned about the vehicles in which the applicant had been kidnapped or returned, that no description of perpetrators was drawn, that there had been no identification parade with the relatives of G. before T., and K. or any search at their premises. Moreover, D., T. and K. were not required to specify the purpose of the applicant's detour from the detention facility, or to explain their own actions following the abduction in order to verify the allegations of their involvement.

50. The above deficiencies of the investigation have never been pointed out by the reviewing bodies, including the courts.

51. Accordingly, in view of the lack of promptness and thoroughness in following up the applicant's complaints, there has also been a violation of Article 3 of the Convention on account of the lack of an effective investigation of the incident of ill-treatment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

52. The applicant complained that the conditions of his detention in the Ussuriysk IZ-25/2 detention facility were in breach of 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. Submissions by the parties

53. The Government argued that the applicant had not exhausted domestic remedies available to him. In particular, he had not complained to a prosecutor about the conditions of his detention. The Government further commented on the conditions of the applicant's detention. In particular, they submitted that the applicant had been detained in satisfactory sanitary conditions. Relying on certificates issued by the facility director, they pointed out that the applicant had not been detained in overcrowded cells. At all times he had had an individual sleeping place. The Government submitted that they were not in possession of any documents showing the

names and exact number of inmates in the cells in which the applicant had been detained because the logs had been destroyed after the expiry of the archive time-limits.

54. The applicant maintained his complaints. He relied on the sanitary report of 1 July 2002, provided by the Government, which, as he alleged, confirmed the existence of overcrowding, the lack of sleeping facilities and unsatisfactory sanitary situation in the facility.

B. The Court's assessment

1. Admissibility

55. The Court notes the Government's argument that the applicant failed to complain to a prosecutor about the appalling conditions of his detention. In this connection, the Court observes that it has already on a number of occasions examined the same objection by the Russian Government and dismissed it. In particular, the Court held in the relevant cases that the Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court, or another State agency, bearing in mind that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; and most recently, *Andrey Frolov v. Russia*, no. 205/02, § 39, 29 March 2007, and *Sudarkov v. Russia*, no. 3130/03, § 39, 10 July 2008). The Court sees no reason to depart from that finding in the present case. Moreover, it notes that the applicant in the present case had in fact complained to the prosecutor's office (see his complaint of 16 June 2001 referred to in paragraph 28 above), which did not appear to yield any response. The Court therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

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

2. Merits

57. The Court notes that the parties have disputed certain aspects of the conditions of the applicant's detention in the Ussuriysk IZ-25/2 detention facility. However, there is no need for the Court to establish the veracity of each and every allegation, because it finds a violation of Article 3 on the basis of facts presented to it which the respondent Government did not refute.

58. The focal point for the Court's assessment is the living space afforded to the applicant in the detention facility. The main characteristic which the parties did agree upon was the size of the cells. However, the applicant claimed that the cell population severely exceeded their design capacity. The Government argued that the applicant had not been detained in the overcrowded cells and that at all times he had had an individual bunk.

59. In this connection, the Court reiterates that Convention proceedings, such as those arising from the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

60. The Court notes that the Government in their contestation of the applicant's complaint of overcrowding were unable to rely on the facility's registration logs claiming that they had been destroyed. However, the sanitary report of 1 July 2002 provided by the Government supported the applicant's allegations, rather than their own, because it stated that only 50% of inmates had had individual sleeping facilities. The Court further notes that the same sanitary report stated that the facility was overfilled by almost twice its capacity and that living space per inmate was as little as 2.31 square metres. It also confirmed the presence of insects and rodents in the facility, as well as the poor state of the sanitary equipment.

61. Having regard to the principle cited above, together with the fact that the Government did not submit any relevant information in support of their claim, the Court will examine the issue concerning the number of inmates in the cells in facility no. IZ-25/2 on the basis of the applicant's submissions.

62. According to the applicant, the cells were severely overcrowded at all times. Although he did not indicate how the allocation of the living space changed throughout the period of detention, the Court notes that in June 2001 he allegedly shared a cell measuring 42 square metres with 38 other detainees and was not provided with an individual sleeping place. The sanitary report drawn a year later, in July 2002 (see paragraph 30 above), shows an only marginal increase in living space and stated that there were only half as many sleeping places as there were detainees in the facility. The Court concludes that in the reference period the applicant was allowed about 2.31 square metres of personal space, even less on some occasions, and that there was a clear shortage of sleeping places.

63. Irrespective of the reasons for the overcrowding, the Court reiterates that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of

detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006).

64. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees. In this connection, the Court reiterates that in a number of cases in which detained applicants usually had less than three and a half square metres of personal space it has already found that the lack of personal space afforded to them was so extreme as to justify, in its own right, a violation of Article 3 of the Convention (see *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Igor Ivanov v. Russia*, no. 34000/02, §§ 37-38, 7 June 2007; *Benediktov v. Russia*, no. 106/02, §§ 36-38, 10 May 2007; *Andrey Frolov*, cited above, §§ 47-49; *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005; and *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005, among others). The Court also found that the problems arising from overcrowding in Russian pre-trial detention facilities were of a structural nature (see *Moiseyev*, cited above; *Kalashnikov*, cited above; and *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006).

65. 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. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the applicant was obliged to live, sleep and use the toilet in the same cell as so many other inmates for more than two years was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

66. Furthermore, while in the present case it cannot be established “beyond reasonable doubt” that the heating or sanitary conditions in the facility were unacceptable from the standpoint of Article 3, the Court nonetheless notes that presence of insects and rodents in the facility, as well as the dilapidated state of the sanitary equipment, are relevant in addition to the focal factor of the severe overcrowding, and show that the applicant’s detention conditions went beyond the threshold tolerated by Article 3 of the Convention (see *Novoselov v. Russia*, no. 66460/01, § 44, 2 June 2005).

67. The Court finds accordingly that there has been a violation of Article 3 of the Convention because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention from 16 February 2001 to 5 March 2003 in the Ussuriysk IZ-25/5 facility.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

68. Lastly, the applicant complained under Article 5 §§ 1 (a) and 3 (c) that his pre-trial detention had been both unlawful and excessively long. He also complained under Article 6 § 1 of the Convention about the length of the criminal proceedings and about shortfalls in the trial, as well as in the investigation of his criminal case, and the courts' failure to remedy them. Under Article 6 § 3 (c) and (d), he complained that his right to defence and adequate time to prepare his defence had been violated. Under Article 4 § 1 of Protocol No. 7 he complained that he had been punished twice for the same offence, referring to the allegedly wrongful interpretation of some counts of his conviction.

69. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, 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

70. 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

71. The applicant claimed 112,500 Russian roubles in respect of pecuniary damage sustained as a result of his detention on criminal charges, including alleged damage to his flat while he was in detention. He also claimed 300,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of violation of his Convention rights.

72. The Government contested the applicant's claims as unsubstantiated and excessive.

73. The Court notes that the applicant's claim for pecuniary damage relates to the complaints that have been found inadmissible (see paragraphs 68-69 above); it therefore rejects this claim. The Court further observes that it has found serious violations of Article 3 of the Convention in the present case, most importantly torture. In these circumstances, it considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Nevertheless, the particular amount claimed appears excessive. Making its assessment on an

equitable basis, it awards the applicant EUR 22,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

74. The applicant requested the Court to reimburse him the expenses incurred in the proceedings before the Court but did not indicate the amount sought.

75. The Government contended this claim as unsubstantiated.

76. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having noted that the applicant's request contained no particulars and was not accompanied by any supporting documents, the Court dismisses the claim under this head.

C. Default interest

77. 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 under Article 3 concerning the ill-treatment of the applicant, the lack of effective investigation thereof and the conditions of the applicant's detention in facility no. IZ-25/5 in Ussuriysk admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the ill-treatment inflicted on the applicant;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the failure to conduct an effective investigation into the applicant's complaints about the ill-treatment;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 16 February 2001 to 5 March 2003 in facility no. IZ-25/5 in Ussuriysk;

5. *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 22,000 (twenty-two thousand euros), plus any tax that may be chargeable in respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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;

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

Done in English, and notified in writing on 29 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President