



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

FIRST SECTION

CASE OF KUZMENKO v. RUSSIA

(Application no. 18541/04)

JUDGMENT

STRASBOURG

21 December 2010

FINAL

20/06/2011

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

In the case of Kuzmenko 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 2 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 18541/04) 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, Ms Tatyana Mikhaylovna Kuzmenko (“the applicant”), on 10 March 2004.

2. The applicant was represented by Mr S. Kiryukhin, a lawyer practising in Orsk. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that she had been ill-treated by the police and that she had not benefited from an effective investigation into the incident.

4. On 19 June 2007 the President of the First Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in the town of Orsk, Orenburg Region.

A. The parties' versions of events on 22 September 2001

6. In the evening of 22 September 2001 police officers arrested the applicant's husband on suspicion of indecent behaviour in a public place and took him to a nearby police station situated in a dormitory building. The applicant accompanied him. According to the applicant, in response to her pleas for her husband's release, a police officer, Mr Sh., grabbed her hair and hit her head against a wall three times. Then he handcuffed her to a radiator in a corridor of the dormitory. She was released few hours later.

7. The Government disputed the applicant's version of events, arguing that the applicant, who was drunk, had followed the police officers and her husband to the station, demanding to be informed of the reasons for her husband's arrest and for him to be released. According to the Government, the applicant attempted to resist her husband's arrest, grabbing the officers' uniforms and using obscene language. On arrival at the station the applicant attempted to block the entrance door and kicked officer Sh. on the leg. After the police officers had locked the entrance door, the applicant broke a pane of glass in the door, unlocked it and entered the station. She accompanied her actions with threats of violence against the officers and said she would get them dismissed from the police force. Faced with violence and resistance on the applicant's part, police officer Sh. used physical force and handcuffed her.

8. In the afternoon of 23 September 2001 the applicant went to Orsk Town no. 2 Hospital complaining of headache, nausea, dizziness and vomiting. She was diagnosed with concussion and prescribed outpatient treatment. The attending doctor also noted that the applicant had bruises on the forehead, chest, shoulders and occipital region of the head.

B. Criminal proceedings

9. Criminal proceedings were instituted against officer Sh. on a charge of abuse of position. The prosecutor's office accused him of having caused the applicant injuries in the form of concussion, tissue damage and bruising on the left side of the face and of exceeding the limits of his official powers by handcuffing the applicant to a radiator.

10. On 28 September 2001 the applicant was subjected to a forensic medical examination. Following the exam the expert issued a report which, in so far as relevant, read as follows:

“[there are] a swelling of the soft tissues on the left side of the [applicant's] forehead accompanied by a bluish and yellow bruise measuring three centimetres in width and six centimetres in length ..., [and] three bruises measuring between seven centimetres in width and seven centimetres in length and two centimetres in width and two centimetres in length on the back surface in the lower third part of her right shoulder. There are similar bruises on the palmar surface of the right forearm (a bruise one centimetre long and one centimetre wide) and on the rear of the right forearm (two

bruises: one centimetre wide and one centimetre long and three centimetres wide and three centimetres long); [there is a bruise], measuring four centimetres in width and four centimetres in length, on ... the left shoulder, [there are] numerous similar bruises on the back of [the applicant's] left wrist and left forearm ... measuring between three to three and four to five centimetres.”

The expert concluded that the applicant had concussion and an injury and bruise on the face which had been caused recently by hard blunt objects and had caused minor damage to health. He listed numerous bruises on the applicant's arms and shoulders, assessing that they too were the result of blows from a firm blunt object and had been incurred at the same time as the head injury. Finally, the expert addressed the possibility that the applicant had sustained a chest injury; this was the preliminary diagnosis she received at the hospital. The expert observed no injuries on the chest, and found that there was no evidence in support of that preliminary diagnosis.

11. Following a second forensic medical examination of the applicant, on 23 January 2002, the expert's findings were similar as to the location of the injuries and their nature and also established that the injuries could have been caused in the circumstances described by the applicant.

12. In March 2002 the case was sent for trial to the Leninskiy District Court of Orsk. However, on 17 April 2002 the District Court returned the case to the prosecution with an order for certain procedural defects, which violated the defendant's rights, to be corrected. The trial court further stressed that a comprehensive expert medical examination of the applicant was needed “to settle certain inconsistencies in the first two expert reports”.

13. On 24 January 2003 a comprehensive expert medical examination authorised by the District Court confirmed that the applicant had had a craniocerebral injury comprising a bruise and an injury to the soft tissue of the left side of the forehead, an injury to the soft tissue of the occipital region and concussion, numerous bruises on the arms and an injury to the soft tissue on the left side of the chest resulting from the application, a number of times, of a hard blunt object with a small surface area. Noting that the injuries could have been caused in the circumstances described by the applicant, the experts went further and stated that the different location, in particular the fact that the bruises had been on the applicant's forehead and the occipital region, and the quantity of the injuries, ruled out self-infliction.

14. On 17 March 2003 the Leninskiy District Court acquitted Mr Sh. of all charges, finding that his actions had not been criminal. The District Court based its judgment on statements by the defendant, the applicant and her husband, four police officers, Mr B., Mr M., Mr T. and Mr S., five witnesses, Mr A., Ms G., Ms K., Ms B., and Ms I., and an opinion given by a forensic medical expert, Mr P. Their statements were as follows:

- the defendant confirmed that on 22 September 2001 he and his partner, Mr T., had arrested the applicant's husband. The applicant, who was drunk, approached and demanded that her husband be released. She used offensive language, grabbed the police officers by their clothes and did not respond to their warnings. After the officers had entered the police station, the applicant tried to prevent them from closing the entrance door and kicked the defendant on the leg. When the defendant succeeded in closing the door, the applicant broke a pane of glass in the door, unlocked it and entered the building. The defendant noted that he had had no choice but to handcuff the applicant to a radiator near the entrance door. However, she continued acting violently. She broke another pane of glass in the entrance door and used offensive language. The defendant insisted that he had not beaten the applicant up. He could not explain the cause of the applicant's injuries, noting that she had had no injuries before her husband's arrest and that she could have hurt herself.

- the applicant confessed that, being under the influence of alcohol, she had tried to prevent her husband's arrest and had grabbed the police officers by their uniforms and had used offensive language. She further stated that after she had broken a pane of glass in the entrance door and gone into the station, the defendant had grabbed her by the hair and hit her head three times against a wall. He had then handcuffed her to a radiator.

- the applicant's husband confirmed that his wife had accompanied him to the police station. At the station he had heard the sound of breaking glass, then his wife shouting, and then more breaking glass. He did not see how his wife had sustained the injuries.

- the witnesses, Mr A. and Ms G., testified that they had seen the applicant and her husband during the evening of 22 September 2001, prior to the arrival of the police, and that they had not observed the alleged beatings by the police.

- the police officers, Mr B. and Mr M., stated that they had arrived at the police station at about 10 p.m. on 22 September 2001. They saw the applicant handcuffed to a radiator in a corridor. She was acting aggressively and was drunk. There was broken glass around her on the floor. She did not have any visible injuries. The police officers noted that Mr Sh. explained to them that he had handcuffed the applicant to calm her down. After the applicant was released she again threatened the police officers, using offensive language.

- the witnesses, Ms K. and Ms B., informed the District Court that on 22 September 2001, at about 10 p.m., they had gone along a corridor in the dormitory building. They noticed that the applicant was handcuffed to a radiator. She was drunk and aggressive and was using offensive language. The applicant did not make any requests or complaints.

- the witness, Ms I., who worked as a concierge in the dormitory, stated that she spoke to the applicant during the evening of 22 September 2001 and

that the applicant had confirmed that she had broken windows to draw attention to her situation.

- the police officer, Mr T., corroborated the statements made by the defendant.

- the police officer, Mr S., testified that the applicant had complained to him that the defendant had beaten her up. He saw a bruise on her arm, above the wrist, and an injury on her forehead. The applicant was sent for a medical examination.

- the expert, Mr P., informed the District Court that on the instruction of a Leninskiy District assistant prosecutor he had performed a forensic medical examination of the applicant and had issued a report. He recorded that the applicant had concussion, tissue damage and a bruise on the face, a bruise on the right side of the forehead and bruises on the arms. The expert noted that his report was corroborated by the results of the compound forensic medical examination of the applicant.

15. Having examined the evidence, the District Court held that there was no evidence that the defendant had beaten the applicant up. As regards the fact that the defendant had handcuffed the applicant, the District Court held as follows:

“The actions of the defendant, Mr Sh., were lawful and valid and were caused by unlawful actions of the victim, [the applicant], who had committed an offence. A special measure – handcuffs were lawfully applied to prevent an ongoing offence by [the applicant], who acted unpredictably, created a dangerous situation for police officers and other individuals who passed through the corridor of the building. [The applicant] could have caused various injuries to individuals by breaking the panes of glass [in the door]. The victim did not need medical assistance, nor did she ask for it. The victim did not have visible injuries which required medical assistance. When he had handcuffed and arrested the spouses [the applicant and her husband], the defendant, Mr Sh., reported to ... his chief, thus fully complying with legal obligations.”

The applicant and the prosecution appealed.

16. On 22 April 2003 the Orenburg Regional Court upheld the District Court's findings. The judgment of the Regional Court, as far as relevant, read as follows:

“As regards injuries caused to the victim.

Mr Sh. emphatically stated that he had not beaten [the applicant] up. There are no eyewitnesses. The statements by the victim as to the cause of her injuries do not correspond to the findings of the forensic medical examinations.

Thus, as it follows from an expert report..., [the applicant] had injuries in the form of concussion, an injury and bruising to the face, on the left side of the forehead. An expert, Mr P., who had performed the initial medical examination, was questioned at a hearing and stated that if it was confirmed that [the applicant] had hit her head it was possible that she had received those injuries, however, it was impossible to say precisely.

According to the conclusions of the comprehensive forensic medical examination, [the applicant] had injuries in the form of a craniocerebral trauma (a bruise and injury to the soft tissues of the left side of the forehead, an injury to the soft tissues of the occipital region of the head, and concussion), numerous bruises on the arms, and an injury to the soft tissues of the left side of the chest.

Having regard to the general picture of the bodily injuries, the experts concluded that it would not have been possible for the victim to inflict them on herself.

However, in the present case the scope of the accusations only included injuries recorded on the forehead of the victim. [The applicant's] injuries on the occipital region of her head and an injury on the chest were not included in the accusations against Mr Sh. Taking this fact into account, the prosecution and the court cannot overstep the bounds of the indictment and cannot examine at the court hearing any additional questions which could lead to further charges.

The court also finds that those injuries cannot be taken into consideration when deciding on the question whether the applicant could have caused those injuries to herself. The prosecution thus did not rebut Mr Sh.'s argument that [the applicant] could have herself caused the injury to the left side of the head which led to the concussion.”

C. Tort action

17. On 27 July 2003 the applicant lodged an action against the Orsk Town police department and the Ministry of Finance, claiming compensation for non-pecuniary damage caused by the unlawful actions of Mr Sh.

18. On 5 December 2003 the Leninskiy District Court, Orsk, relying on the judgment of 17 March 2003 of the same court, dismissed the applicant's action. The District Court held that Mr Sh.'s guilt in having caused the injuries had not been proven. Referring to Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the District Court noted “the character” of the applicant's injuries and the fact that neither the applicant nor Mr Sh. had explained “the mechanism of the appearance of injuries” and it held that “the injuries could have been caused accidentally when lawful sanctions were being applied to the plaintiff”. The District Court considered that the actions resulting in those injuries could not amount to “torture”.

19. On 5 February 2004 the Orenburg Regional Court upheld the judgment of 5 December 2003, relying on the findings of the District Court made during the trial against Mr Sh.

II. RELEVANT DOMESTIC LAW

A. Investigation into criminal offences

20. The Code of Criminal Procedure of the Russian Federation (in force since 1 July 2002, “the CCrP”) establishes that a criminal investigation can be initiated by an investigator or a prosecutor on a complaint by an individual or on the investigative authorities' own initiative, where there are reasons to believe that a crime has been committed (Articles 146 and 147). A prosecutor is responsible for overall supervision of the investigation (Article 37). He/she can order specific investigative actions, transfer the case from one investigator to another or order an additional investigation. If there are no grounds to initiate a criminal investigation, the prosecutor or investigator issues a reasoned decision to that effect, which has to be notified to the interested party. The decision is amenable to appeal to a higher-ranking prosecutor or to a court of general jurisdiction within a procedure established by Article 125 of the CCrP (Article 148). Article 125 of the CCrP provides for judicial review of decisions by investigators and prosecutors that might infringe the constitutional rights of participants in proceedings or prevent access to a court.

B. Use of force and special measures by the police

Police Act (no. 1026-1 of 18 April 1991) (Закон РФ «О милиции»)

21. Police officers are only entitled to use physical force, special means and firearms in the cases and within the procedure established by the Police Act; staff members of police facilities designated for temporary detention of suspects and accused persons may only use such force and special means in cases and within the procedure established by the Custody Act (section 12).

22. Section 12 of the Police Act provides that a police officer resorting to physical force, special means or a firearm, should warn an individual that force/special means/firearms are to be used against him. In cases when a delay in the use of force, special means or firearms may endanger the life and health of civilians or police officers or cause other serious damage, such a warning is not necessary. Police officers should ensure that damage caused by the use of force/special means/firearms is minimal and corresponds to the character and extent of the danger posed by unlawful conduct and the perpetrator, and the resistance offered by the perpetrator. Police officers should also ensure that individuals who have been injured as a result of the use of force/special means/firearms receive medical assistance.

23. Under section 13 of the Police Act police officers may use physical force, including combat methods, to prevent criminal and administrative offences, to arrest individuals who have committed such offences, to overcome resistance to lawful orders, or if non-violent methods do not ensure compliance with responsibilities entrusted to the police.

24. Sections 14 and 15 of the Police Act lay down an exhaustive list of cases when special means, including handcuffs, and firearms may be used. In particular, handcuffs may only be used to overcome resistance offered to a police officer, to arrest an individual caught when he is committing a criminal offence against life, health or property and if he is attempting to escape, and to bring arrestees to police stations, to transport and protect them if their behaviour allows the conclusion that they are liable to escape, cause damage to themselves or other individuals or offer resistance to police officers.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant complained that the police officer had severely beaten her up and had left her handcuffed for hours in a humiliating position and that the domestic authorities had failed to effectively investigate the incident and to punish the perpetrator in violation 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

26. The Government opened their line of arguments by attracting the Court's attention to the circumstances of the applicant's husband's arrest and her extreme reaction to the police officers' lawful actions. The Government stressed that the applicant had unlawfully sought her husband's release, which had been effected in compliance with domestic requirements, including that of informing an individual of the reasons for his arrest. The applicant, who in the trial hearings did not deny this, was drunk, acted aggressively, attempted to resist her husband's arrest, used offensive language, grabbed the police officers by their uniform, threatened them with violence and even kicked an officer on the leg. She continued her outrageous behaviour in the police station by breaking the panes of glass in the entrance door and bursting into the building. The Government argued

that in those circumstances the use of force by the police officer, as well as the use of handcuffs, was a justified and lawful response to the applicant's conduct. Moreover, it was the only possible and effective response, as no non-violent methods were capable of calming the applicant down. In the Government's opinion the force used against the applicant did not run contrary to the guarantees envisaged by Article 3 of the Convention. In particular, the force did not reach the minimum level of severity required by that Convention provision for it to become applicable. The damage caused to the applicant as a result of the use of force did not lead to any long-term negative consequences for her health and was considered "insignificant" by the experts. Furthermore, while applying force and handcuffing the applicant, the officer had no intention of causing her physical or psychological suffering or of humiliating her. The Government concluded that the force did not reach the limit of inhuman or degrading treatment.

27. The Government further addressed the applicant's argument of ineffective investigation into the events on 22 September 2001. They asserted that the Russian investigating authorities had done everything possible to effectively respond to the applicant's complaints of ill-treatment. They instituted criminal proceedings against the police officer and prepared his case for trial, having collected necessary evidence for the charges to be upheld in court. In the Government's view, those efforts, despite the officer's acquittal, corroborate the fact that the Russian authorities had fulfilled their positive obligations under Article 3 of the Convention in the applicant's case.

28. The applicant maintained her complaints, arguing that the Government had failed to provide any evidence in support of their allegations that the police officer's actions had been lawful. The applicant stressed that her husband's arrest had had no legal basis and therefore her attempts to prevent the arrest had been legitimate. In any event, the officer's response to her conduct was inexplicable and unjustifiable. The applicant observed that the Government did not dispute that all her injuries had been caused by the police officer. However, they did not explain why it was necessary to hit her head at least three times against the wall as the officer had done. Having been beaten up and handcuffed to a radiator in the dormitory corridor, she suffered humiliation and distress which could not be excused by her own conduct.

B. The Court's assessment

1. Admissibility

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

2. Merits

(a) General principles

(i) As to the scope of Article 3

30. As the Court has stated on many occasions, Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Chahal v. the United Kingdom*, 15 November 1996, § 79, *Reports of Judgments and Decisions* 1996-V). Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 of the Convention, even in the event of a public emergency threatening the life of the nation (see *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V, and *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports* 1998-VIII).

31. In order for ill-treatment to fall within the scope of Article 3 it must attain a minimum level of severity. The assessment of this minimum depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25, and *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX). Further factors include the purpose for which the treatment was inflicted, together with the intention or motivation behind it (compare, *inter alia*, *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports* 1996-VI; *Egmez v. Cyprus*, no. 30873/96, § 78, ECHR 2000-XII; and *Krastanov v. Bulgaria*, no. 50222/99, § 53, 30 September 2004), as well as its context, such as an atmosphere of heightened tension and emotions (compare, for instance, *Selmouni*, cited above, § 104).

32. The Court has considered treatment to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering (see *Labita*, cited above, § 120). Treatment has been held to be “degrading” when it is such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or psychological resistance, or when it is such as to drive the victim to act against his will or conscience (see, *inter alia*, *Keenan v. the United Kingdom*, no. 27229/95, § 110, ECHR 2001-III, and *Jalloh*, cited above, § 68).

33. In determining whether a particular form of ill-treatment should be classified 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 such a distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see *Ireland v. the United Kingdom*, cited above, § 167; *Aksoy*, cited above, § 63; and *Selmouni*, cited above, § 96). In addition to the severity of the treatment, there is a purposive element to torture, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, § 115, ECHR 2000-X).

(ii) *Establishment of the facts*

34. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly or in large part within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

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

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

(i) Establishment of facts and assessment of the severity of ill-treatment

α. Alleged beatings by the police officer

36. The Court observes, and the parties did not dispute, that in the evening of 22 September 2001 the applicant had a heated argument with the police officers over her husband's arrest. It was likewise uncontested that following the applicant's attempts to break into the police station to obtain her husband's release, officer Sh. used physical force against the applicant and handcuffed her to a radiator in the corridor of the dormitory building where the police station was situated. The applicant spent a few hours in that position and was released without any charges being brought against her.

37. The Court further notes that on 23 September 2001 the applicant was examined in the hospital, diagnosed with concussion and admitted for outpatient treatment. Bruises on her chest, shoulders, forehead and occipital region of the head were also recorded (see paragraph 8 above). Five days later a forensic medical examination of the applicant confirmed the presence of those injuries, apart from the one on the chest, and concluded that they had been caused by a hard blunt object (see paragraph 10 above). Similar findings were made by an expert who conducted another medical examination of the applicant on 23 January 2002. However, on that occasion the expert amended the conclusions by accepting the plausibility of the applicant's version of events (see paragraph 11 above).

38. In this respect the Court observes that there was no argument between the parties that the applicant's injuries as shown by medical reports had been sustained at the police station. The Court attributes particular weight to the fact that neither the applicant nor the Government argued that the injuries had been caused prior to the confrontation between the applicant and police officer or that they could have been self-inflicted by the applicant. It has therefore been established "beyond reasonable doubt" that the applicant sustained injuries as the result of the use of force by police officer Sh.

39. Against this background, given the serious nature of the applicant's injuries, the burden rests on the Government to demonstrate with convincing arguments that the use of force was not excessive (see *Zelilof v. Greece*, no. 17060/03, § 47, 24 May 2007).

40. The Court notes that the exact circumstances and intensity of the use of force against the applicant were disputed by the parties and were subject to somewhat conflicting evaluations by the prosecution and judicial authorities. The Government alleged that the use of force had been strictly proportionate and necessary as the applicant had been aggressive, had

kicked a police officer while trying to enter the station and had been a threat to the officers and other individuals who happened to go along the corridor of the dormitory building at the time. They submitted that the acts of violence against the applicant had been committed by police officer Sh. in the performance of his duties. The applicant did not dispute that she had broken into the police station in violation of a direct order from officer Sh. However, relying on expert reports showing that she had numerous injuries on her arms, shoulders and chest and a serious head trauma, she submitted that officer Sh. had repeatedly hit her head against a wall and had applied excessive force in handcuffing her.

41. The Court notes the Government's argument that force had been used lawfully in response to the applicant's unruly conduct. It accepts that in defusing situations, maintaining order, preventing offences, catching alleged criminals and protecting themselves and other individuals, police officers are entitled to use appropriate means, including force. Nevertheless, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007, with further references). Recourse to physical force which has not been made strictly necessary by the individual's own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.

42. The Court observes that the Government's submissions indicate that on arrival at the police station the applicant had attempted to go in. On being denied access she kicked officer Sh. on the leg, broke a pane of glass in the entrance door and went into the station. She accompanied her actions with obscene language and threats of violence. The police officer ordered the applicant to stop this unruly behaviour, but the applicant refused to comply. The Court accepts that in these circumstances the officer may have needed to resort to physical force to prevent further disruptions and calm the applicant down. It is also prepared to accept that some injuries on the applicant's body, such as small bruises on the forearms and shoulders, are consistent with a minor physical confrontation which might have occurred between the applicant and officer Sh. when the latter attempted to overcome the applicant's resistance and close the door to the police station or handcuff her. At the same time, the Court does not lose sight of the fact that the injuries suffered by the applicant were not restricted to the area of her arms and shoulders, that the degree of bruising established during the medical examinations was excessive and that she had sustained a serious head injury (see, by contrast, *Stefan Iliev v. Bulgaria*, no. 53121/99, § 44, 10 May 2007).

43. Given the extent of the applicant's injuries, the Court does not consider that the degree of the force used against her was necessary in the circumstances of the case. It is not convinced that officer Sh. could have reasonably believed that the amount of force he used was necessary to

accomplish a legitimate police purpose and compel compliance by the applicant. The force used against the applicant in preventing or terminating her violent behaviour went beyond what was strictly necessary in the circumstances. In fact, the Court is of the opinion that the actions by the police officer were disproportionate to the applicant's imputed transgressions and inconsistent with the goals he sought to achieve. The Court further finds that the degree of force to which the applicant was subjected must have caused her mental and physical suffering, even though it did not apparently result in any long-term damage to her health. In these circumstances the Court finds that the applicant was subjected to treatment which can be described as inhuman and degrading.

44. Accordingly, having regard to the circumstances of the case, the Court concludes that the State is responsible under Article 3 on account of the beatings to which the applicant was subjected by the police officer in the police station on 22 September 2001 and that there has thus been a violation of that provision.

β. Handcuffing

45. The Court further does not lose sight of the fact that for few hours the applicant remained handcuffed to a radiator in the corridor of the dormitory building. It is apparent from the Government's submissions, that handcuffing was aimed at facilitating the police officer's task of calming the applicant down and restoring order. The Court reiterates that the use of handcuffs or other instruments of restraint does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary. In this regard, it is important to consider, for instance, the danger of the person's absconding or causing injury or damage (see *Raninen v. Finland*, 16 December 1997, *Reports* 1997-VIII, § 56, and *Mathew v. the Netherlands*, no. 24919/03, § 180, ECHR 2005). However, the manner in which the applicant is subjected to the measure in issue should not go beyond the threshold of a minimum level of severity envisaged by the Court's case-law under Article 3 of the Convention (see, *mutatis mutandis*, *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 94, ECHR 2005–II). Assessing the parties' description of the events which occurred in the police station on 22 September 2001, the Court notes that handcuffing may be regarded as a less intrusive measure, as opposed to pure violence, to restore order and calm the applicant down. It is also ready to accept that the handcuffing was made necessary by the applicant's own aggressive behaviour to prevent further disruptions. In this connection, the Court does not lose sight of the fact that the applicant's handcuffing was, as is apparent from the Government's submissions, more effective in facilitating the police officers' task of restoring order. The Court observes that the applicant did

not contend that the handcuffing had affected her physically. There is also no evidence that the handcuffing was aimed at debasing or humiliating her. While regretting that the applicant was left for a few hours handcuffed near the entrance door where she was visible to the public, the Court is of the opinion that, given the parties' description of the events, the manner in which the handcuffing was carried out in the applicant's case can be considered inevitable and could be justified by the danger posed by her to surroundings. It is also evident from the applicant's behaviour following the handcuffing, in particular her persistent attempts to attract attention of passers-by, that the applicant herself did not perceive the handcuffing as a humiliating and degrading treatment. The Court therefore does not find unacceptable the manner in which the handcuffing was effected.

46. There has thus been no violation of Article 3 of the Convention on account of the applicant's handcuffing in the police station on 22 September 2001.

(c) Alleged inadequacy of the investigation

47. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev*, cited above, § 107 et seq., and *Assenov and Others v. Bulgaria*, 28 October 1998, *Reports* 1998-VIII, § 102 et seq.).

48. On the basis of the evidence adduced in the present case, the Court has found that the respondent State is responsible under Article 3 for the ill-treatment of the applicant (see paragraph 44 above). The applicant's complaint in this regard is therefore "arguable". The authorities thus had an

obligation to carry out an effective investigation into the circumstances in which the applicant sustained her injuries (see *Krastanov v. Bulgaria*, no. 50222/99, § 58, 30 September 2004).

49. The Court observes that the investigation into the applicant's allegations commenced as soon as she brought the matter before the competent authorities and that, at least on the face of it, the authorities initially appeared to have acted with diligence and promptness. In March 2002, only six months after the incident, officer Sh. was served with a bill of indictment following which the case was referred to the trial court for examination on the merits (see paragraph 12).

50. The Court notes, however, that after a preliminary examination of the case the trial court discovered certain flaws in the two forensic medical reports summoned by the prosecution authorities, as well as a number of procedural violations on their part which had negatively effected the defendant's rights. The case was sent back to the prosecution for correction of the defects. As a result the examination of the applicant's case by the trial court was delayed for almost a year. Furthermore, having examined the merits of the case the District Court acquitted the police officer, finding that there was no evidence of ill-treatment. In this respect the Court reiterates that the applicant was entirely reliant on the prosecutor to assemble the evidence necessary to corroborate her complaint. The prosecutor had the legal powers to interview the police officers, summon witnesses, visit the scene of the incident, collect forensic evidence and take all other crucial steps for the purpose of establishing the truth of the applicant's account. His role was critical not only to the pursuit of criminal proceedings against the perpetrator of the offence but also to the pursuit by the applicant of other remedies to redress the harm she had suffered (see paragraph 20 above). In these circumstances the Court is bound to interpret the District Court's finding of insufficiency of evidence as a sign of serious flaws in the work of the prosecuting authorities.

51. The major fact undermining the reliability and effectiveness of the investigation in the applicant's case was the prosecuting authorities' failure to accuse officer Sh. of causing the applicant injuries to the chest and occipital region of the head. The Court observes that the prosecution merely concentrated on raising the issue of the applicant's having sustained an injury to the forehead as a result of the police officer's actions, and excluded the remaining injuries recorded by the medical experts from the description of the *actus reus* of the alleged crime. In this respect the Court reiterates the Regional Court's finding that the limited scope of accusations brought by the prosecution against officer Sh. prevented the trial court's assessment of the entire set of facts as the court was legally bound to respect the boundaries of the indictment drafted by the prosecution (see paragraph 16 above). It is also apparent that in these circumstances the trial court was unable to give a correct interpretation of the findings of the medical experts

as to the nature and origin of the applicant's injuries, in particular their inflicted character. The Court is of the opinion that the defective indictment made it impossible for the prosecution to sustain a conviction. Moreover, the Court observes that given a chance to correct the procedural defects pointed out by the District Court in April 2002, it was open to the prosecution authorities to check one more time that they had prepared their case effectively for trial in order to obtain a guilty verdict against officer Sh. The Court finds it surprising that no such efforts were made by the prosecution.

52. The fact remains that the competent authorities committed serious errors of an irremediable nature leading to the ultimate acquittal of officer Sh. In the absence of any other plausible explanation for these mistakes by the Government, the Court finds that the principal reason for these errors lay in the manifest incompetence of the prosecuting authorities which conducted the investigation in the applicant's case (see, for similar reasoning, *Maslova and Nalbandov v. Russia*, no. 839/02, §§ 93-97, ECHR 2008-... (extracts)).

53. Accordingly, the Court finds that there has been a violation of Article 3 of the Convention on account of the lack of an effective investigation into the applicant's allegations of ill-treatment.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

57. The Government argued that the claim was unsubstantiated and excessive.

58. The Court reiterates, firstly, that the applicant cannot be required to furnish any proof of the non-pecuniary damage she sustained (see *Gridin v. Russia*, no. 4171/04, § 20, 1 June 2006). The Court further observes that it has found a serious violation in the present case. It accepts that the applicant suffered humiliation and distress on account of the ill-treatment inflicted on her. In addition, she did not benefit from an effective investigation of her complaints about the ill-treatment. 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 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

59. The applicant did not claim any amount for the costs and expenses incurred before the domestic courts or before the Court. Consequently, the Court does not make any award under this head.

C. Default interest

60. 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 complaint concerning the alleged beatings and handcuffing of the applicant by a police officer on 22 September 2001 and the ineffectiveness of the investigation into the incident admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention on account of the beatings to which the applicant was subjected in the police station on 22 September 2001;
3. *Holds* that there has been no violation of Article 3 of the Convention on account of the applicant's handcuffing in the police station on 22 September 2001;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the authorities' failure to investigate effectively the applicant's complaint about the inhuman and degrading treatment to which she was subjected by the police;
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 12,000 (twelve thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable on that amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President