



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

FIRST SECTION

CASE OF ALEKSANDRA DMITRIYEVA v. RUSSIA

(Application no. 9390/05)

JUDGMENT

STRASBOURG

3 November 2011

FINAL

03/02/2012

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

In the case of Aleksandra Dmitriyeva v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 11 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 9390/05) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Aleksandra Petrovna Dmitriyeva (“the applicant”), on 26 January 2005.

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

3. Referring to events which took place between 8 and 10 December 2001, the applicant alleged that police officers had beaten and unlawfully detained her, having broken into the area of the apartment which she lived in against her will. She also complained about the lack of effective investigation into the alleged ill-treatment by the authorities.

4. On 12 January 2010 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1946 and lives in St Petersburg.

6. The applicant, her husband and their son reside in an apartment, which they share with two other families. She suffers from a number of diseases, affecting her skin, kidneys and thyroid gland. The applicant is classed as Category 2 disabled under Russian law.

7. In April 2001 the applicant's son allegedly beat up Bo., who was a member of one of the families residing in the same apartment. Bo. complained to the police of having been beaten. On 1 October 2002 the applicant's son was convicted of affray in this connection and given a six-month conditional sentence.

A. Events of 8 December 2001

8. At around 5 p.m. on 8 December 2001 K., a neighbourhood police inspector, and police officer S., the Deputy Head of the 28th Section of the St Petersburg Central District Department of the Interior ("the District Department of the Interior") arrived at the applicant's apartment to invite the applicant's son to attend an interview. At the time, he had not been either classed as a suspect or formally charged. Bo. let the officers into the apartment and they saw the applicant's son entering his room and locking the door behind him.

9. The applicant blocked the way to her son's door. S. explained the reasons for their visit to the applicant, but the applicant asked them to leave. According to S., the applicant verbally insulted him and punched him several times in the chest. The applicant disagreed and submitted that she had simply blocked access to the door, but did not insult or punch anyone.

10. The applicant's neighbours, who were present during the incident, later confirmed that the applicant had used abusive language and had tried to hit S.

11. K. then left the building in order to prevent the applicant's son from escaping through a window and S. stayed in the apartment and called the police, asking them to send reinforcements. Some time later, officers Sh., D.B. and M. arrived at the applicant's apartment. S. told them to take the applicant to the police station for having insulted the policemen on duty.

12. According to the applicant, and as also noted in the statement of her neighbours given during the subsequent investigation, thereafter the policemen forced the door to the room of the applicant's son open, entered the room and some time later led him outside of the apartment and put him in a car.

13. According to S., he offered to let the applicant put her winter clothes on, but the applicant refused. Sh. and M. then took the applicant by the hands, led her out of the apartment and put her in the car. The applicant resisted their efforts.

14. The applicant submitted that while she had been in the apartment, one of the policemen had knocked her to the floor, had grabbed her by the

wrists and had dragged her out of the apartment. He had dragged her down two staircases of the building and out to the car. She denied having been given the chance to put her winter clothes on.

15. According to the applicant, it had been minus 10° C outside. The applicant's son had been put in the same car. The police brought them to the District Department of the Interior's premises and locked them in cells for administrative detainees.

16. Some time later the applicant's husband brought her warm clothes. A record made after the incident concerning the administrative offence of minor affray under Article 158 of the RSFSR Administrative Offences Code states that the applicant "used abusive language in public". The record describes the applicant's identity and time of the incident, but does not mention whether any decision was taken in connection with her alleged misconduct, whether the applicant was taken into custody and whether or when she was released. The applicant confirmed having seen a copy of the record in the police station.

17. The Government were unable to provide the Court with the materials pertaining to the applicant's administrative case, explaining that they were destroyed following the expiry of the time-limit for storage of such documents in February 2003, April 2005 and April 2007. They did not submit any specific information as to the existence of a record of the applicant's detention.

18. According to the applicant, she had spent approximately twenty hours in a cell for administrative detainees in the District Department of the Interior's premises. She was not given any food, was not provided with medical assistance and did not have the opportunity to sleep, as there was neither a bed nor bedding. Given that she had suffered an injury to her tail bone, the only position that she had been able to cope with was staying upright all the time. It is not clear whether any records of the applicant's detention were made.

19. The Government submitted that there had been no standard rules concerning the conditions for such detention, that the applicant's cell had been equipped with a wooden bench, that the applicant had not complained about the state of her health and that the authorities had not impeded third parties, such as a relative, from bringing their own food to feed the applicant.

20. The applicant was released on 9 December 2001 at around 1 p.m., without having been brought before a judge or otherwise interrogated. On the same date, the applicant was examined by a doctor who recorded a bruise on the applicant's tail bone. The doctor stated specifically that the bruise had been formed as a result of an impact occurring no less than once by a blunt object in a mechanical way, similar to a blow, and that it "could have been inflicted during a fall onto a flat surface or [by] continuous dragging along the floor or down a staircase".

21. The administrative proceedings against the applicant and her son concerning the charge of minor affray were later discontinued or abandoned.

22. The Government did not dispute the timing of the applicant's detention and release.

B. Criminal investigation

1. First round of investigation

23. On 12 December 2001 the applicant asked a prosecutor to initiate criminal proceedings against police officers S., K. and the policeman who had dragged her from the apartment to the car. In her application, she referred specifically to the policemen's unlawful entry to the apartment and the applicant's family's accommodation, to being beaten and to her subsequent unlawful arrest and detention. The letter described in detail the conditions of her detention. On 28 January 2002 Ts., an assistant prosecutor at the St Petersburg Central District Prosecutor's Office, refused to institute criminal proceedings. The applicant did not provide the Court with a copy of the decision.

24. On 8 February 2002 M., a supervising prosecutor at the St Petersburg Prosecutor's Office, instituted criminal proceedings against S. on the basis of the applicant's complaint of S.'s unlawful actions. She argued that:

“... [the decision of 28 January 2002] had been unlawful and had to be quashed insofar as it had concerned the actions of the police officers.

Thus, [the relevant legislation] indeed empowers the policemen to enter without hindrance the residential premises of private citizens. However, this power is provided only in case the [policemen are pursuing] the persons suspected of criminal activity. In the case at hand, [the applicant's son] was not a suspect within the meaning of [the domestic law on criminal procedure], the criminal case against him was instituted only later, which policemen K. and S. certainly knew. In addition, in breach of the mentioned legal norm obliging the police to inform about all such cases the relevant prosecutor within 24 hours, this has not been done.

The unlawful actions of the policemen [in question] mostly provoked the subsequent actions of [the applicant], which was unjustifiably viewed by the policemen as a minor affray. [The applicant's] intent in the present situation was directed at the protection of her son, and not the breach of public order. As was earlier noted in [previous decision of the prosecutor's office], the [applicant's] actions did not qualify as [an offence of insulting a public officer] ... because the relevant actions did not have a lawful character ...”

The prosecutor considered that the applicant had been taken to the police station and had been detained there unlawfully. The prosecutor decided to

institute criminal proceedings but for some reason failed explicitly to quash the decision of 28 January 2002.

25. On 14 March 2002 an expert examination of the applicant's medical condition was conducted. The expert noted that the applicant had a bruise on her tail bone which could have occurred, among other reasons, as a result of her being dragged down the staircase on 8 December 2001.

26. Investigator Ch. of the St Petersburg Central District Prosecutor's Office, in charge of the criminal case against S., collected the following evidence. He questioned S., who stated that during the incident in the applicant's apartment she had verbally insulted and pushed him several times and that he had had to call for reinforcements and take the applicant to the police station. S. had not known about the applicant's disability at the time of the incident.

27. The investigator also questioned K., who stated that he had been in charge of investigating Bo. having been beaten up by the applicant's son. On 8 December 2001, having learned that the applicant's son was at home, he had gone with officer S. to invite him to attend a police interview. They had met the applicant in the apartment and she had started to verbally insult them and push S. out of the apartment. The applicant's neighbours had witnessed the incident. Then K. had left the building and had seen the reinforcing officers arriving. Sh. and M. had gone upstairs and had soon come back, leading the applicant by the hands to the car.

28. Sh. told the investigator that on 8 December 2001 he had arrived at the applicant's apartment. He had seen the applicant swearing and pushing S. Then S. had given the order to take the applicant to the station. He and another policeman had taken her by the hands and had led her out of the apartment to the car. The applicant had resisted.

29. The investigator questioned the applicant's neighbours Bo. and S., who stated that they had seen her insulting and trying to hit officer S. They stated that the two policemen had then taken the applicant to the car, despite her resistance. The neighbours also gave evidence to the effect that the police officers had forced open the door to the applicant's son's room and had entered it despite the applicant's objections.

30. L., a passer-by, stated to the investigator that she had seen two policemen leading a woman from an apartment block to a car. The woman had been resisting and screaming. She had then been "carefully put into the car".

31. The applicant told the investigator that in the apartment a police officer had hit her so hard that she had fallen to the floor. He had then taken her by the wrist and had dragged her along the floor out of the apartment. She had walked by herself from the entrance of the apartment block to the car.

32. In the light of the above evidence, the investigator concluded that S., by ordering the applicant's transfer to the police station, had acted lawfully.

Accordingly, on 8 June 2002 he took a decision to discontinue the criminal proceedings against S.

2. Second round of investigation

33. On 1 July 2002 deputy prosecutor B. S. of the St Petersburg Central District Prosecutor's Office quashed the decision of 8 June 2002 and ordered additional investigation of the applicant's complaint concerning alleged unlawful actions by S.

34. On 21 October 2002 an investigator at the St Petersburg Central District Prosecutor's Office discontinued the criminal proceedings against S. He argued that S. had acted lawfully and had not abused his authority. The investigator also found that the applicant had insulted S. and had punched him several times in the chest, and therefore that she was liable to prosecution for having committed violent actions towards an officer on duty. He separated the case relating to the applicant's actions in respect of the officer into a different set of criminal proceedings. On 28 April 2003 the criminal proceedings against the applicant in this respect were discontinued for the lack of evidence of a crime.

3. Third round of investigation

35. On 17 February 2003 deputy prosecutor B.S. of the St Petersburg Prosecutor's Office quashed the decision of 21 October 2002 and ordered additional investigation into the applicant's complaints.

36. On 3 April 2003 investigator A. Sh. of the St Petersburg Central District Prosecutor's Office discontinued the criminal proceedings. The investigator stated that the applicant's bruise had occurred as a result of her active resistance to the lawful actions of policemen. On the way to the car, the applicant had tried to hold on to a door frame, the rails of the staircase and a metal fence on the street, and had bent her feet so that the policemen had had to carry her. The investigator argued that taking the applicant to the police station had been justified by the need to hold her responsible for her breach of public order. The investigator concluded that there was no evidence that S. had abused his powers. The investigator also stated that the police had made a record of the applicant's administrative offence and that they had arrested the applicant in order to bring her before a judge who was competent to decide on her guilt as regards the administrative offence in accordance with applicable law.

4. Fourth round of investigation

37. On 30 December 2003 deputy prosecutor Zh. of the St Petersburg Prosecutor's Office quashed the decision of 3 April 2003 and ordered additional investigation by another prosecutor's office. The prosecutor noted that it had not been possible to establish with certainty the

circumstances of the incident between the applicant and the police officers due to inconsistencies in the witnesses' statements. In the decision, the prosecutor referred to the record of the applicant's administrative and police detention but noted discrepancies as regards the beginning of the applicant's detention and also stated that the time of the applicant's release was not recorded at all. He considered that it was necessary to carry out a comprehensive medical expert examination of the applicant and noted the inadequacy of the investigation conducted so far.

38. On 18 February 2004 an investigator from the St Petersburg Admiralteyskiy District Prosecutor's Office discontinued the criminal proceedings against S. He noted that the decision of 8 February 2002 had not quashed the decision of 28 January 2002 and that the original decision was still in force. Thus, the institution of criminal proceedings at a time when there was a valid decision to discontinue them was unlawful. The investigator noted in his decision that, in entering the apartment against the will of its owner and ordering the policemen to take the applicant to the police station, S. had acted unlawfully. He also noted that officer Sh. had led the applicant out of the apartment. According to the investigator, the applicant had been detained at the police station on the basis of reports by a number of policemen, namely B., Sh. and M.

5. Fifth round of investigation

39. On 31 March 2004 deputy prosecutor A. Zh. of the St Petersburg Prosecutor's Office quashed the decision of 18 February 2004 due to the inadequacy of the investigation and ordered additional investigation.

40. On 31 May 2004 investigator Zh. of the St Petersburg Admiralteyskiy District Prosecutor's Office discontinued the criminal proceedings against S. The investigator stated that it had not been possible to establish with certainty the circumstances of the incident between the applicant and police officers due to inconsistencies in the witnesses' statements. He argued that S. had unlawfully entered the apartment against the applicant's will and had given an illegal order to take her to the police station. The investigator also added that S. had violated the applicant's rights, as he had not checked whether her detention at the police station for more than three hours was lawful. The investigator further argued that the institution of criminal proceedings at a time when the decision of 28 January 2002 to discontinue them was still in force was unlawful and all evidence collected in the course of the newly opened investigation was inadmissible. The applicant's son challenged the decision in court on the applicant's behalf.

41. On 17 February 2005 the Smolninskiy District Court in St Petersburg examined the applicant's complaint against the investigator's decision of 31 May 2004 and rejected it. The court upheld the investigator's conclusion that the institution of criminal proceedings at a time when the

decision of 28 January 2002 to discontinue them was still in force was unlawful and all evidence gathered in the course of the newly opened proceedings was inadmissible. The applicant appealed. On 7 April 2005 the St Petersburg City Court rejected the applicant's appeal.

6. Sixth round of investigation

42. On 2 June 2004 deputy prosecutor A. Zh. of the St Petersburg Prosecutor's Office quashed the decision of 8 February 2002 to institute criminal proceedings. On 2 June 2004 the deputy prosecutor quashed the decision of 28 January 2002 to discontinue the criminal proceedings and ordered additional investigation.

43. On 11 June 2004 deputy prosecutor K. of the St Petersburg Central District Prosecutor's Office discontinued the criminal proceedings against S. The deputy prosecutor noted that police officers Sh. and M. had taken the applicant by the hands and had led her out of the apartment. He concluded that the police officers had acted lawfully during the incident, which had been provoked by the applicant and her son. The deputy prosecutor also mentioned the fact that no records of the time of the applicant's release had been made at the police station and added that the materials of inquiry concerning the administrative proceedings against the applicant and her son, namely the records of administrative offences, had been destroyed. In taking the decision, the prosecutor did not mention any specific piece of evidence, either new or old. The applicant's son challenged this decision in court on her behalf.

44. On 1 November 2004 the Smolninskiy District Court in St Petersburg rejected the complaint against the decision of 11 June 2004. The court noted that:

"... the statements of all persons questioned in connection with the case have been analysed, the events have been described in the decision [of 11 June 2004] in chronological order and do not contradict the evidence contained in the materials of inquiry ... submitted to the court. The statements of policemen Sh., B., K. and S. that they did not commit any illegal actions towards Dmitriyeva and that the conflict was provoked by [the applicant], who had refused to follow the lawful orders of the policemen, are also confirmed by the statements of witness L. ..."

The applicant appealed against the judgment.

45. On 27 January 2005 the St Petersburg City Court rejected the applicant's appeal.

II. RELEVANT DOMESTIC LAW

46. Section 11(18) of the Police Act 1991 gives the police the right to enter premises when pursuing a person suspected of having committed a crime or when the police have sufficient information to believe that a crime has been or is being committed on the premises or that an accident has

happened there and also for the purposes of ensuring the safety of citizens and of the public in cases of natural disasters, catastrophes, accidents, epidemics, epizootics and public disorders. The police have to notify a prosecutor of all cases of entry into the homes of persons against their will within twenty-four hours.

47. Article 158 of the RSFSR Administrative Offences Code 1984, as in force at the relevant time, punished minor affray, namely the use of abusive language in public places, harassment of citizens and other similar actions disturbing the public order and peace. Article 238 of the Code provided that an accused person could be brought to a police station for the purpose of making a record of an administrative offence if it had not been possible to make it on the spot. Article 240 required that administrative detention be recorded. According to Article 242, a person who committed an administrative offence could be detained for no more than three hours. However, individuals who committed minor affray could be detained until the examination of the case by a court or by the head of a law-enforcement body.

III. RELEVANT INTERNATIONAL DOCUMENTS

48. The relevant extract from the 2nd General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) (CPT/Inf (92) 3) reads as follows:

“42. Custody by the police is in principle of relatively short duration ... However, certain elementary material requirements should be met.

All police cells should be of a reasonable size for the number of persons they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (e.g. a fixed chair or bench), and persons obliged to stay overnight in custody should be provided with a clean mattress and blankets.

Persons in custody should be allowed to comply with the needs of nature when necessary in clean and decent conditions, and be offered adequate washing facilities. They should be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day.

43. The issue of what is a reasonable size for a police cell (or any other type of detainee/prisoner accommodation) is a difficult question. Many factors have to be taken into account when making such an assessment. However, CPT delegations felt the need for a rough guideline in this area. The following criterion (seen as a desirable level rather than a minimum standard) is currently being used when assessing police cells intended for single occupancy for stays in excess of a few hours: in the order of 7 square metres, 2 metres or more between walls, 2.5 metres between floor and ceiling.”

The CPT reiterated the above conclusions in its 12th General Report (CPT/Inf (2002) 15, § 47).

49. The part of the Report to the Russian Government on the visit to the Russian Federation carried out by the CPT from 2 to 17 December 2001 (CPT/Inf (2003) 30) reads, in so far as it concerns conditions of detention in administrative-detention cells located within police stations, as follows:

“25. Similar to the situation observed during previous visits, none of the district commands (RUVd) and local divisions of Internal Affairs visited were equipped with facilities suitable for overnight stays; despite that, the delegation found evidence that persons were occasionally held overnight at such establishments... The cells seen by the delegation were totally unacceptable for extended periods of custody: dark, poorly ventilated, dirty and usually devoid of any equipment except a bench. Persons held overnight were not provided with mattresses or blankets. Further, there was no provision for supplying detainees with food and drinking water, and access to a toilet was problematic.

The CPT reiterates the recommendation made in its report on the 1999 visit (cf. paragraph 27 of document CPT (2000) 7) that material conditions in, and the use of, cells for administrative detention at district commands and local divisions of Internal Affairs be brought into conformity with Ministry of Internal Affairs Order 170/1993 on the general conditions and regulations of detention in administrative detention cells. Cells which do not correspond to the requirements of that Order should be withdrawn from service.

Further, the Committee reiterates the recommendation made in previous visit reports that administrative detention cells not be used for accommodating detainees for longer than 3 hours.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED ILL-TREATMENT DURING THE ARREST AND THE LACK OF INVESTIGATION INTO THE EVENTS

50. The applicant complained with reference to the events of 8 December 2001 that she had been violently thrown to the floor and dragged out of her apartment and down a staircase by a police officer and that the authorities had failed properly to investigate the incident. The Court will examine these grievances under Article 3 of the Convention, which provides as follows:

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

A. Admissibility

51. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

52. The Government contested the applicant's account of events and argued that the police officers had acted lawfully and proportionately. The incident had been thoroughly investigated and the domestic authorities had determined that the applicant's allegations of ill-treatment had been unsubstantiated.

53. The applicant disagreed and maintained her complaints. She referred, in particular, to the medical record noting her injury and to various deficiencies in the investigation to insist on her initial account of the events in question.

2. The Court's assessment

(a) Alleged ill-treatment during the arrest

54. The Court reiterates that Article 3 of the Convention prohibits in absolute terms torture and inhuman or degrading treatment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim. Treatment has been held by the Court 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, and also "degrading" because it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. The question of whether the purpose of the treatment was to humiliate or debase the victim is a further factor to be taken into account, but the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3 (see *Labita v. Italy* [GC], no. 26772/95, §§ 119-20, ECHR 2000-IV).

55. Furthermore, allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita*, cited above, § 121). 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.

56. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). The Court further reiterates that, being sensitive to the subsidiary nature of its role and cautious in taking on the role of a first-instance tribunal of fact, it is nevertheless not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case (see, by contrast, *Edwards v. the United Kingdom*, 16 December 1992, § 34, Series A no. 247-B; see also *Matyar v. Turkey*, no. 23423/94, § 108, 21 February 2002, and *Vidal v. Belgium*, 22 April 1992, §§ 33 and 34, Series A no. 235-B.).

57. In the instant case, the Court observes that the parties did not dispute that in the course of the visit of the policemen to the apartment in which the applicant lived on 8 December 2001, she blocked their passage in a corridor and was then forcefully restrained and brought to the police car which waited outside. It remains to be determined whether the applicant had indeed been merely led out of the apartment, as argued by the Government, or whether she had been thrown to the floor and dragged down a staircase by the hands, as suggested by the applicant. It should then be determined whether the ill-treatment complained of reached the minimum level of severity within the meaning of Article 3 of the Convention.

58. In connection with the former question, the Court would note that the parties did not dispute the validity of the medical report drawn up on 9 December 2001 immediately following the applicant’s release, which confirmed the presence of a bruise on the applicant’s tail bone (see paragraphs 20 and 25). The applicant’s allegations of ill-treatment in this connection were examined and rejected by the domestic authorities in the course of the criminal investigation into the events of 8 December 2001 which ended with the decision of 11 June 2004 (see paragraph 43). That decision was upheld by the domestic courts at two judicial instances on 1 November 2004 and 27 January 2005 respectively (see paragraphs 44 and 45). The Court notes, however, that the authorities at the domestic level largely ignored the medical data contained in that report and, apart from the decision of 3 April 2003 which was later quashed (see paragraph 36), made

no serious attempt to explain the origin of this injury and to establish in detail the relevant factual circumstances (see paragraphs 26-32, 34, 36, 38, 40 and 43). Furthermore, it is clear that there is nothing in the case file or the parties' submissions suggesting that the injury described in the report had been inflicted either before the applicant's arrest on 8 December 2001 or in the period following her release on the next day. In such circumstances, the Court concludes that no satisfactory and convincing explanation for the origin of the applicant's injuries has been obtained or advanced either at the domestic level, or in the proceedings before this Court. Without prejudice to the question of the personal criminal liability of the alleged perpetrators of the acts in question, the Court concludes therefore that the Government failed to discharge its burden and that it was not satisfactorily established that the applicant's account of events had been inaccurate or otherwise erroneous.

59. Accordingly, the Court accepts the description of the events of 8 December 2001 as submitted by the applicant.

60. Furthermore, having regard to all the circumstances of the treatment as such, its physical and mental effects and the applicant's health condition and age, the Court concludes that the ill-treatment at issue amounted to inhuman and degrading treatment in violation of Article 3 of the Convention.

61. Accordingly, there has been a breach of the substantive limb of Article 3 of the Convention on account of the way in which the applicant was arrested and brought to the police car on 8 December 2001.

(b) Alleged failure to carry out an effective investigation

62. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, 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. As with an investigation under Article 2, such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Jasar v. the former Yugoslav Republic of Macedonia*, no. 69908/01, § 55, 15 February 2007; *Matko v. Slovenia*, no. 43393/98, § 84, 2 November 2006; *Assenov and Others v. Bulgaria*, § 102, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII; and *Labita*, cited above, § 131).

63. The minimum standards of “effectiveness” defined by the Court’s case-law also require that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005, and *Menesheva v. Russia*, no. 59261/00, § 67, ECHR 2006-III).

64. Turning to the case at hand, the Court notes that the parties did not dispute the validity of the medical report drawn up on 9 December 2001, almost immediately following the applicant’s release, and confirming the presence of a bruise on the applicant’s tail bone. The applicant’s allegations, which were detailed and consistent throughout the domestic proceedings and before this Court, were, at least to some extent, corroborated by a medical certificate recording an injury. The domestic authorities themselves repeatedly admitted having serious doubts concerning the lawfulness of the applicant’s arrest and detention and reacted to the applicant’s complaint by instituting criminal proceedings in this connection (see paragraphs 23, 24 and 38). They were therefore under an obligation to conduct an effective investigation into the applicant’s allegations, both concerning the ill-treatment during her arrest and also in so far as she complained of pain and suffering as a result of being detained in a cell with an injury to the tail bone (see *Fedotov v. Russia*, no. 5140/02, §§ 69-70, 25 October 2005), satisfying the above requirements of Article 3 of the Convention.

65. In this connection, the Court notes that the prosecuting authorities, who were made aware of the applicant’s ill-treatment and subsequent detention, carried out a preliminary investigation which did not result in a criminal prosecution. The applicant’s complaints were also subsequently subject to examination by the domestic courts at two levels of jurisdiction (see paragraphs 43-45). In the Court’s opinion, the issue is consequently not so much whether there was an investigation, since the parties did not dispute that there was one, but whether it was conducted diligently, whether the authorities were determined to identify and prosecute those responsible and, accordingly, whether the investigation was “effective”.

66. The Court reiterates that the applicant was entirely reliant on the prosecutor to gather the evidence necessary to corroborate her complaint. The prosecutor had the legal power to interview the police officers and order their medical examinations, 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. The Court will therefore assess the thoroughness of the investigation. In this connection, the Court notes a number of significant omissions capable of undermining its reliability and effectiveness.

67. First, the Court is struck by the fact that even though the applicant complained of the actions of several police officers, including S., K., M. and Sh., with the latter two being directly involved in the episode during which

the applicant was allegedly thrown to the floor and dragged out of the apartment, the criminal proceedings were opened against S. only (see paragraph 23). The Court finds that this shortcoming fundamentally incapacitated the investigation, having switched its focus from the use of allegedly excessive force through the specific actions of officers Sh. and M. to the general guidance of the operation by S. Furthermore, the Court notes that the investigating authority ignored the applicant's allegations concerning the unacceptable conditions of her detention in a cell for administrative detainees.

68. Second, the Court notes that the initial witness statements collected by the investigation contained many inconsistencies which had to be ironed out by meticulous comparison of these pieces of evidence with one another in relation to specific details or possibly reconstructions. It was important to conduct this process as quickly as possible whilst memories of what had happened were still fresh, but also in order to avoid the loss of contact with witnesses. As acknowledged by the investigating authority itself (see paragraphs 37 and 40), the necessary actions were not carried out even more than two years later and in fact they were not conducted at the domestic level at all (see paragraph 62). The Court, however, is mindful of the important role which investigative interviews play in obtaining accurate and reliable information from suspects, witnesses and victims and, ultimately, the discovery of the truth about the matter under investigation. Observing the suspects', witnesses' and victims' demeanour during questioning and assessing the probative value of their testimony forms a substantial part of the investigative process.

69. Third, the Court would note that on 2 June 2004 all of the previous investigative actions were quashed and declared null and void because of a breach of domestic procedure at an initial stage of investigation. The evidence that was lost as a result was never recovered, as it appears that the subsequent decision of 11 June 2004 did not rely on any specific piece of evidence collected after that date (see paragraph 43).

70. Lastly, the Court would deplore the overall quality of the final legal decision which summarised the findings of the investigation (see paragraph 43). In addition to being crippled by the previously mentioned and apparently uncorrected defects and not being based on any specific pieces of evidence, it failed to establish the relevant factual circumstances of the case or assess the proportionality of the use of force by the policemen.

71. Having regard to the above failings of the Russian authorities, the Court considers that the investigation carried out into the applicant's allegations of ill-treatment was ineffective and insufficient.

72. There has accordingly been a violation of Article 3 of the Convention under its procedural limb on account of the authorities' failure to properly investigate the circumstances of the applicant's arrest and ill-treatment.

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

73. The applicant complained that her detention for approximately twenty hours in a cell for administrative detainees at the District Department of the Interior's premises on 8 and 9 December 2001 was incompatible with Article 3 of the Convention in that she had been injured and had slept on the floor and had not been given any food or drink.

A. Admissibility

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

B. Merits

1. *The parties' submissions*

75. As regards the applicant's detention in a temporary detention cell, the Government submitted that no specific rules had existed at the domestic level describing the standards for such detention. They also stated that the cell in question had been equipped with a wooden bench, that the applicant had made no complaints about the state of her health to the policeman in charge throughout the period of her detention in the cell, and that the authorities had not impeded third parties, such as a relative, from bringing their own food to feed the applicant.

76. The applicant disagreed and maintained her complaints.

2. *The Court's assessment*

77. The Court notes that the only account of the conditions of the applicant's detention at the police station is that furnished by her. The Court reiterates that Convention proceedings, such as 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) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these 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-founded nature of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

78. In the present case, the domestic authorities have had ample opportunity to investigate the conditions of detention in the cells at the police station, notably by conducting an on-site inspection or by questioning the police officers or other witnesses concerned (see paragraphs 64-72 below). However, their submissions contained no specific information on this point, apart from an acknowledgement, which did not rely on any specific evidence, that the conditions of such detention had been unregulated, that the applicant had not been fed by the police, that the cell had had a bench and that the applicant could have called for medical assistance, but had failed to do so (see paragraph 18). Nor did the Government offer any convincing explanation for their failure to submit all relevant information.

79. Given these circumstances, the Court will examine the merits of the complaint on the basis of the applicant's submissions.

80. The Court observes that between 8 and 9 December 2001 the applicant was detained in a cell at the premises of the St Petersburg Central District Department of the Interior for a period of approximately twenty hours. During that time she received no food or drink and could not use the toilet.

81. The Court recalls that it has found a violation of Article 3 in a case where an applicant had been kept for twenty-two hours in an administrative-detention police cell without food or drink or unrestricted access to a toilet. It also noted that the unsatisfactory conditions of his detention had exacerbated the mental anguish caused by the unlawful nature of his detention (see *Fedotov v. Russia*, no. 5140/02, § 67, 25 October 2005 and *Shchebet v. Russia*, no. 16074/07, §§ 85-96, 12 June 2008). Furthermore, the Court has previously considered that the mere fact of holding an applicant in custody for three months in a detention centre designed only for short-term detention disclosed a violation of Article 3 (see *Kaja v. Greece*, no. 32927/03, §§ 49-50, 27 July 2006).

82. The applicant's description coincides with the findings of the CPT, which inspected various cells for administrative detainees located within several police stations across Russia that same year. The CPT found, in particular, that there had been no provision for supplying detainees with food and drinking water and that access to a toilet had been problematic. It stated that such cells were totally unacceptable for extended periods of custody (see paragraphs 48-49 above). In connection with its findings above, the Court would emphasise that it considers it unacceptable for a person to be detained in conditions in which no provision is made for meeting his or her basic needs (see *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 106, ECHR 2008-... (extracts)).

83. Indeed, there is no evidence in the present case of any positive intention to humiliate or debase the applicant. Nevertheless, the Court reiterates that the absence of any such intention cannot exclude a finding of

a violation of Article 3 of the Convention (see *Novoselov v. Russia*, no. 66460/01, § 45, 2 June 2005, and *Peers v. Greece*, no. 28524/95, §§ 70-72, ECHR 2001-III). Even if there had been no fault on the part of the police officers, it should be emphasised that the Governments are answerable under the Convention for the acts of any State agency, since what is in issue in all cases before the Court is the international responsibility of the State (see *Novoselov*, cited above, and *Lukanov v. Bulgaria*, § 40, 20 March 1997, *Reports* 1997-II).

84. The Court notes that the applicant was kept overnight with an injured tail bone in a cell unfit for an overnight stay, without food or drink. These unsatisfactory conditions exacerbated the mental anguish caused by the arbitrary nature of her detention (see paragraphs 94-97 below). In these circumstances, the Court considers that the applicant was subjected to inhuman treatment, incompatible with Article 3 of the Convention.

85. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention on 8 and 9 December 2001.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

86. The applicant complained that her arrest and detention for approximately twenty hours on 8 and 9 December 2001 had been unlawful and arbitrary. She relied on Article 5 of the Convention, which, in so far as relevant, provides as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

A. Admissibility

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

B. Merits

1. The parties' submissions

88. The Government contested the applicant's complaint, arguing that the investigating authorities and the domestic courts had examined various aspects of this complaint and had concluded that the applicant's detention had been lawful and in full compliance with domestic legal requirements. They relied, in particular, on Articles 241 and 242 of the RSFSR Administrative Offences Code 1984, which had made acts constituting minor affray an administrative offence punishable by administrative arrest of up to fifteen days, and argued that under applicable procedure it had been necessary for the policemen either to bring the applicant before a judge or to arrest the applicant in order to interrupt her unlawful conduct. They were unable to submit any documents concerning the applicant's arrest, subsequent detention and release and explained this failure by the expiry of the relevant time-limits for storage of the documents.

89. The applicant disagreed and maintained her initial position.

2. The Court's assessment

90. The Court notes, firstly, the undisputed fact that the overall length of time during which the applicant was held in police custody was about twenty hours between the applicant's arrest at around 5 p.m. on 8 December 2001 and her release on 9 December 2001 at around 1 p.m. (see paragraphs 8-15, 20 and 22). The Government did not contest the applicability of Article 5 to the applicant's situation and the Court notes its previous findings that the applicant was arrested at her apartment, then forcibly brought downstairs to the police car, and then taken to the police station. In view of the above circumstances, the Court finds that the applicant's arrest and subsequent detention constituted a deprivation of liberty within the meaning of Article 5 § 1 (see *Gillan and Quinton*

v. the United Kingdom, no. 4158/05, § 57, ECHR 2010-... (extracts), and *Foka v. Turkey*, no. 28940/95, §§ 74-79, 24 June 2008).

91. The Court next notes that the applicant's deprivation of liberty did not fall under sub-paragraphs (a), (d), (e) and (f) of paragraph 1 of Article 5. Nor was it covered by sub-paragraph (b), as there is no evidence of the applicant's failure to comply with any lawful court order or to fulfil any obligation prescribed by law. It remains to be determined whether the applicant's deprivation of liberty fell within the ambit of sub-paragraph (c).

92. It is significant in this connection that the explanation for the applicant's arrest and subsequent detention provided by the respondent Government in the proceedings before this Court, namely the need to bring the applicant before a judge competent to handle an administrative case or to interrupt her unlawful behaviour, is inconsistent with the outcome of the criminal inquiry into the events of 8-9 December 2001, which in its final version referred to the applicant's refusal to follow legitimate orders of the policemen (see paragraph 44). The Court would also recall that at each new round of investigation into the incident of 8 December 2001 the competent authorities gave a fresh explanation for the actions of the policemen with the previous version being silently ignored or implicitly discarded.

93. Thus, in his initial statement, policeman S. mentioned the need to take the applicant to the police station for "having insulted the policemen on duty" (see paragraphs 11 and 26). In the decision dated 21 October 2002 the investigator concluded that there was a need to investigate violent actions towards the policemen allegedly committed by the applicant (see paragraph 34). The investigator later mentioned the need to punish the applicant for a breach of public order (see paragraph 36) and finally in its last two decisions of 11 June and 1 November 2004 the authorities explained the arrest as a legitimate response to a provocation by the applicant (see paragraph 43) or as a reaction for her refusal to follow legitimate orders given by the policemen (see paragraph 44). Given the Court's previous reservations concerning the overall poor quality of the investigation (see paragraph 77-85 above) and the fact that the applicant was never tried, let alone declared culpable (see paragraphs 34, 17 and 20) in respect of any of the aforementioned types of conduct, the Court finds that the exact motivation behind the applicant's arrest and continued detention was not meaningfully elucidated at the domestic level. It would therefore be hesitant to accept the Government's latest account unconditionally and finds it necessary to review it in detail.

94. Turning to the circumstances of the applicant's arrest and subsequent detention, the Court notes that the Government's explanation manifestly contradicts the course of events and remains unsupported by the documents submitted.

95. The Court observes that the respondent Government were unable to produce any documents confirming the applicant's arrest and subsequent

detention, explaining such inability with reference to the destruction of the relevant documents due to the expiry of the time-limit for their storage. In addition, they admitted that the domestic authorities had made no records in respect of the applicant's release. The Court reiterates that the absence of a record of arrest and detention with an indication of a number of details such as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Menesheva v. Russia*, cited above, § 87). The Court has previously considered that the loss of records is capable of depriving an applicant of an opportunity to usefully challenge his arrest and detention (see *Boris Popov v. Russia*, no. 23284/04, §§ 74-75, 28 October 2010). This is precisely what happened in the present case, where the destruction of the relevant records demonstrably impeded the pending criminal investigation at the domestic level, such loss being specifically mentioned and deplored by the investigative authorities (see paragraph 43), which repeatedly questioned the lawfulness of the applicant's detention (see paragraphs 24 and 38). The storage of the relevant records for at least the duration of the relevant investigation was thus incumbent on the national authorities and it follows that the unavailability of the record of the applicant's arrest is imputable to the national authorities.

96. The Court would reiterate that the case file contains no records in respect of the applicant's arrest and there is an acknowledgement by the Government that her detention remained undocumented in part, at least as regards her release (see paragraphs 16 and 17). The applicant was neither brought before a judge after her arrest (see paragraphs 16-22), nor found liable by a police authority (see paragraph 16), nor was there any need to bring the applicant to the police station to draw up a record, as the relevant record could have easily been produced on the spot (see paragraph 47). In addition, the Government were unable to produce any evidence that the police brought proper administrative proceedings against the applicant in connection with the events of 8 December 2001. Against this background, the Court cannot accept the Government's account of the reasons underlying the applicant's arrest and detention and finds that the applicant's arrest was not "effected for the purpose of bringing [her] before the competent legal authority on reasonable suspicion of having committed an offence" and could not be "reasonably considered necessary to prevent [her] committing an offence or fleeing after having done so" within the meaning of Article 5 § 1 (c).

97. It follows that the applicant's arrest did not have any legitimate purpose under Article 5 § 1 and was accordingly contrary to that provision. There has therefore been a violation of that Article.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

98. The applicant further complained that the policemen had entered her accommodation against her will and had broken into her son's room in breach of domestic law. The Court will examine this grievance under Article 8, which, in its relevant parts, reads as follows:

“1. Everyone has the right to respect for ... his home ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. Admissibility

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

B. Merits

1. The parties' submissions

100. The Government contested the applicant's complaint. They argued that the policemen had acted in compliance with domestic law and that they had paid a visit to the applicant in order to serve a summons on her son. The policemen had been allowed to enter the common area of the apartment by B., the applicant's neighbour. They had not entered any private premises belonging specifically to the applicant or her family.

101. The applicant disagreed, having noted that the policemen had entered her family's accommodation by breaking down the door to the applicant's son's room. She further argued that applicable law had required the policemen to inform a competent prosecutor of any such actions within twenty-four hours and that this condition had never been met.

2. The Court's assessment

(a) Whether there was an interference with the applicant's Article 8 rights

102. The Court notes that the parties were essentially in agreement that the policemen had entered the common area of the flat in which the applicant lived on the invitation of her neighbour, Bo. The parties disagreed,

however, whether the policemen had actually entered the private accommodation of the applicant and her family or whether they had remained confined to the common area of the flat. In this connection, the Court notes that the final decision summarising the findings of the investigation remained silent on that point, whilst the eye-witnesses who were questioned essentially confirmed the version of events submitted by the applicant, namely that after the applicant's removal to the police car the policemen forced open the door to the applicant's son's room and some time later also took him away (see paragraphs 12 and 29).

103. Given its previous reservations concerning the overall quality of the investigation and the fact that in their arguments the Government did not rely on any specific evidence which would corroborate their factual position, the Court finds it established that the policeman entered the accommodation belonging to the applicant and her family, as alleged by the applicant and the witnesses, and that there was an interference with the applicant's home within the meaning of Article 8 § 1 of the Convention.

(b) Whether the interference was “in accordance with the law”

104. Under the Court's case-law, the expression “in accordance with the law” within the meaning of Article 8 § 2 requires, among other things, that the measure should have some basis in domestic law.

105. Turning to the case at hand, the Court recalls that the principal aim of the police's visit on 8 December 2001 to apartment in which the applicant lived was to serve a summons on the applicant's son in connection with an ongoing investigation into a recent incident involving their neighbour, Bo. The Court is prepared to accept, therefore, that the police had entered the applicant's accommodation within the apartment in pursuit of a suspect within the meaning of section 11(18) of the Police Act 1991.

106. The case file indicates, however, that the police failed to notify a prosecutor of the incident and thus manifestly breached the requirements of that domestic provision. This omission was mentioned as a finding of fact by supervising prosecutor M. in her decision of 8 February 2002 (see paragraph 24) in which she considered that the policemen had acted unlawfully, whilst all subsequent decisions passed over this point in silence. Against this background, the Court concludes that the above requirement of domestic law has not been complied with and that the interference with the applicant's rights under Article 8 was not, therefore, “in accordance with the law”.

107. It follows that there has been a violation of Article 8 in this case.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 5 AND 8

108. The applicant complained that she had not had an effective remedy in respect of the violations alleged under Articles 5 and 8 of the Convention. She referred to Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

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

B. Merits

1. The parties' submissions

110. The Government disagreed. They stated that the applicant had had unrestricted access to various types of domestic proceedings in which the courts would have been competent to review her complaints.

111. The applicant disagreed and maintained her complaints.

2. The Court's assessment

(a) The general principles

112. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant's complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by acts or omissions of the authorities of the respondent State (see *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports* 1996-VI).

(b) Application of those principles

113. In view of the Court's findings above with regard to Articles 5 and 8, these complaints are clearly "arguable" for the purposes of Article 13. The applicant should accordingly have been able to avail herself of effective and practical remedies capable of enforcing the substance of these Convention rights.

114. However, in circumstances where, as here, the arrest, detention and release records were quickly destroyed or never existed (see paragraph 95), whilst the entry by the police to the applicant's private area of the shared apartment in which she lived remained undocumented and the criminal investigation into the events of 8 and 9 December 2001 was ineffective on account of, among other things, failure to establish relevant factual details (see paragraphs 64-72 above), and where the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, was consequently undermined, the Court finds that the State has failed in its obligations under Article 13 of the Convention.

115. Consequently, there has been a violation of Article 13 of the Convention in conjunction with Articles 5 and 8 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. 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

117. The applicant claimed 110,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of the events at issue.

118. The Government argued that the sum claimed by the applicant was excessive and unjustified.

119. As to non-pecuniary damage, the Court sees no reason to doubt that the applicant suffered distress as a result of the manner in which she was arrested and subsequently detained in inappropriate conditions and that sufficient just satisfaction would not be provided solely by the finding of a violation. Making an assessment on an equitable basis as required by Article 41, the Court awards the applicant EUR 15,000.

B. Costs and expenses

120. The applicant also claimed 34,000 Russian roubles (RUB) for costs and expenses incurred before the domestic courts and the Court.

121. The Government agreed that the applicant had spent RUB 25,000 in this connection and viewed the rest of her claims under this head as unsubstantiated.

122. According to the Court's case-law, an applicant is entitled to the reimbursement of 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 550 covering costs under all heads.

C. Default interest

123. The Court considers it appropriate that the default interest rate 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 application admissible;
2. *Holds* that there has been a violation of the substantive aspect of Article 3 of the Convention on account of the way in which the applicant was arrested and brought to the police car on 8 December 2001;
3. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention on account of the authorities' failure to investigate properly the circumstances of the applicant's arrest and ill-treatment;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention on 8 and 9 December 2001;
5. *Holds* that there has been a violation of Article 5 of the Convention on account of the applicant's arbitrary arrest and detention on 8 and 9 December 2001;

6. *Holds* that there has been a violation of Article 8 of the Convention on account of the unlawful entry by the policemen to the applicant's apartment on 8 December 2001;
7. *Holds* that there has been a violation of Article 13 taken in conjunction with Articles 5 and 8 of the Convention;
8. *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 15,000 (fifteen thousand euros), in respect of non-pecuniary damage, and EUR 550 (five hundred and fifty euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on both amounts, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 3 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President