



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

FIRST SECTION

CASE OF DMITRIYEV v. RUSSIA

(Application no. 13418/03)

JUDGMENT

STRASBOURG

24 January 2012

FINAL

24/04/2012

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

In the case of Dmitriyev v. Russia,

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

Peer Lorenzen, *President*,
Anatoly Kovler,
Elisabeth Steiner,
Khanlar Hajiyeu,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 13418/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Nikolay Nikolayevich Dmitriyev (“the applicant”), on 3 April 2003.

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

3. Relying on various Convention provisions, in particular Articles 3, 5, 8 and 13 of the Convention, the applicant alleged that on 8 December 2001 he had been beaten up by local policemen, who unlawfully entered his home and then detained him for two days. According to the applicant, his complaints about the events of 8-10 December 2001 were not properly investigated.

4. On 26 March 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and lives in St Petersburg.

6. The applicant and his parents live in an apartment which they share with two other families.

7. In April 2001 the applicant beat up Bo., who was a member of one of the families living in the same apartment. Bo. complained to the police about the beating. On 1 October 2002 the applicant was convicted of affray in this connection and given a six-month suspended sentence. In the context of these proceedings the applicant had been detained on remand between 10 June and 15 July 2002. It does not appear that he ever complained about this detention before the competent authorities at the domestic level.

A. The events of 8 to 10 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 request him 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 entering his room and locking the door behind him.

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

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

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

12. According to the applicant, and as also noted in the statement of his neighbours given during the subsequent investigation, the policemen then forced the door to his room, entered the room and some time later led him outside the apartment and put him into a car. The applicant submitted that during the arrest the policemen had punched and kicked him all over the body.

13. The Government submitted that the applicant had himself come out of his room, acted aggressively and sworn at the police officers.

14. The applicant and his mother were both arrested and put into the same police car. The police took them to the District Department of the Interior and locked them in cells for administrative detainees.

15. According to an undated and unsigned handwritten report to a head of the District Department of the Interior submitted by the Government, the applicant was detained on 8 December 2001 on suspicion of “an administrative offence”. Without mentioning the legal characterisation of the offence, the report also described the circumstances of the arrest and stated that the applicant had pushed the officers away and had sworn at and threatened them, that he had waved his arms and behaved in a belligerent fashion. It was mentioned that physical force had been applied to arrest the applicant. It appears that the report was written by one of the policemen who had taken part in the applicant’s arrest on 8 December 2001.

16. The case file also contains a copy of a decision of 8 December 2001 to institute criminal proceedings against the applicant in connection with the episode involving his neighbour which had taken place in April 2001.

17. In the context of these criminal proceedings, on 9 December 2001 an investigator decided to apply a measure of restraint in respect of the applicant, in the form of an undertaking not to leave his place of residence while the criminal proceedings were pending. The decision did not mention the applicant’s previous arrest, but did bear his signature confirming that he had been notified about it.

18. It is undisputed that the applicant was held in detention until 10 December 2001. At around 10 a.m. on that day he was brought before a judge, St., of the Kuybyshevskiy District Court and then released.

19. The applicant submitted that the judge had refused to examine the materials submitted by the police because of various “mistakes in these documents” and the administrative proceedings were thus discontinued.

20. The Government did not comment on this allegation and were unable to provide the Court with the materials pertaining to the administrative case of the applicant, explaining that they had been 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 administrative detention.

21. The Government did not dispute the timing of the applicant’s detention and release.

B. The applicant’s medical examination of 29 December 2001

22. According to the applicant, prior to the events of 8 December 2001 he had been undergoing alcohol rehabilitation treatment in a specialised clinic. On that day he had paid a weekend visit to his family.

23. Upon release, he returned to the clinic, where he resumed his treatment, despite an aching chest and head. Upon his discharge from the clinic on 29 December 2001, he applied for specialised medical assistance in a nearby hospital.

24. On the same day he was diagnosed as having multiple fractures of the ribs, a closed cranio-cerebral injury and a closed fracture of a heel bone. He remained in that hospital for further treatment until 5 January 2002.

C. The investigation into the events of 8 to 10 December 2001

1. First round of investigation

25. On 12 December 2001 the applicant and his mother asked a prosecutor to initiate criminal proceedings against police officers S., K. and other policemen who had allegedly ill-treated them on 8 December 2001. In their application, they referred specifically to the policemen's allegedly unlawful entry to the apartment and the applicant's family's accommodation, to having been beaten and to their subsequent arrest and detention.

26. On 28 January 2002 Ts., an assistant prosecutor at the St Petersburg Central District Prosecutor's Office, refused to institute criminal proceedings, because no signs of crime had been detected.

27. On 8 February 2002 Mo., a supervising prosecutor at the St Petersburg Prosecutor's Office, instituted criminal proceedings against S. on the basis of the complaint by the applicant and his mother about S.'s actions. She argued that:

“... [the decision of 28 January 2002] had been unlawful and should be quashed in so far 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 the event that the [policemen are pursuing] anyone suspected of criminal activity. In the case at hand, [the applicant] 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 the relevant prosecutor of all such cases within twenty-four hours, this was not done ...”

The decision did not address the question of the origin of the applicant's injuries, and dealt mostly with the grievances of the applicant's mother. The prosecutor decided to institute criminal proceedings but for some reason failed to explicitly quash the decision of 28 January 2002.

28. On 8 June 2002 investigator Ch. of the St Petersburg Central District Prosecutor's Office discontinued the criminal proceedings against S.

29. The investigator collected the following evidence. He questioned S., who stated that during the incident in the applicant's apartment he had been verbally insulted several times. The applicant had refused to follow him to the police station and had locked himself in his room. S. had had to call for reinforcements and take the applicant to the police station by force.

30. The investigator also questioned K., who stated that he had been in charge of looking into Bo.'s complaint that he had been beaten up by the applicant. On 8 December 2001, having learned that the applicant was at home, he had gone with officer S. to request him to attend a police interview. They had met the applicant in the apartment. Then K. had left the building and had seen the reinforcing officers arriving. Sh. and M. had gone upstairs and had soon come back, pulling the applicant and his mother to the car by the arms.

31. The investigator questioned the applicant's neighbours Bo. and Sv., who stated that the police officers had forced open the door to the applicant's room and had entered it without permission.

32. The decision did not address the applicant's complaint of ill-treatment by the policemen and his injuries.

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

2. Second round of investigation

34. 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.

35. 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 and his mother had insulted S. The decision did not address the question of the applicant's injuries.

3. Third round of investigation

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

37. On 3 April 2003 investigator A. Sh. of the St Petersburg Central District Prosecutor's Office discontinued the criminal proceedings. The decision focused solely on the applicant's mother and did not address the applicant's grievances, mentioning that administrative proceedings had been brought against the applicant and that their outcome was unclear because the relevant documents had been destroyed. Overall, the investigator concluded that there was no evidence that S. had abused his powers.

4. Fourth round of investigation

38. On 30 December 2003 deputy prosecutor A. 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. The decision also noted that on 29 December 2001 the applicant had applied for medical assistance at the local hospital, had been diagnosed as having a number of injuries and that no investigation had been conducted in this connection. The decision mentioned without referring to the source of that information that the applicant's injuries might have resulted from a fall earlier on that day. The prosecutor questioned this version of events, noted that the investigation conducted so far was inadequate and, among other things, ordered an investigation as to whether the applicant's injuries could have been inflicted during the arrest of 8 December 2001.

39. 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, because such actions were only lawful if aimed at interrupting ongoing criminal activity. The decision also noted that the allegedly aggressive behaviour of the applicant and his mother were "an understandable reaction" to unlawful actions on the part of the policemen.

5. Fifth round of investigation

40. 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 an additional investigation.

41. 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 the police officers due to inconsistencies in the witnesses' statements.

42. He argued that S. had unlawfully entered the apartment against the applicant's will and had given an illegal order to take the applicant and his mother to the police station. 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 that all the evidence collected in the course of the newly opened investigation was inadmissible.

43. The decision gave details of a forensic examination of the applicant's medical condition which had taken place on an unspecified date. It mentioned specifically that:

“... a closed fracture of the front eighth and ninth left ribs took place no more than two-three weeks prior to [29 December 2001], a closed fracture of the fifth and sixth left ribs took place over four weeks before [29 December 2001] [and] a closed fracture of the right heel bone took place in a term not exceeding (approximately) one month before [29 December 2001] ... [whilst] a bruise on the left side of the back was received no more than two weeks before [29 December 2001] ...”.

The decision also mentioned that both the applicant and his mother were civil claimants in this criminal case.

44. The applicant challenged the decision in court.

45. 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 that 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

46. 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 an additional investigation.

47. On 11 June 2004 deputy prosecutor K. of the St Petersburg Central District Prosecutor's Office again discontinued the criminal proceedings against S. The deputy prosecutor noted that because the applicant had refused to follow them to the police station, police officers Sh. and M. had taken the applicant by the arms and led him out of the apartment. He concluded that the police officers had acted lawfully during the incident, which had been provoked by the applicant and his mother. The deputy prosecutor also mentioned that the documents pertaining to the administrative proceedings against the applicant and her son, namely the records of administrative offences, had been destroyed. It did not address the issue of the lawfulness of the arrest and the detention or the question of the origin of the applicant's injuries. In taking the decision, the prosecutor did not refer to any specific piece of evidence. The decision did not rely on any evidence, either new or old, in reaching the above conclusions.

48. The applicant challenged this decision in court.

49. 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., D.B., K. and S., that they did not do anything illegal ... and that the conflict was provoked by [the applicant’s mother], 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.

50. On 27 January 2005 the St Petersburg City Court rejected the applicant’s appeal.

II. RELEVANT DOMESTIC LAW

51. 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.

52. 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 public order and peace. Article 238 of the Code provided that an accused person could be taken 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 has committed an administrative offence may be detained for no more than three hours. However, individuals who have committed a minor affray may be detained until the examination of the case by a court or by the head of a law-enforcement body.

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

53. Relying on Articles 3 and 13 of the Convention, the applicant complained with reference to the events of 8 December 2001 that he had been beaten up by police during his arrest and that the authorities had failed to investigate the incident properly. 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

54. 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

55. The Government contested the applicant's account of events and argued that the police officers had acted lawfully and proportionately. They submitted that the timing of the traces on the applicant's body did not correspond to his description of the events, that the incident had been thoroughly investigated, that the applicant's injuries could have been incurred after his release and that the domestic authorities had found the applicant's allegations of ill-treatment to be unsubstantiated. In particular, they referred to the decision of 30 December 2003 which had mentioned that the injuries might have resulted from a fall on 29 December 2001.

56. The applicant disagreed, and maintained his complaints. He referred, in particular, to the medical record noting his injuries and to various deficiencies in the investigation, and insisted on his original account of the events in question.

2. *The Court's assessment*

(a) **The alleged ill-treatment in police custody**

i. General principles

57. 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. Unlike most of the substantive clauses of the Convention and its Protocols, Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 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 of Judgments and Decisions* 1998-VIII).

58. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). 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 *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

ii. Application of these principles

59. Having regard to the parties' submissions and all the materials in its possession, the Court considers that the evidence before it does not enable it to find beyond all reasonable doubt that the applicant was subjected to treatment contrary to Article 3, as alleged. In this connection, the Court does not find persuasive the applicant's explanation for the delay which elapsed between his release on 10 December 2001 and his first application for assistance in the local hospital on 29 December 2001. The Court takes note in this connection that the applicant failed to draw attention of judge St. of the Kuybyshevskiy District Court to his allegedly serious medical condition during their meeting on 10 December 2001 and did not ask for medical treatment during his stay in the alcohol rehabilitation clinic during the subsequent three weeks.

60. In addition to these circumstances, the Court would also add that the forensic examination referred to in the decision of 31 May 2004 questions whether the injuries detected during the medical examination of 29 December 2001 could be linked to the events of 8 December 2001. Some of them, such as a closed fracture of the front eighth and ninth left ribs, could have occurred no more than “two-three weeks prior to [29 December

2001] ...”, whilst others, such as fractures of left ribs and a right heel bone “took place over four weeks before” or “in a term not exceeding (approximately) one month before [29 December 2001]” (see paragraph 43). In addition, a “bruise on the left side of [the applicant’s] back” was dated to “no more than two weeks before [29 December 2001]”. This lack of consistency with the time of the alleged ill-treatment coupled with the applicant’s failure to give an intelligible account concerning his conduct between his release and the first medical examination three weeks later casts a serious doubt on the veracity of his version of the events.

61. Overall, the Court concludes that it has not been established beyond reasonable doubt that the applicant was ill-treated on 8 December 2001. Accordingly, there has been no breach of Article 3 of the Convention in this respect.

(b) The alleged failure to carry out an effective investigation

i. General principles

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; *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV and *Assenov and Others*, cited above, § 102).

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).

ii. Application of the above principles in the present case

64. The Court notes that the parties did not dispute the validity of the medical report drawn up on 29 December 2001, following the applicant’s

arrest and detention between 8 and 10 December 2001, and confirming the presence of various injuries on the applicant's body. The Court further observes that the matter was duly brought before the appropriate authorities at a time when they could reasonably have been expected to investigate the circumstances in question. 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 injuries to the head, ribcage and heel. The domestic authorities themselves repeatedly admitted having serious doubts concerning the lawfulness of the actions of the policemen on 8 December 2001 (see paragraphs 27 and 39) and it is moreover clear that the arresting officers themselves admitted to having used physical force during the applicant's arrest (see paragraph 15). The domestic authorities were therefore under an obligation to conduct an effective investigation 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 49-50). 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 his 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 essential steps to establish 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 about the actions of several police officers, including S., D. B., M. and Sh., (see paragraphs 12 and 25), criminal proceedings were opened only against S. and focused principally on the allegations concerning the applicant's mother (see paragraphs 27, 35, 37). The Court finds that this shortcoming fundamentally incapacitated the investigation, switching its focus from the use of allegedly excessive force through the specific actions of the above-mentioned officers in respect of the applicant and his mother to the general guidance of the operation by S.

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 by 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 loss of contact with witnesses. As acknowledged by the investigating authority itself (see paragraphs 38 and 39), the necessary actions had not been taken as long as two years later, and in fact they were not conducted at the domestic level at all. 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, in discovering the truth about the matter under investigation. Observing the demeanour of the suspects, witnesses and victims 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 the 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, apart from the statements of the implicated policemen, collected after that date (see paragraphs 46 and 47).

70. Lastly, the Court questions the overall quality of the investigation which, being fully aware of the medical certificate confirming the applicant's injuries (see paragraph 43) and the report suggesting the use of physical force by the police (see paragraph 15), throughout the proceedings never seriously inquired into the origin of these injuries and any possible relationship between the injuries and the actions of the policemen during the events of 8 December 2001 (see paragraphs 27, 28-33, 35, 37, 41-43 and 47). In addition to being handicapped 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 and to assess whether the police used the physical force during the arrest and whether it was proportionate.

71. Having regard to the above-mentioned failings on the part 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 ill-treatment.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

73. The applicant complained that his arrest and detention between 8 and 10 December 2001 had been unlawful and arbitrary. He 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

74. 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

75. 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 158 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 put a stop to his 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 time-limits for storage of the documents.

76. The applicant disagreed and maintained his initial position.

2. The Court's assessment

77. The Court notes, firstly, the undisputed fact that the overall length of time during which the applicant was held in police custody was about forty-one hours, i.e. from the applicant's arrest at around 5 p.m. on 8 December 2001 and until his release on 10 December 2001 at around 10 a.m. (see paragraphs 8 and 18). 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 forcibly arrested at his apartment 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).

78. 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 that the applicant failed 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).

79. 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.

80. The Court notes that the respondent Government were unable to produce any documents confirming the applicant's arrest and subsequent detention, explaining this 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*, 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) and 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 37). 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.

81. 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 his detention remained undocumented, both as regards his initial arrest and subsequent release (see paragraph 20). For this reason the exact details of the applicant's meeting with a judge on 10 December 2001 as well as its exact outcome are unclear (see paragraphs 18-19). He was not found liable by a police authority, nor was there any need to take the applicant to the police station for a record to be drawn up, as the relevant record could have easily been produced on the spot (see paragraph 52). In addition, the Government were unable to produce any evidence that the police brought any administrative proceedings against the applicant in connection with the events of 8 December 2001.

82. 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 [him] before the competent legal authority on reasonable suspicion of having committed an offence" and could not be "reasonably considered necessary to prevent [him] committing an offence or fleeing after having done so" within the meaning of Article 5 § 1 (c).

83. The Court would note that the case file contains the investigator's decision of 8 December 2001 to institute criminal proceedings against the applicant in connection with the episode involving his neighbour which took place in April 2001, as well as the investigator's decision taken on the next day to apply a measure of restraint in respect of the applicant in the form of an undertaking not to leave his place of residence while the criminal proceedings were pending (see paragraphs 16 and 17). It should be noted, however, that the documents do not contain any specific information concerning either the applicant's arrest, subsequent detention or his release whilst the case file contains the report which suggests that the applicant had been arrested on suspicion of having committed "an administrative offence" (see paragraph 15). Also, the respondent Government did not rely on these documents or the mentioned set of criminal proceedings to justify the

applicant's detention even in part, and the Court finds no reason to do so either.

84. 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.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

85. The applicant further complained that the policemen had entered his home and had broken into his room against his will, 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.”

1. The parties' submissions

86. The Government contested the applicant's complaint. They argued that he had failed to exhaust domestic remedies in this connection and that in any event the policemen had acted in compliance with domestic law. They had been allowed to enter the common area of the apartment by Bo., the applicant's neighbour, whilst the applicant allegedly came out of the room of his own volition. According to them, the policemen had not entered any private premises belonging specifically to the applicant or his family.

87. The applicant disagreed, noting that the policemen had entered his family's home by breaking down the door to his room. He further argued that the applicable law required the policemen to inform a competent prosecutor of any such actions within twenty-four hours and that this condition had never been met.

A. Admissibility

88. In so far as the respondent Government submitted that the applicant had failed to exhaust domestic remedies, the Court reiterates that the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention obliges applicants to use first the remedies which are available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain both in theory and in practice, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that

complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used. However, there is no obligation to have recourse to remedies which are inadequate or ineffective (see, for example, *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports* 1996-VI; *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV; and, more recently, *Cennet Ayhan and Mehmet Salih Ayhan v. Turkey*, no. 41964/98, § 64, 27 June 2006).

89. The Court has emphasised that the application of the rule of exhaustion of domestic remedies must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting States have agreed to set up. Accordingly, it has recognised that Article 35 § 1 must be applied with some degree of flexibility and without excessive formalism. It has further recognised that the rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned but also of the general context in which they operate, as well as the particular circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Akdivar and Others*, cited above, § 69; *Aksoy*, cited above, §§ 53-54; and *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 82, ECHR 1999-IV).

90. Turning to the facts of the case, the Court would note at the outset that the episode at issue remained undocumented and the parties in the Strasbourg proceedings disagreed whether the policemen even entered the applicant's apartment, let alone forced the door to his room. These grievances were raised by the applicant properly and in due time in the context of his complaint to the prosecutor's office on 12 December 2001 (see paragraph 25). The prosecutor reacted by bringing criminal proceedings against the policeman in charge of the operation, specifically mentioning this episode in his decision of 8 February 2002. The investigation ended with a decision of 11 June 2004, which entirely rejected the applicant's version of events and his complaint in this connection and was later confirmed by the courts at two levels of jurisdiction.

91. In view of the refusal by the authorities to recognise that the episode even took place, it cannot be said that the domestic avenues chosen and employed by the applicant, namely the institution of criminal proceedings against the police officers, were ineffective or otherwise inappropriate.

Given the circumstances of the case, the Court finds that the applicant made the authorities sufficiently aware of his allegations and considers that the applicant complied with the requirement to exhaust domestic remedies.

92. 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. Whether there was an interference with the applicant's Article 8 rights

93. 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 at the invitation of his neighbour, Bo. The parties disagreed, however, as to whether the policemen had actually entered the private accommodation of the applicant and his 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 eyewitnesses who were questioned essentially confirmed the version of events submitted by the applicant, namely that the policemen forced open the door to the applicant's room and some time later took him away (see paragraphs 12 and 31).

94. 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 his family by forcing the door, 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.

2. Whether the interference was "in accordance with the law"

95. 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.

96. Turning to the case at hand, the Court notes that the principal aim of the police's visit on 8 December 2001 to the apartment in which the applicant lived was apparently to serve a summons on the applicant 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 (see paragraph 31 above).

97. 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 Mo. in her decision of 8 February 2002 (see paragraph 27) 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".

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

99. Lastly, the applicant complained under Articles 5, 6 and 13 of the Convention that the criminal proceedings against him for affray were unfair in that the courts wrongly assessed the evidence in the case and that his detention on remand between 10 June and 15 July 2002 had been unlawful.

100. However, having regard to the materials in its possession, and in so far as they fall within its jurisdiction, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

101. It follows that this part of the application should be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

102. 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

103. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of the events at issue.

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

105. The Court sees no reason to doubt that the applicant suffered distress as a result of the violations found 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 10,000.

B. Costs and expenses

106. The applicant also claimed EUR 2,025 for costs and expenses incurred before the domestic courts and the Court.

107. The Government viewed his claims under this head as unsubstantiated.

108. 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 100 covering costs under all heads.

C. Default interest

109. 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 complaints about the circumstances of the applicant's arrest of 8 December 2001, his subsequent detention and the quality of the investigation into these events admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of the substantive aspect of Article 3 of the Convention on account of the events of 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 ill-treatment;

4. *Holds* that there has been a violation of Article 5 of the Convention on account of the applicant's arbitrary arrest and detention between 8 and 10 December 2001;
5. *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 room on 8 December 2001;
6. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 10,000 (ten thousand euros), in respect of non-pecuniary damage, and EUR 100 (one hundred 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 on 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Peer Lorenzen
President