



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

FIRST SECTION

CASE OF MENESHEVA v. RUSSIA

(Application no. 59261/00)

JUDGMENT

STRASBOURG

9 March 2006

FINAL

09/06/2006

In the case of Menesheva v. Russia,

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

Christos Rozakis, *President*,

Snejana Botoucharova,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 14 February 2006,

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

PROCEDURE

1. The case originated in an application (no. 59261/00) 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 Ms Olga Yevgenyevna Menesheva, a Russian national, on 20 June 2000.

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

3. The applicant alleged ill-treatment by the police, the absence of an effective investigation into her complaints in this respect, unlawful arrest and detention and the absence of effective domestic remedies in respect of the above complaints.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 15 January 2004, the Chamber declared the application partly admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1). The Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*), the parties replied in writing to each other's observations.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1979 and lives in Bataysk, Rostov Region.

9. On 11 February 1999 the police started an investigation into a murder case in which they identified L. as a suspect. It was believed that L. was the applicant's boyfriend.

10. On the same day the police decided they would search for L. at the applicant's home.

11. On 12 February 1999, about midnight, the police arrived at the applicant's flat, apparently to conduct a search, but since they failed to produce a warrant she would not let them in.

12. On the following day, 13 February 1999, at about 4.30 p.m., three policemen in plain clothes were waiting for the applicant at her door. One of them produced the identity card of a police major S. and demanded to enter the applicant's flat. As they still had no warrant, the applicant again refused to let them in. The policemen insisted and the applicant fell into a heated discussion with them during which both sides exchanged threats and insults. Ultimately, the major ordered the applicant's arrest. His subordinates, P. and B., seized the applicant, turned her upside down and, while continuing to intimidate her, threw her into a car with no police markings on it. In the struggle the applicant was pushed against the door and hurt her leg and her head; she also banged her head against the car when she was being pushed into it. On the way, the major S. threatened the applicant, saying that he would beat her family and loot her flat while searching it.

13. The applicant was taken to the Zheleznodorozhnyy district police station in Rostov-on-Don. She was not informed why she had been taken to the police station. According to the Government's subsequent accounts, it was to fill in the official report on her forceful resistance to the police. However, in the police report it was stated that she was brought in for questioning.

14. At the police station, the applicant was brought before the Deputy Head of the Criminal Investigation Department who questioned her about the whereabouts of "her husband". The applicant told him that she had never been married, and after that he started strangling her with his hands and several other policemen started beating her. For about two hours they administered kicks and blows to her legs, threw her across the room, beat her with a baton and hit her head against the walls. While beating her they accused her of telling lies, insulted her and threatened her with rape and violence against her family.

15. The applicant requested that her relatives be informed about her detention; she also requested medical assistance and permission to contact a

lawyer, but all her requests were refused.

16. At the end of the applicant's interrogation, the deputy prosecutor of the district of Zheleznodorozhnyy, D., happened to visit the police station and enter the room where the applicant had been beaten. The applicant seized this opportunity to complain about her arrest and the beating. He listened to her and suggested that she write him a complaint about her unlawful arrest, but he discouraged her from complaining about ill-treatment. The applicant claimed that she wrote her complaint on the spot and handed it to D.

17. After that, at about 7 p.m., the applicant was taken home because the police wanted to conduct a search of her flat. The applicant's neighbour Z., who was summoned as a witness, was told that they were looking for L., and she confirmed that L. did not live there. The police insisted on searching the flat, however it transpired that they still did not have a search warrant and the applicant again refused to let them in. After a short struggle the applicant was again seized and carried to the car upside down with her head banging on the walls and the staircase. She was taken back to the Zheleznodorozhnyy district police station where she was again beaten up, intimidated and accused of hiding L. She was then placed in a detention cell.

18. The applicant was kept in the detention cell until 2.30 p.m. on 14 February 1999. Although this fact has never been in dispute, no record concerning this period of the applicant's detention could be found.

19. On 14 February 1999 at about 2 p.m. the applicant was subjected to a personal search and the keys to her flat were seized. Later on the same day the prosecutor of the district of Zheleznodorozhnyy issued a warrant to search the applicant's flat and it was carried out.

20. On the same day the applicant was brought before an officer who, without introducing himself, said to her "five days". Subsequently the applicant learned that it was Judge P. of the Zheleznodorozhnyy District Court of Rostov, and that "five days" meant a five-day sentence for the administrative offence of forceful resistance to the police. On the same day the applicant was taken to a special centre for administrative detention.

21. On 18 February 1999, when the applicant's release after the five-day detention was due, the police major S. who had arrested her checked her out of the detention centre, took her to the Zheleznodorozhnyy district police station and ordered her to wash the floor in the police station hallway. When she had finished doing so he released her.

22. On 19 February 1999 the applicant underwent a forensic examination by a medical expert who established that she had multiple bruises on the face and legs, abrasions on the face, jaw, neck and legs, and a traumatic oedema of the soft tissues of the head.

A. The proceedings concerning ill-treatment and unlawful arrest

23. On 11 March 1999 the Human Rights Commissioner of the Rostov regional governor's office filed, on the applicant's behalf, a complaint with the Head of the Internal Affairs Department of the Rostov Region and another one with the prosecutor of the Rostov Region. They requested an investigation into the applicant's alleged ill-treatment by the police and her allegedly unlawful detention; they also enclosed the applicant's detailed account of the events and the forensic report of 19 February 1999.

24. On 15 March 1999 the applicant lodged a claim for damages with the Bataysk City Court of the Rostov Region, alleging ill-treatment by the police and challenging her arrest and the search of her flat.

25. On 30 March 1999 the Deputy Head of the Internal Affairs Department of the Rostov Region informed the applicant that an internal inquiry had been conducted in view of her complaint and that her allegations had been found to be unsubstantiated. The conclusions of the internal inquiry were forwarded to the prosecutor's office. However, she was also informed that some unspecified police officers had been charged with disciplinary offences. The Human Rights Commissioner received a similar reply.

26. On 12 April 1999 the applicant received a letter from the deputy prosecutor of the district of Zheleznodorozhnyy, D., whom she had met at the police station (see paragraph 16 above). He informed the applicant that her complaint against the police had been forwarded to him by the Rostov City prosecutor's office and that he had decided that no criminal investigation in respect of the accused police officers was to be opened.

27. On 7 May 1999 the prosecutor of the district of Zheleznodorozhnyy, Kh., informed the Bataysk City Court, apparently following their official inquiry, that no documents concerning the applicant's arrest and detention could be found.

28. On 9 June 1999 the deputy prosecutor of the Rostov City prosecutor's office confirmed that decision.

29. On 22 December 1999 the Bataysk City Court examined the applicant's claim and held that the search of the applicant's flat, the initial arrest and the five-day detention had been lawful. The court found that the police had acted lawfully, as authorised by the prosecutor, and that it was necessary for the investigation into the murder case. As to the allegations of ill-treatment, the court referred to the prosecutor's refusal to open a criminal investigation in respect of the police officers and to the conclusion of the internal police inquiry that no ill-treatment had been established. It dismissed the forensic report as irrelevant and held that the allegations of ill-treatment were unsubstantiated.

30. On 23 February 2000 the Rostov Regional Court examined the applicant's appeal and upheld the earlier findings.

B. The appeal against the administrative detention

31. On 15 March 1999 the applicant attempted to challenge her five-day detention before the Rostov Regional Court. She alleged that she was not informed of the name of the officer who took the decision to detain her and that he did not ask her any questions, did not inform her of any charge against her, did not explain the purpose of her appearance before him and did not give her a copy of his decision concerning her detention.

32. On 17 March 1999 the same judge who imposed the five-day detention informed the applicant that no ordinary appeal could be brought against that decision, and that it could only be challenged by the prosecutor's extraordinary appeal.

33. On 25 March 1999 the applicant filed a complaint with the Zheleznodorozhnyy District Court and the Rostov Regional Court. She challenged the refusal to consider her claim in civil proceedings.

34. On 26 May 1999 the President of the Rostov Regional Court replied to the applicant that, on the evidence of the file, her detention had been lawful as it had been imposed for the administrative offence in accordance with substantive and procedural law.

35. On 17 July 1999 the applicant filed another appeal with the Rostov Regional Court against the decision on her detention.

36. On 23 August 1999 the Acting President of the Rostov Regional Court replied that no appeal against a decision on administrative detention was provided for by law.

37. The applicant subsequently tried to challenge the above decisions, but none of her claims were accepted, the ground given being that the courts lacked jurisdiction over the subject matter. The last decision in this respect was taken on 1 December 1999 by the Rostov Regional Court.

C. Further proceedings

38. On 15 January 2003 the prosecutor's office of the district of Zheleznodorozhnyy instituted a criminal investigation into the circumstances of the applicant's arrest and her overnight detention and into her allegations of ill-treatment.

39. On 28 February 2003 the prosecutor of the Rostov Region filed of his own motion a request with the President of the Rostov Regional Court to quash the decision of 14 February 1999 by which the applicant had been convicted of an administrative offence. He stated that the applicant's resistance to the police did not constitute an administrative offence because the police had acted unlawfully and that the detention was in any event a disproportionate punishment.

40. On 5 March 2003 the President of the Rostov Regional Court granted the request and quashed the decision on the grounds that the judge

who had convicted the applicant had not examined the circumstances of the case and had not established whether she was guilty of any administrative offence. It was found that no forceful resistance had taken place, because the police were carrying out an investigation and not safeguarding public order when the applicant resisted. It was also held that the police had acted in violation of the procedural law.

41. On 25 August 2003 the prosecutor's office of the district of Zheleznodorozhnyy terminated the criminal investigation into the alleged ill-treatment and unlawful arrest and detention on the ground that the police officers had not committed any unlawful act.

42. On 3 March 2004 the Prosecutor General's Office quashed the termination order of 25 August 2003 and resumed the criminal investigation concerning the ill-treatment and the unlawful arrest. The prosecutor's office of the district of Zheleznodorozhnyy was given thirty days to complete the investigation under the supervision of the Prosecutor General. The relevant parts of this decision read as follows:

“[The applicant] consistently maintained that she objected to the unlawful entry of the police into her flat and the unlawful search in the absence of a prosecutor's warrant, and had therefore been subjected to unlawful arrest and detention and beaten up ...

The medical examination revealed numerous injuries caused by beating ... the time of origin and the cause of which corroborate [the applicant's] statements ... The investigation has not established the circumstances in which these injuries were caused.

The reports on the administrative offence and on the applicant's arrest of 13 February 1999 ... contain fraudulent statements concerning the participation of the attesting witnesses ... These circumstances have not been fully investigated, although they served as a basis for the applicant's administrative arrest. The decision of 29 April 2003 dispensing with criminal proceedings against [the police officer who issued the reports] ... is unfounded.”

43. In their letter of 19 April 2004, the Government submitted that the investigation was still in progress. The parties have not provided any update concerning the criminal investigation thereafter.

II. RELEVANT DOMESTIC LAW

A. Forceful resistance

44. The relevant provision of the Administrative Code (*Кодекс об административных правонарушениях РСФСР*), in force until 1 July 2002, read as follows:

Article 165

“Forceful resistance to a lawful order or demand by a police or a voluntary brigade serviceman, ... shall be punished by a fine of ten to fifteen times the minimum wage ... or by one to two years' corrective labour ... or if these measures are considered insufficient, by up to fifteen days' imprisonment.”

B. Questioning of witnesses

45. The relevant parts of the Code of Criminal Procedure in force at the material time provided as follows:

Article 155

“A witness shall be summoned for questioning by a written notice served on him personally, or in his absence to an adult member of his family ...

The notice shall contain the name of the person called as a witness, indicate where, before whom, on what date and at what time he is due to appear and the consequences of a failure to appear. A witness may also be summoned by telephone or telegram.”

Article 157

“The questioning of a witness takes place at the place of investigation. An investigator may decide to question a witness at the witness's location.”

C. Administrative arrest and detention

46. The relevant part of the Constitution of the Russian Federation adopted by referendum on 12 December 1993 provides as follows:

Article 22

“1. Everyone has the right to liberty and personal security.

2. Arrest, detention and placement in custody shall be subject to a court decision. No one may be detained longer than forty-eight hours before the court decision is taken.”

Chapter 19 of the Administrative Code (see paragraph 44 above) provided that the police could subject a person to an administrative arrest to prevent an administrative offence, to establish a person's identity, to issue a document certifying that an administrative offence had been committed, if it was necessary and could not be done on the spot, and to ensure effective proceedings or the enforcement of administrative sanctions. Article 242 provided, in particular, that the term of administrative arrest should not exceed three hours, except for certain categories of offenders, including

those who forcefully resisted the lawful order of the police, who could be detained as long as necessary until their case was considered by a district (city) judge or a senior police officer. Article 240 set out the requirements for the arrest report.

The Administrative Code did not provide for an appeal against the administrative arrest if imposed by a judge. The relevant provisions read as follows:

Article 266

“... The decision of a district (city) court or judge to impose an administrative sanction is final and not subject to appeal in the administrative proceedings ...”

Article 274

“The decision of a district (city) judge to impose an administrative sanction under [Article 165] may be changed or quashed by the same judge following a prosecutor's extraordinary appeal, or by a president of a superior court, of his own motion.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicant complained under Article 3 of the Convention that she had been ill-treated by the police during her arrest and while she was in custody at the police station. She also complained that her allegations of ill-treatment had not been investigated effectively, as required by the procedural obligation imposed by the same Article. Article 3 of the Convention provides as follows:

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

A. Alleged ill-treatment by the police

1. The parties' submissions

48. The applicant submitted that on 13 February 1999 she was arrested in a manner contrary to Article 3 of the Convention. She further alleged that she had been beaten up upon arrival at the police station by the officers who questioned her and then again on the same day by the police officers when she refused to let them search her flat. She alleged that she had sustained

injuries, such as bruises and abrasions, and that she had felt intimidated due to such treatment. She also alleged that she had received no medical assistance subsequently.

49. The applicant presented a forensic report drawn up shortly after her release, which mentioned injuries compatible with her account of events.

50. The Government submitted in their memorial of 15 March 2004 and in their letter of 19 April 2004 that the investigation into the applicant's allegations of ill-treatment was in progress. They informed the Court that the Prosecutor General's Office had reviewed the criminal file no. 3467098 concerning allegations of abuse of authority by the police and on 3 March 2004 resumed the investigation. They claimed that before it was finished they could not comment on the merits of these complaints.

51. Since then the Government have made no further submissions concerning the course of the investigation or the facts established thereby.

2. *The Court's assessment*

52. The Court reiterates that “[w]here an individual, when taken in police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention” (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V).

53. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336, and *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

54. The Court notes that the Government did not contest the applicant's account of events, or the forensic report. The investigation carried out in 2003-04 did not furnish any new facts or evidence beyond that submitted by the applicant. Neither did the Government provide an alternative explanation as to how her injuries could have been inflicted. In particular, it can be assumed as common ground that those injuries were not sustained before the applicant was taken into police custody.

55. Furthermore, the authorities conceded that the applicant's allegations were credible. In particular, the Prosecutor General's Office acknowledged

that she had consistently maintained in full her assertions of ill-treatment and noted that the applicant's injuries recorded by a medical expert were compatible with her account of events (see paragraph 42 above).

56. The Court notes that the police expected the applicant to provide information relating to the murder allegedly committed by L., supposedly her boyfriend. It observes the conflicting official statements as to why the applicant was taken to the police station and concludes that she was taken there for questioning as a witness about that crime and not in connection with a minor administrative offence used as a pretext. This interview was not attended by the usual procedural guarantees under Russian law, such as a record of the interview, access to a lawyer, etc., hence the Court cannot rule out the use of force by the police to extract information from the applicant.

57. Having regard to the applicant's consistent and detailed allegations, corroborated by the forensic report, and in view of the absence of any other plausible explanation as to the origin of the injuries found on the applicant upon her release from custody, the Court accepts that the applicant was ill-treated by the police.

58. As to the seriousness of the acts of ill-treatment, the Court reiterates that in order to determine whether a particular form of ill-treatment should be qualified as torture, it must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. It appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The Court has previously had before it cases in which it has found that there has been treatment which could only be described as torture (see *Aksoy v. Turkey*, 18 December 1996, § 64, *Reports of Judgments and Decisions* 1996-VI; *Aydın v. Turkey*, 25 September 1997, §§ 83-84 and 86, *Reports* 1997-VI; *Selmouni*, cited above, § 105; *Dikme v. Turkey*, no. 20869/92, §§ 94-96, ECHR 2000-VIII; and, among recent authorities, *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, § 116, ECHR 2004-IV).

59. The acts complained of were such as to arouse in the applicant feelings of fear, anguish and inferiority capable of humiliating and debasing her and possibly breaking her physical and moral resistance. In any event, the Court reiterates that, in respect of persons deprived of their liberty, recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Selmouni*, cited above, § 99).

60. The Court finds that in the instant case the existence of physical pain or suffering is attested by the medical expert and the applicant's statements regarding her ill-treatment in custody. The sequence of events also demonstrates that the pain and suffering was inflicted on her intentionally,

in particular with the view of extracting from her information concerning L. (see paragraphs 56-57 above).

61. To assess the severity of the “pain or suffering” inflicted on the applicant, the Court has regard to all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, as in some cases, the sex, age and state of health of the victim (see *Bati and Others*, cited above, § 120). The Court observes that at the material time the applicant was only 19 years old and, being a female confronted with several male policemen, she was particularly vulnerable. Furthermore, the ill-treatment lasted for several hours during which she was twice beaten up and subjected to other forms of violent physical and moral abuse.

62. In these circumstances, the Court concludes that, taken as a whole and having regard to its purpose and severity, the ill-treatment in issue amounted to torture within the meaning of Article 3 of the Convention.

63. The Court concludes that there has been a breach of Article 3 of the Convention in this regard.

B. Alleged failure to carry out an effective investigation

1. The parties' submissions

64. The applicant submitted that immediately after the events she lodged several requests for criminal proceedings against the police officers involved; that she had indicated their names and ranks and claimed that she could recognise them; and that she had attached the forensic report confirming her injuries. However, none of her requests had succeeded and no investigation had been carried out before her application to the Court was communicated to the Government. As for the investigation opened in 2003, the applicant did not consider it prompt or effective and, furthermore, she was wary of the authorities' negative reaction to the fact that she had lodged an application with the Court and found their contact with her intimidating. Therefore she did not play an active role in these proceedings. She submitted that although she had given evidence to the investigator she had never been informed of the outcome of these proceedings.

65. The Government did not comment on the merits of this complaint (see paragraphs 50-51 above).

2. The Court's assessment

66. The Court considers, first of all, that the medical evidence and the applicant's complaints and testimony together raised a reasonable suspicion that her injuries could have been caused by the police.

67. Where an individual raises an arguable claim that he or she has been seriously ill-treated by the police in breach of Article 3, that provision, read

in conjunction with the State's general duty under Article 1 to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports* 1998-VIII, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV). The minimum standards as to effectiveness defined by the Court's case-law also include the requirements that the investigation must be independent, impartial and subject to public scrutiny, and that the competent authorities must act with exemplary diligence and promptness (see, for example, *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00, §§ 208-13, 24 February 2005).

68. The Court finds that a procedural obligation arose to investigate the applicant's allegation of ill-treatment as soon as she brought the matter before the competent authorities, that is to say, the prosecutor's office and the senior police officer. Her requests for an investigation were filed within one month of the incident and contained a detailed account of events, expressly pointed at certain individuals and were accompanied by the forensic report corroborating her story. However, no investigation followed. The Internal Affairs Department inquiry that took place (see paragraph 25 above), although it resulted in some disciplinary charges, did not disclose the names of those charged or the grounds for their punishment. For this reason alone it could not qualify as an effective investigation, and the Government, rightly, did not claim it as such.

69. The investigation was only opened almost four years after the events complained of, when the matter was brought to the attention of the domestic authorities in connection with the applicant's proceedings before the Court. The case was investigated in criminal proceedings which, despite their lateness, were not necessarily doomed to failure, since the file already contained ample documentary evidence submitted by the applicant. However, this investigation has not been satisfactory, as it has failed to establish the material circumstances and to address the questions put before it, such as the origin of the applicant's injuries (see paragraph 42 above).

70. On 3 March 2004 the Prosecutor General gave orders for the investigation to be resumed, but since then there has been no follow-up. Therefore the Court cannot but conclude that in the past three years the authorities have not remedied the shortcomings of which they were acutely aware.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION AS REGARDS THE ILL-TREATMENT

72. The applicant also claimed to have been denied an effective remedy in respect of her Convention complaint of ill-treatment. She submitted that all her attempts to institute criminal proceedings had failed, as had her attempts to secure redress through civil proceedings before the courts. She relied on Article 13 of the Convention, which provides as follows:

“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.”

73. The Government made no submissions other than those under Article 3 of the Convention.

74. The Court notes that Article 13 of the Convention requires that, where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach. The Contracting States are afforded some discretion as to the manner in which they comply with their Convention obligations under this provision. As a general rule, if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI; see also *Čonka v. Belgium*, no. 51564/99, § 75, ECHR 2002-I).

75. However, the scope of the State's obligation under Article 13 varies depending on the nature of the applicant's complaint, and in certain situations the Convention requires a particular remedy to be provided. Thus, in cases of suspicious death or ill-treatment, given the fundamental importance of the rights protected by Articles 2 and 3, Article 13 requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible (see *Anguelova v. Bulgaria*, no. 38361/97, §§ 161-62, ECHR 2002-IV; *Assenov and Others*, cited above, §§ 114 et seq.; and *Süheyla Aydın v. Turkey*, no. 25660/94, § 207, 24 May 2005).

76. On the basis of the evidence adduced in the present case, the Court has found that the State authorities were responsible for the injuries sustained by the applicant on 13 February 1999. The applicant's complaints to the domestic authorities in this regard were based on the same evidence and were therefore “arguable” for the purposes of Article 13 (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). The authorities thus had an obligation to carry out an effective investigation into her allegations against the police officers. For the reasons set out above, no effective criminal investigation can be considered to have been carried out. Consequently, any other remedy available to the applicant, including the

claim for damages, had limited chances of success. While the civil courts have capacity to make an independent assessment of the facts, in practice the weight attached to a preceding criminal inquiry is so important that even the most convincing evidence to the contrary furnished by a plaintiff would often be discarded as “irrelevant”. The civil proceedings brought by the applicant illustrate that. The court simply endorsed the prosecutor's opinion that the applicant's claim was unmeritorious without assessing the facts of the case (see paragraphs 29-30 above). Therefore the action for damages was, in the circumstances of the case, only a theoretical and illusory remedy, not capable of affording redress to the applicant.

77. The Court therefore finds that the applicant has been denied an effective domestic remedy in respect of the ill-treatment by the police. Consequently, there has been a violation of Article 13 of the Convention on that account.

III. ALLEGED VIOLATION OF ARTICLES 5 AND 6 OF THE CONVENTION AS REGARDS THE ADMINISTRATIVE DETENTION

78. The applicant complained that her arrest on 13 February 1999, the overnight detention in the police station and the subsequent five-day detention had been unlawful. These complaints have been declared admissible under Articles 5 and 6 of the Convention, the relevant parts of which provide:

Article 5

“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.

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

...”

Article 6

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

79. The Government acknowledged that the applicant's arrest and detention had been unlawful. However, they claimed that the applicant had ceased to be a victim of the violations alleged under this head. They referred to the ruling of the President of the Rostov Regional Court of 5 March 2003 which established that the applicant's arrest had been in breach of domestic law and quashed the decision of 14 February 1999.

80. In the Government's view, this decision opened to the applicant the possibility of claiming compensation in separate civil proceedings for the non-pecuniary damage caused by the unlawful deprivation of liberty, as provided by Articles 1070 and 1100 of the Civil Code. They considered that since the applicant had failed to bring such an action for damages she had not exhausted domestic remedies and, accordingly, the Court should reject the complaints relating to her detention.

81. The applicant contested the Government's position and maintained her complaints.

82. In their objection the Government requested the Court to find that the ruling of 5 March 2003 had affected the applicant's status as a victim and that she must apply for compensation. However, the Court notes that essentially the same objection has already been put forward by the Government and was dismissed by the Court in its decision on the admissibility of the application. Accordingly, the Court will not examine the Government's objection.

A. Lawfulness of the detention

83. The Court observes from the outset that, as was not disputed by the parties, the applicant's arrest, her overnight detention at the police station and the subsequent five-day administrative detention amounted to deprivation of liberty within the meaning of Article 5 § 1 of the Convention.

84. The first question to be considered is whether the detention was covered by any of the permitted grounds of deprivation of liberty listed exhaustively in paragraph 1 of Article 5. The Court observes that the applicant's detention falls into two distinct periods, namely before and after her meeting with the judge on 14 February 1999. On that day, a five-day detention was imposed on the applicant in connection with the administrative offence allegedly committed by her; accordingly, from that point her detention had clearly defined grounds. As for the preceding overnight detention, it remains largely unexplained. The Court will examine these periods separately.

1. The arrest and overnight detention

85. The Court notes that at one stage of the applicant's detention she was formally charged with the administrative offence and theoretically could be assumed to be detained under Article 242 of the Administrative Code until her administrative case was heard by a judge. However, it transpires that the true reason she was taken to the police station was to force her to give information on L.'s case and to make her surrender the keys to her flat. Charging her with the administrative offence was clearly just a pretext for having her available for that interrogation.

86. In these circumstances the Court may dispense with deciding whether the applicant's overnight detention was in any way covered by any of the sub-paragraphs of Article 5 § 1 of the Convention since the following considerations would in any event apply.

87. Firstly, the Court observes that no documents pertaining specifically to the applicant's initial arrest and her overnight stay at the police station could subsequently be found (see paragraph 27 above). It follows that for some twenty hours after the applicant's arrest there existed no records as to who the applicant was and what the reason for and expected duration of her detention was. Even assuming that the police intended to press charges for the administrative offence, this did not absolve them from complying with such basic formalities before detaining her. That fact in itself must be considered a most serious failing, as it has been the Court's traditional view that the unacknowledged detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters 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 *Anguelova*, cited above, § 154, and *Kurt v. Turkey*, 25 May 1998, § 125, *Reports* 1998-III).

88. Moreover, it can be deduced from the Government's post-admissibility submissions that the applicant's arrest was unlawful under

domestic law (see paragraphs 39-40 above).

89. Against this background, the Court concludes that the period of the applicant's detention until her appearance before a judge on 14 February 1999 did not comply with the guarantees of Article 5 § 1 of the Convention. There has accordingly been a violation of this Article.

2. The five-day detention on the charge of forceful resistance to the police

90. On 14 February 1999 the applicant was brought before the judge, who ruled that she had committed the offence of forceful resistance to the police, an administrative offence under Article 165 of the Administrative Code, and sentenced her to five days' imprisonment. On 5 March 2003 this decision was declared unlawful and quashed. It must be determined whether serving this sentence following the conviction in the administrative proceedings complied with Article 5 without prejudging the merits of the complaint under Article 6 referring to the same decision.

91. The Court reiterates the following general principles that were stated in *Benham v. the United Kingdom* (10 June 1996, §§ 40-42, *Reports* 1996-III) and reiterated in other cases (see *Lloyd and Others v. the United Kingdom*, nos. 29798/96 et seq., 1 March 2005, and *Perks and Others v. the United Kingdom*, nos. 25277/94 et seq., 12 October 1999):

40. The main issue to be determined in the present case is whether the disputed detention was 'lawful', including whether it complied with 'a procedure prescribed by law'. The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness ...

41. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with ...

42. A period of detention will in principle be lawful if it is carried out pursuant to a court order. A subsequent finding that the court erred under domestic law in making the order will not necessarily retrospectively affect the validity of the intervening period of detention. For this reason, the Strasbourg organs have consistently refused to uphold applications from persons convicted of criminal offences who complain that their convictions or sentences were found by the appellate courts to have been based on errors of fact or law ..."

92. The Court observes that the five-day detention was carried out pursuant to the order of a judge who was in principle competent to take the decision in issue. The substantive correctness of this order generally falls outside the Court's review, as follows from the case-law cited above. However, this case is different from the cases where the impugned decisions were taken by judicial authorities in good faith, following the procedure

prescribed by law. The judge in the instant case, on the contrary, exercised his authority in manifest opposition to the procedural guarantees provided for by the Convention. Therefore, the ensuing detention order was inconsistent with the general protection from arbitrariness guaranteed by Article 5 of the Convention.

93. It follows that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's five-day detention.

B. Right to a fair trial

1. Applicability of Article 6 § 1

94. Although the applicability of Article 6 to the administrative proceedings in question is not in dispute, the Court considers it necessary to address this issue of its own motion. For the reasons set out below it considers that these proceedings involved the determination of a criminal charge against the applicant.

95. The Court observes that in order to determine whether an offence qualifies as “criminal” for the purposes of the Convention, it is first necessary to ascertain whether or not the provision defining the offence belongs, in the legal system of the respondent State, to criminal law; next the “very nature of the offence” and the degree of severity of the penalty risked must be considered (see *Öztürk v. Germany*, 21 February 1984, § 50, Series A no. 73, and *Demicoli v. Malta*, 27 August 1991, §§ 31-34, Series A no. 210).

96. As to the domestic classification, the Court has previously examined the sphere defined in certain legal systems as “administrative” and found that it embraces some offences that are criminal in nature but too trivial to be governed by criminal law and procedure (see *Palaoro v. Austria*, 23 October 1995, §§ 33-35, Series A no. 329-B). In the Russian system that also appears to be the case.

97. The Court also observes that loss of liberty imposed as punishment for an offence belongs in general to the criminal sphere, unless by its nature, duration or manner of execution it is not appreciably detrimental (see *Engel and Others v. the Netherlands*, 8 June 1976, §§ 82-83, Series A no. 22, and *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98 and 40086/98, §§ 69-130, ECHR 2003-X). In the present case the applicant was deprived of her liberty for five days and was locked up in the detention centre during the term of her sentence. Finally, the purpose of the sanction imposed on the applicant was purely punitive.

98. These considerations are sufficient to establish that the offence of which the applicant was accused may be classified as “criminal” for the purposes of the Convention. It follows that Article 6 applies.

2. *Whether the applicant received a fair trial*

99. The Government accepted that the proceedings in issue had been defective both under domestic law and the Convention. Indeed the court ruling quashing the above judgment stated that “the judge who convicted the applicant had not examined the circumstances of the case and had not established whether she was guilty of any administrative offence”. That corroborates the applicant's allegations that there had been no adversarial proceedings as such and that even the appearances of a trial had been neglected to the extent that she did not get a chance to find out the purpose of her brief appearance before Judge P.

100. It follows that there has been a violation of Article 6 § 1 of the Convention.

IV. IMPOSSIBILITY TO APPEAL AGAINST CONVICTION OF AN ADMINISTRATIVE OFFENCE

101. The applicant complained that under domestic law the decision ordering her administrative detention was not subject to appeal. She therefore maintained that there was no effective domestic remedy in this respect. She referred to Article 13 of the Convention which provides as follows:

“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.”

This complaint was also declared admissible under Article 5 § 4 of the Convention, which provides as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

102. The Government accepted that under domestic law no appeal lay against such a decision.

103. The Court first refers to the above finding that the decision ordering the applicant's administrative arrest was taken by a “tribunal established by law” in the proceedings falling within the ambit of Article 6 (see paragraphs 93 and 98 above).

104. The Court reiterates that a right of recourse against a faulty judicial decision is not recognised as a general guarantee (see *Delcourt v. Belgium*, 17 January 1970, § 25, Series A no. 11). This right is provided for in criminal cases in Article 2 of Protocol No. 7 to the Convention, with the exception of offences of a minor character. However, the applicant did not rely on this Article and presented no argument whether or not her criminal charge concerned anything but an “offence of a minor character”. The Court does not consider it necessary to raise this issue of its own motion.

105. As regards Article 13, the Court observes that Article 6 § 1 is a *lex specialis* in relation to Article 13, in other words the requirements of Article 13 are less strict than, and are here absorbed by, those of Article 6 (see, *mutatis mutandis*, *Kamasinski v. Austria*, 19 December 1989, § 110, Series A no. 168). As a rule, Article 13 is not applicable where the alleged violation of the Convention has taken place in the context of judicial proceedings (see *Pizzetti v. Italy*, 26 February 1993, § 41, Series A no. 257-C). The only exceptions to this principle have been the Article 13 complaints relating to a breach of the “reasonable time” requirement (see *Kudla*, cited above, §§ 146-49). Since this is not the case here, there is no room for a separate breach of Article 13.

106. In so far as Article 5 § 4 is concerned, the Court notes that its guarantees are in principle redundant with respect to detention under Article 5 § 1 (a), since judicial control of the deprivation of liberty has already been incorporated into the original conviction and sentence (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 76, Series A no. 12). Turning to the facts of the present case, the applicant's five-day detention was based solely on her conviction by the judge, therefore Article 5 § 4 did not require that a separate judicial authority review that decision.

107. In view of the above, the Court concludes that this complaint raises no separate issue under Article 13 or Article 5 § 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicant claimed 100,000 euros (EUR) for non-pecuniary damage in respect of the injuries and distress she had suffered as a result of her ill-treatment by the police and the anguish caused by the administrative proceedings and the ensuing detention, as well as by the authorities' failure to act in response to her complaints about the ill-treatment.

110. As pecuniary damage she claimed 25 roubles (RUB), the money charged by the detention centre for her five-day detention.

111. The Government submitted no comments on the applicant's claims, indicating that it was in part due to the pending investigation into the ill-treatment and in part due to their objection concerning non-exhaustion in respect of her complaint about the detention.

112. The Court observes that it has found that the authorities tortured the applicant and failed to provide a prompt and public investigation meeting the requirements of Article 3 of the Convention. It has also been established that she was deprived of her liberty in violation of Article 5, through proceedings conducted contrary to Article 6. In addition, the applicant spent months in unsuccessful attempts to secure domestic redress for the acts of ill-treatment. The applicant must have suffered anguish and distress as a result of all these circumstances. Having regard to all these considerations, the Court awards the applicant, on an equitable basis, EUR 35,000 for non-pecuniary damage and RUB 25 for pecuniary damage, plus any tax that may be chargeable on these amounts.

B. Costs and expenses

113. The applicant claimed RUB 5,000 for costs and expenses incurred in the domestic proceedings and before the Court, including stamp duty, translation fees, postal expenses and stationery.

114. The Government did not object.

115. Against this background, the Court finds the applicant's claim reasonable and therefore awards her RUB 5,000 for costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

116. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 3 of the Convention as regards the ill-treatment;
2. *Holds* that there has been a violation of Article 3 of the Convention as regards the absence of an effective investigation into the applicant's allegations of ill-treatment;
3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the ill-treatment complained of;
4. *Holds* that there has been a violation of Article 5 § 1 of the Convention

in respect of the applicant's arrest and overnight detention;

5. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the applicant's five-day detention;
6. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
7. *Holds* that there are no separate issues under Articles 5 § 4 and 13 of the Convention as regards the absence of a right of appeal against the decision imposing a sanction for the administrative offence;
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, the following amounts:
 - (i) RUB 25 (twenty-five roubles) in respect of pecuniary damage;
 - (ii) EUR 35,000 (thirty-five thousand euros) in respect of non-pecuniary damage to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;
 - (iii) RUB 5,000 (five thousand roubles) in respect of costs and expenses;
 - (iv) any tax that may be chargeable on the above amounts;
 - (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 9 March 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President