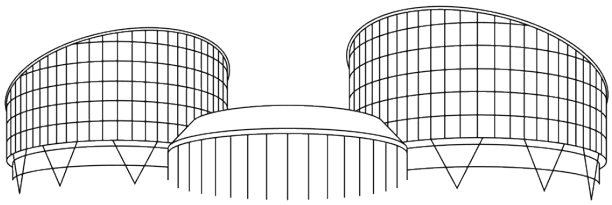

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF YUDINA v. RUSSIA

(Application no. 52327/08)

JUDGMENT

STRASBOURG

10 July 2012

FINAL

22/10/2012

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

In the case of Yudina v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 19 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 52327/08) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Irina Klavdiyevna Yudina ("the applicant"), on 17 June 2008.

2. The applicant was represented by Ms Ye. Burmitskaya and Ms O. Koynova, lawyers practising in Novokuznetsk, Russia, and Mr W. Bowring, Mr P. Leach and Ms J. Evans, lawyers practising in London, United Kingdom. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that she had been subjected to ill-treatment by law-enforcement officers and that the ensuing investigation had not been effective.

4. On 9 February 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Yegultys, Kemerovo Region.

A. Use of force against the applicant on 26 December 1998

1. The version of the events as established in the course of the official investigation

6. On 18 December 1998 the Kiselevsk Town Department of the Interior opened a criminal investigation in respect of a robbery and theft of a car. According to undisclosed sources, the stolen car was being kept in a garage belonging to the applicant's husband.

7. On 26 December 1998 six policemen, V., R., Sn., St., Bl. and Bk. went to the applicant's house, in three cars, to follow up on the information received from the source. V. knocked on the door and opened it himself. In the house, he saw the applicant and her eleven-year old daughter. He showed his ID to the applicant and the policemen entered the house. They saw a gun holster on a hook in the hallway and asked the applicant about it and the whereabouts of her husband. The applicant shouted at them and ordered them to leave. She went outside with them and told her daughter to lock the entrance door. She threatened to set her dogs on the policemen. In order to neutralise the applicant and to prevent her from interfering with the inspection of the courtyard, V. held her by the arms and put her into one of the police cars. The applicant got out of the car and kicked R., who tried to stop her, in the groin. At this point she slipped and fell down. She bit R.'s fingers. R. got his hand free and together with St. handcuffed the applicant and put her back in the car.

8. Meanwhile, Sn. went to the sauna which was in the courtyard. The applicant's husband was there. When Sn. explained the purpose of their visit, he let them into the house. R. brought the applicant in and took off the handcuffs. The applicant's husband showed them his guns and the relevant documents. They also looked into the garage. The stolen car was not there and the policemen left.

2. The applicant's version of the events

9. On 26 December 1998 the applicant and her eleven-year old daughter were in their house. Her husband and their ten-year old son were in the sauna in the courtyard. At 6 p.m. seven men burst into the house. The first one hit her immediately in the face "to bring her to her senses", as he put it. She asked for a search warrant and for civilian witnesses to be present: the same man hit her again. She asked the men to leave. They said that they would not leave until they had turned the place upside down. The applicant ran out of the house to call the neighbours. The men ran after her. She told the daughter to lock the door, which she did. The men tried to break down the door. Then one of them suggested breaking a window instead. They asked where her husband was. She told them that he was in the sauna. The men seemed surprised. They thought he should have been in prison. The

applicant shouted for help. She ran, and got as far as the gate, but the men knocked her down, pushed her face into the snow and kicked her. One of them tried to gag her with a glove. Someone pulled her by the hair and dragged her to the car. They handcuffed her. They hit her head against the car. One of them grabbed her neck and tightened their grip. They kicked her and tore her mouth. Then they put her in the car. One man stayed by the car to guard her and the rest of them went back into the house.

3. The applicant's condition

10. On 26 December 1998 the applicant was admitted to hospital. According to the applicant's medical file maintained by the hospital, the applicant was diagnosed with a contusion of the left kidney, a closed abdominal contusion (закрытая травма живота), a contusion of the front abdominal wall (ушиб передней брюшной стенки), contusion of the lumbar spine (ушиб поясничного отдела позвоночника) and concussion. She also had a bruise near her lower lip.

11. On 13 January 1999 the applicant underwent a forensic medical examination conducted by local experts. The experts did not confirm the diagnosis indicated in the applicant's medical file, except for the contusion of the kidney and the bruise near the lower lip, which were classified as "not serious damage to health". They further noted that those injuries could have been caused by blows with a blunt instrument shortly before the applicant's admission to hospital.

12. On 17 March 1999 the applicant underwent a second forensic examination which, in substance, reiterated the findings of the experts on 13 January 1999. In addition, the experts explained that the kidney contusion must have been caused by a blow from a blunt instrument or collision with a blunt object or by a fall on to a flat surface.

13. On 12 May 2000 the regional medical forensic experts presented their findings. They subscribed, in substance, to the previous examinations' results and accepted that the applicant had suffered from concussion, which could have been caused by a fall. As regards the origin of the contusions of the kidney and lower lip, the experts ruled out the possibility that they had been caused by a fall on to a floor or the ground.

14. On 7 October 2000 the Medical and Social Expert Commission found that the craniocerebral injury the applicant had sustained in December 1998 had caused her to acquire a Category 2 disability.

15. On 20 December 2000 the applicant underwent another forensic examination, at the Altai Region forensic expert institution. The forensic expert panel noted as follows:

> "On the basis of the ... medical documents, the forensic medical panel concludes that [the applicant] had the following bodily injuries:

1.1 Rupture inside the left renal capsule (подкапсульный разрыв левой почки). This injury was caused by a blunt blow (inflicted possibly by a booted foot or a fist). It could not have been caused by the applicant's falling on to an even surface or a prominent object. A life-threatening injury, it should be classified as severe damage to the applicant's health...

1.2 Injuries to the lower lip and the left corner of the mouth, accompanied by swelling of the soft tissue of the lip, could have been caused by one (or two) blunt blows administered to the [applicant's] lower lip area, possibly by a fist. Those injuries could not have been caused by a fall and did not result in any damage to the [applicant's] health."

16. As regards the applicant's allegations that she had received multiple blows to her body, head or legs, the experts did not discern any medical evidence to confirm them.

17. Dr B. gave a separate opinion on the results of the applicant's examination. Taking into account the applicant's medical documents and the witness statements, he considered that the applicant could have sustained the injuries, including the contusion on the lower lip, the craniocerebral injury, rupture of the left kidney, and bruises on the legs and arms as a result of the beatings she had allegedly been subjected to.

B. Ensuing investigation

1. Initial proceedings

18. On 26 December 1998 the hospital where the applicant had been admitted reported her injuries to the local police station.

19. On 27 December 1998 F., a driver working for the road police, submitted a report to his superiors. He indicated that he had been driving one of the three cars which had been at the applicant's house the day before. Six policemen had entered the house. Some twenty minutes later they had brought out a woman. She was handcuffed and her face was covered with blood. They had put her into his car. She stayed there for another twenty ot twenty-five minutes. Then the policemen took her back into the house.

20. On 30 December 1998 the applicant lodged a complaint of police brutality with the Kiselevsk Town Department of the Interior.

21. On 6 January 1999 the Prokopievsk Town Prosecutor opened a criminal investigation in respect of the applicant's allegations. It was discontinued for lack of *corpus delicti* on 5 April 1999.

22. On 13 August 1999 the Regional Deputy Prosecutor quashed the decision of 5 April 1999 and ordered a further investigation, which was completed on 9 June 2000.

23. As part of the ensuing investigation, the prosecutor questioned the alleged perpetrators, who denied the applicant's allegations. They provided the following account of the events of 26 December 1998:

> "[The police officers] denied that they had beaten [the applicant]. They explained that their task was to find out whether [the applicant's husband] was keeping a stolen car [at his place]. They entered the house, identified themselves to the applicant and showed her their IDs. They asked her about a pistol holster they saw in the house. The applicant asked them to leave. She shouted, without answering their questions. They went outside. In order to calm down the applicant, who wanted to set the dogs on them, policeman V. took hold of her and took her to a police car. The applicant shook him off and started screaming. They put her in the back seat of the car and left her there. Policemen R. and S. stayed by the car and the rest of them went back to the house when they saw the applicant's husband and son going in. The applicant opened the car door to escape. R. tried to stop her, but she kicked him in the groin. She slipped and hit her back against the car when falling down. R. tried to help her stand up, but she bit his finger. When trying to get his finger out of the applicant's mouth, R. might have caused her a bruise on the lower lip. None of them hit the applicant. She continued to resist and R. and S. had to handcuff her. Then they put her back in the car. R. went inside the house and put some iodine on the bite. The applicant's husband asked the policemen to bring her into the house and they did so. They checked the cabinet where the applicant's husband kept his guns, and the garage, and then left."

24. The applicant was questioned by the prosecutor on several occasions. She also repeated her accusations in the presence of the accused. The prosecutor noted, however, that her version of the events was contradictory concerning the number of blows she had received and the number of the alleged perpetrators. Each time she was questioned she gave a different number. At the beginning she did not identify policeman M. as one of the perpetrators. Later she changed her mind. The prosecutor concluded that the applicant's testimony was not reliable.

25. The applicant's husband, when questioned in the course of the investigation, corroborated the applicant's testimony. He submitted that two of the policemen were sober and the rest of them seemed to be inebriated. His daughter told him that the policemen had beaten up the applicant in her presence. He submitted that when the policemen had brought the applicant into the house her face was covered with blood, she was handcuffed and her hands were bluish. After the policemen had left, he and Bez., the applicant's brother had taken her to hospital.

26. The prosecutor decided against questioning the applicant's daughter, who was unable to identify the perpetrators.

27. K., one of the applicant's neighbours, submitted that on 26 December 1998 he had heard a woman screaming in the street. He went outside and saw three cars near the applicant's house. He also saw a woman lying on the ground and three men kicking her. He was unable to identify the alleged perpetrators.

28. L., another neighbour, testified that Bez., the applicant's brother, had asked her to come to the applicant's house after the incident. L. had not seen the applicant. The policemen seemed to be drunk.

29. Neighbours M. and S. testified that they had seen several men beating someone. They could not provide any further details about the perpetrators or the victim.

30. Ms B., the applicant's sister-in-law, testified that she had visited the applicant in hospital on 4 January 1999. The applicant's legs, arms and back were covered with bruises. The skin on her jaw was yellowish.

31. On the basis of the evidence collected, the prosecutor concluded that the applicant's allegations were unsubstantiated, and discontinued the proceedings for lack of *corpus delicti* on 9 June 2000.

2. Subsequent developments

32. On 26 June 2000 the decision of 9 June 2000 was quashed and the matter was remitted for further investigation.

33. Between 25 August 2000 and 7 August 2002 the prosecutor's office discontinued the investigation on six occasions for lack of *corpus delicti* Each time, in response to the applicant's complaint, the superior prosecutor or the court ordered further investigation. The relevant final decisions were taken on 20 February, 4 May, 5 June and 1 August 2001, and 4 March and 7 August 2002.

34. On 23 September 2002 the Town Prosecutor's Office discontinued the investigation.

35. On an unspecified date the General Prosecutor's Office of the Russian Federation reviewed the case file at the applicant's request. It was noted that "the investigation had been conducted with a low level of professionalism and without due supervision by those in charge".

36. On 16 June 2003 the Regional Deputy Prosecutor's Office quashed the decision of 23 September 2002. The regional deputy prosecutor noted that that the policemen who had entered the applicant's premises on 26 December 1998 had conducted a search without any authorisation.

37. On 23 July 2003 the investigator with the Prokopievsk Town Department of the Interior discontinued the investigation. He noted that the policemen had acted in strict compliance with the law and had not beaten the applicant. The applicant appealed to the court.

38. On 22 December 2005 the Rudnichniy District Court of Prokopievsk quashed the decision of 23 July 2003. The court noted that between 1999 and 2003 the case had been closed and reopened ten times. The court heard several witnesses summarising their testimonies as follows:

> "Witness F. confirmed in court that he had been ... assigned as a driver to accompany policeman R. to Yegultus on two occasions on 23 and 26 December 1998 ... . He recalled that on 26 December 1998 a woman was placed in his car. She was beaten up and asked for the handcuffs to be removed. This woman did not try to escape. She did not fall down and she did not hit herself against his car prior to having been placed inside.

> Witness R. submitted in court that on 26 December 1998 several other policemen and himself had carried out an inquiry in Yegultys ... . He had normal working relationship with driver F. They had carried out an inspection in the [applicant's] house. Having observed [the applicant's] behaviour, they had understood that something "had been wrong" and started working with her. He had said that they had been authorised to carry out a search. However, they had not invited attesting witnesses. When they had taken [the applicant] out of the house, she had thrown herself at them. Then she had fallen down hitting herself against the car. He had put her into the car in order to keep her warm because it had been very cold outside.
>
> R. could not explain ... why [the applicant] had been handcuffed and put into the police car and why they had not taken her to the police station in order to comply with investigator O.'s order to identify the alleged perpetrators of the car theft.
>
> ...
>
> Witness Bez. confirmed in court that on 26 December 1998 he had been repairing a car in the [applicant's] garage. His niece had come and told him that [some men] had been beating up her mother. He had seen several cars in the courtyard near the house and a group of men who had been crushing things in the house. He had asked them to show their ID. They had refused. Then he had asked why his sister had been beaten up and handcuffed. They had started "putting pressure" on him and said that they could take his sister to a driveway and make her drink a litre of vodka. When he had called the neighbours for help, the policemen had left."

As regards investigator O.'s request that the information concerning the stolen car be followed up, the court noted that the relevant request did not state that the stolen car might be in the possession of the applicant's husband. Lastly, the court ordered the investigating authorities to rectify the failures in the investigation. The prosecutor appealed.

39. On 14 March 2006 the Regional Court upheld the decision of 22 December 2005 on appeal.

40. On 17 May 2006 the Prokopievsk Town Prosecutor's office discontinued the proceedings. The decision was based on the statements by the applicant, her relatives and neighbours, policemen and the medical reports obtained in 1998-2001.

41. On 14 November 2006 the District Court quashed the decision of 17 May 2006. The court accepted the applicant's argument that the prosecutor's office had not complied with the instructions issued by its superiors on further investigation. In particular, the court noted that the investigators had failed to question one of the drivers of the police cars, that they had not assessed the severity of the applicant's injuries and had not determined whether the use of force by the policemen against the applicant had been lawful. On 6 March 2007 the Regional Court upheld the decision of 14 November 2006 on appeal.

42. On 7 May 2007 the Prokopievsk Town Prosecutor's Office discontinued the investigation.

43. On 19 February 2008 the District Court quashed the decision of 7 May 2007, noting that the investigation had been incomplete. On 8 April 2008 the Regional Court upheld the decision of 19 February 2008 on appeal.

44. On 16 June 2008 the investigator at the Prokopievsk Department of the Interior discontinued the investigation. On 8 July 2008 the Kemerovo Regional Prosecutor's Office quashed the decision of 16 June 2008.

45. On 10 October 2008 the Kemerovo Regional Prosecutor's Office discontinued the investigation.

46. According to the Government, the General Prosecutor's Office of the Russian Federation reviewed the investigation file and found the decision of 10 October 2008 unlawful, noting that the investigating authorities had failed to comply fully with the court's decision of 19 February 2008. In particular, the investigating authorities had not reconciled the contradictory findings of the forensic reports in order to assess the veracity of the statements made by the applicant, her daughter and the policemen. The Government did not submit a copy of the decision in question.

47. On 29 April 2010 the case file was returned to the regional prosecutor's office for further investigation. The proceedings are still pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicant complained under Articles 3 and 13 of the Convention that she had been subjected to ill-treatment by the police, and that the ensuing investigation had been ineffective. The Court considers that the complaints fall to be examined under Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

49. The Government contested that argument. They considered that, in view of the ongoing investigation into the matter, it was not yet possible to establish the veracity of the applicant's allegations of police brutality.

50. The applicant maintained her complaint. She asserted that her allegations of police brutality had been supported by numerous witnesses' statements and forensic evidence, and stated that the authorities were obliged to carry out an effective investigation. In view of the length of the investigation in her case, more than ten years, the investigation could not be

considered effective. Furthermore, the perpetrators could not be prosecuted, because of the expiry of the statute of limitation.

A. Admissibility

51. In so far as the Government may be understood to suggest that the applicant's complaint is premature in view of the pending investigation, the Court considers that this question is closely linked to that of whether the investigation of the applicant's allegations of ill-treatment was effective. However, this issue relates to the merits of the applicant's complaint under Article 3 of the Convention. The Court therefore decides to join it to the merits.

52. 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. Effectiveness of the investigation

(a) General principles

53. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of 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 (see, among other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102-103, *Reports of Judgments and Decisions* 1998-VIII).

54. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 71, ECHR 2002-II, and *Mahmut Kaya v. Turkey*, no. 22535/93, § 124, ECHR 2000-III).

55. An investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened, and should not rely on hasty or ill-

founded conclusions to close their investigation or as the basis for their decisions (see *Assenov and Others*, cited above, § 103 et seq.). They must take all reasonable steps available to them to secure evidence concerning the incident, including, *inter alia,* eyewitness testimony and forensic evidence (see, *mutatis mutandis*, *Salman v. Turkey* [GC], no. 21986/93, § 106, ECHR 2000-VII; *Tanrıkulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV, § 104 et seq.; and *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000). Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard.

56. Furthermore, the investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time (see *Labita v. Italy* [GC], no. 26772/95, § 133 et seq., ECHR 2000-IV). Consideration was given to the starting of investigations, delays in taking statements (see *Timurtaş v. Turkey*, no. 23531/94, § 89, ECHR 2000-VI, and *Tekin v. Turkey*, 9 June 1998, *Reports* 1998-IV, § 67), and the length of time taken to complete the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001).

(b) Application of the general principles to the present case

57. Turning to the facts of the present case, the Court is satisfied that the applicant has raised an arguable claim of ill-treatment by the police and that the authorities were under an obligation to conduct an effective investigation in response to her complaint. The authorities were informed of the applicant's injuries by the hospital where she underwent treatment on the same day as she stated she had sustained them, that is on 26 December 1998 (see paragraph 18 above). Then, four days later, the applicant herself lodged a relevant complaint. The medical examination conducted by the hospital seemed to corroborate the applicant's allegations of ill-treatment.

58. The Court further observes that the authorities opened and conducted an investigation of the applicant's allegations of ill-treatment. It is not convinced, however, that the inquiry has been sufficiently thorough and expeditious to meet the requirements of Article 3.

59. The issues to be addressed by the authorities were of a certain complexity and required time on the part of the authorities to look into the veracity of the applicant's accusations. They questioned the alleged perpetrators and numerous witnesses, commissioned and studied the results of forensic medical examinations, and were under an obligation to reconcile the evidence collected. The Court is not persuaded, however, that the complexity of the case alone can account for the fact that the investigation has lasted for over thirteen years and has not been completed to date.

60. In this connection the Court notes that, following the opening of the criminal case, the prosecuting authorities discontinued the investigation on fourteen occasions. Each time, the applicant appealed and the supervising prosecutor or the court quashed the relevant decision and reopened the investigation, noting the investigators' failure to fully determine the circumstances of the case. The Court considers that such remittals of the case for re-examination disclose a serious deficiency of the criminal investigation which irreparably protracted the proceedings, denying the applicant an opportunity to have her allegations of ill-treatment investigated effectively.

61. Finally, in so far as the Government imply that the complaint under Article 3 is premature, the Court recognises that the investigation is still pending but, in view of its length so far and the seriousness of the issues at stake, the Court does not consider that the applicant should wait for completion of the investigation before making her application to the Court, as the conclusion of those proceedings would not remedy the overall delay in any way (see *Angelova and Iliev v. Bulgaria*, no. 55523/00, § 103, ECHR 2007-IX).

62. In the light of the foregoing, the Court dismisses the Government's objection, and finds that the authorities failed to carry out an effective criminal investigation of the applicant's allegations of ill-treatment. Accordingly, there has been a violation of Article 3 under its procedural limb.

2. Alleged ill-treatment

(a) General principles

63. The Court has stated on many occasions that 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 and degrading treatment or punishment, irrespective of the victim's conduct (see, among many other authorities, *Labita v. Italy*, cited above, § 119, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

64. The Court accepts that in defusing situations, maintaining order, preventing offences, catching alleged criminals and protecting themselves and other individuals, police officers are entitled to use appropriate means, including force. Nevertheless, such force may be used only if indispensable, and must not be excessive. Recourse to physical force which has not been made strictly necessary by the individual's own conduct diminishes human dignity and is in principle an infringement of the rights set forth in Article 3 of the Convention (see *Kuzmenko v. Russia*, no. 18541/04, § 41, 21 December 2010).

65. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (see, among others, *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 26, ECHR 2004-VII; and *Akdivar and Others v. Turkey*, 16 September 1996, § 168, *Reports of Judgments and Decisions* 1996-IV).

(b) Application of the general principles to the present case

66. Turning to the circumstances of the present case, the Court notes that the medical evidence submitted by the applicant and not challenged by the Government conclusively demonstrates that on 26 December 1998, that is the day of the altercation between the applicant and the policemen, she sustained a number of injuries, including a rupture inside the left renal capsule, a concussion and multiple contusions.

67. The Court further notes that the applicant provided a detailed and consistent description of the ill-treatment to which she had been allegedly subjected by the policemen. She indicated its place, time and duration. Her allegations of ill-treatment were sufficiently serious for the authorities to open a criminal investigation. The Court also notes that at no point in the proceedings before the Court did the Government directly challenge or refute the applicant's allegations. They merely stated that, in view of the ongoing investigation, it was impossible to determine whether she had been subjected to a treatment in contravention of Article 3 of the Convention.

68. In such circumstances, and having regard to the Court's earlier finding that the domestic inquiry into the applicant's allegations has fallen short of the standards set forth in Article 3 of the Convention, the Court considers that the Government failed to rebut the presumption of their responsibility for the injuries inflicted on the applicant while in the hands of the agents of the State. Accordingly, the Court finds it established to the standard of proof required in Convention proceedings that the applicant sustained the injuries as a result of her altercation with the police officers. The burden therefore rests on the Government to provide a satisfactory and convincing arguments that the use of force was not excessive (compare, *mutatis mutandis*, *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII).

69. The Court observes that the applicant was not a suspect in any crime or subject to an arrest in the course of a random operation which might have given rise to unexpected developments to which the police might have been called upon to react without prior preparation. The documents before the Court indicate that the police planned the search of the applicant's household in advance and that they had sufficient time to evaluate the possible risks and to take all necessary measures to carry out the operation. There were six or seven policemen involved and they were capable of putting an end to the applicant's allegedly unruly behaviour, if any.

70. Furthermore, the Court considers that, even assuming that the applicant had not been calm and had refused to comply with the police officers' orders, there is no evidence presented in the domestic proceedings or before the Court that the applicant had been particularly dangerous or had been in possession of a weapon. No evidence of any injury to the police officers was adduced. Even conceding that the police officers might have needed to resort to physical force to prevent the applicant's interference with the search they were to conduct, it is obvious that the beatings the police officers subjected the applicant to were not conducive to the desired result, that is, facilitating the search. In the Court's view they were merely a form of reprisal or corporal punishment (compare *Dzwonkowski v. Poland*, no. 46702/99, § 55, 12 April 2007, and *Dedovskiy and Others v. Russia*, no. 7178/03, § 83, 15 May 2008). Accordingly, the Court concludes that the force used by the police against the applicant was excessive and unjustified.

71. The Court further reiterates that the ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (see *Assenov and Others, cited above*, § 94). The Court considers that the number and location of the injuries the applicant had sustained indicate that the beatings the policemen had subjected her to were sufficiently serious, of a nature amounting to inhuman treatment prohibited by Article 3.

72. It follows that there has been a violation of Article 3 of the Convention under its substantive limb.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed compensation for non-pecuniary damage in the amount the Court considered "reasonable and appropriate to the level of pain and suffering" that she had endured.

75. The Government considered that, given that the applicant's rights under the Convention had not been infringed, her claim of damages should be rejected. Alternatively, they proposed that finding a violation would constitute sufficient just satisfaction.

76. The Court notes that it has found a combination of grievous violations in the present case. The applicant has been a victim of police brutality. The ensuing investigation in her allegations has been ineffective. In such circumstances, the Court considers that the applicant's suffering and anguish cannot be compensated by the mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

77. The applicant claimed (1) 600 pounds sterling (GBP) for the work carried out by Mr Bowring, who reviewed the case documents and provided comments on the draft reply to the Government's observations for four hours; (2) GBP 108 for the work carried out by the EHRAC administrator who did some translation, arranged for the translation of the documents by external translators and compiled the list of documents; (3) GBP 75 for the postal, telephone/fax and photocopying expenses incurred by the EHRAC office; and (4) GBP 798.1 for translation services. She submitted invoices in respect of the work performed by Mr Bowring and the translator. No other copies of relevant receipts were provided.

78. The Government did not comment.

79. 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 720 euros (EUR) in respect of the work performed by Mr Bowring and EUR 960 to cover translation costs, that is EUR 1,680 in total.

C. Default interest

80. 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. *Joins* to the merits the Government's objection as to the exhaustion of domestic remedies and rejects it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in that the authorities failed to carry out an effective investigation into the applicant's allegations of ill-treatment;

4. *Holds* that there has been a violation of Article 3 of the Convention in that the applicant was subjected to inhuman treatment by the police;

5. *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, the following amounts:
      (i) EUR 15,000 (fifteen thousand euros) plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable on the date of settlement;
      (ii) EUR 1,680 (one thousand six hundred and eighty euros), plus any tax that may be chargeable to the applicant, in respect of translation costs, to be paid into the EHRAC bank account in the United Kingdom;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Nina Vajić
Registrar	President