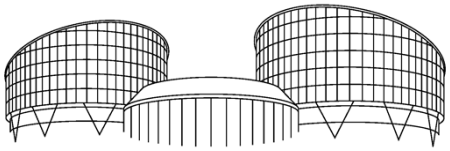

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MOSTIPAN v. RUSSIA

(Application no. 12042/09)

JUDGMENT

STRASBOURG

16 October 2014

FINAL

16/01/2015

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

In the case of Mostipan v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 23 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 12042/09) 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 Yelena Almazbekovna Mostipan ("the applicant"), on 10 February 2009.

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

3. The applicant alleged, in particular, that she had been subjected to ill-treatment in police custody and that the ensuing investigation had not been effective, and that her conviction had been based on self-incriminating statements she had made under duress.

4. On 6 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1973 and is currently serving a prison sentence in Bozoy, Irkutsk Region.

A. The applicant's arrest and alleged ill-treatment

6. According to the applicant, and not contested by the Government, at approximately 11 p.m. on 5 April 2007 she was arrested on suspicion of abducting, raping and murdering S. According to the arrest record, she was arrested at 3.30 a.m. on 6 April 2007.

7. Following the arrest, the applicant was taken to a police station where she was questioned by an investigator in the presence of a lawyer. Prior to the questioning, she wrote a statement admitting to S.'s abduction. According to her, police officers threatened to beat her if she refused to make a written statement. She did not explain whether she had been denied access to a lawyer prior to writing the statement.

8. According to the applicant, on the morning of 6 April 2007 she was taken to the town prosecutor's office. She was taken to an office where policemen started beating her and urging her to confess to S.'s murder. They hit her on the head and threatened to rape her, and then handcuffed her and pushed her to the floor. They put a hat on her head and pulled it down over her eyes. They also threw a coat over her. They punched her in the solar plexus and the stomach, and pulled her by the legs. They attached a wire to her right leg and placed a metal object between her shoulders, then subjected her to electrocution while gagging her mouth to muffle her screams.

9. On the same day the applicant was questioned by the investigator and confessed to S.'s abduction. She was later taken to the location where she had last seen S. alive and was questioned again afterwards. The applicant's lawyer was present during the questioning.

10. Later that day the applicant was taken to a temporary detention centre, where an officer conducted a medical examination and noted numerous bruises on her belly and scratches below the right clavicle. It appears that the administration of the detention facility informed the investigator from the town prosecutor's office accordingly, who ordered that the applicant undergo a forensic medical examination.

11. At approximately 5 or 6 p.m. that evening the applicant underwent a forensic medical examination which, in addition to the injuries noted before, revealed two bruised areas on her chest, possibly caused by blunt solid objects one to two days before the examination. At the time, the applicant did not offer any explanation as to the cause of the injuries.

12. On 13 April 2007 the investigator questioned the applicant again the in the presence of her lawyer. She denied having any intent to kill S. According to her, it was two other co-defendants who had decided to do so.

13. On 10 May 2007 a local newspaper published an article about S.'s murder and the opening of the investigation. The names of the alleged perpetrators were not disclosed.

B. Investigation into the applicant's allegations of ill-treatment

14. On 28 June 2007 the town prosecutor's office received a complaint from the applicant alleging that she had been ill-treated.

15. On 10 March 2008 investigator T. from the town prosecutor's office refused to open a criminal investigation into the applicant's and her co-defendants' allegations of ill-treatment in police custody. The investigator noted as follows:

> "In the course of the investigation, [the applicant and three other defendants] alleged that their initial statements had been coerced by police officers and the prosecutor's office and were false. In addition, the medical examination conducted revealed that they had sustained injuries. However, in the course of the investigation ... the [defendants'] statements were obtained in accordance with the rules of criminal procedure. The [defendants'] allegations should be considered with criticism. They are charged with serious offences. They have not pleaded guilty and wish to evade criminal liability. Accordingly, no objective information has been found that would confirm the defendants' allegations that they sustained injuries while in [custody]."

16. It appears that the applicant's allegations of ill-treatment in police custody were subject to additional pre-investigative inquiry. On 10 September 2008 investigator M. from the regional prosecutor's office refused to open criminal proceedings against the alleged perpetrators. He took into account the fact that the applicant had been convicted as charged (see paragraph 22 below). He further relied on statements made by the police officers involved in the applicant's arrest and questioning, who denied having beaten or tortured her. He summarised his findings as follows:

> "The analysis of the collected material shows that the [applicant's] allegations of ill-treatment are not confirmed by objective information and are refuted by the explanations provided by the police officers and investigators from the town prosecutor's office. [The applicant] complained of ill-treatment after a considerable length of time, and only when she was charged with serious offences, even though nothing had precluded her from communicating her complaint to the investigator who had questioned her in the presence of a lawyer or during the inspection of the crime scene or subsequent questionings, etc. Furthermore, when admitted to the temporary detention facility, [the applicant] did not complain of her injuries allegedly inflicted by police officers. In the absence of a forensic medical examination, it is impossible to determine that [the applicant] sustained the injuries, the degree of their severity, the time of their infliction, or their cause. Regard being had to the above, it should be concluded that the [applicant's] allegations of ill-treatment should be considered with criticism and viewed as an attempt by [the applicant] to avoid criminal liability for the serious crimes committed. Such a conclusion is substantiated by the [applicant's] conviction by the Irkutsk Regional Court ... [Her] allegations of ill-treatment were subject to verification by the court, which ruled [that there was] no case to answer against the police officers and investigators from the prosecutor's office, who had not abused their powers or infringed the [applicant's] rights in contravention of the law."

17. On 18 June 2009 investigator T. refused to institute criminal proceedings against the police officers who had allegedly subjected the

defendants to ill-treatment following their arrest. The parties did not provide a copy of this decision.

18. On 26 October 2009 the Irkutsk Regional Court, within the framework of the trial, issued a separate ruling concerning the applicant's and other defendants' allegations of ill-treatment in police custody, advising the regional prosecutor that an additional inquiry should be conducted. In the ruling, the court considered that the inquiry conducted in response to the defendants' complaints had been incomplete. In particular, the court stated as follows:

> "In the course of the trial, each of the defendants alleged that they had been subjected to physical and psychological pressure by law-enforcement officers ... who demanded that they confess to [the crimes] ...
>
> As it transpires from the material in the case file, during the preliminary investigation in the present case each of the defendants lodged complaints with the [town] and [regional] prosecutors' offices alleging an abuse of power and the use of force by law-enforcement officers ... Following the inquiry in response to the [applicant's] complaint, on 10 September 2008 [senior investigator M. from the investigating committee of the regional prosecutor's office] refused to institute criminal proceedings on [the grounds that] no offence had been committed.
>
> ...
>
> The court cannot subscribe to [M.'s] finding that it was impossible to establish objectively that [the applicant] had bodily injuries because [allegedly] she had not undergone a forensic medical examination ... [T]he material in the case file ... contains information showing that all the defendants had sustained bodily injuries ...
>
> For instance, witness Sh., who saw [the applicant] immediately prior to [her] arrest ... and witness Shin., [one of the police officers] who had taken [the applicant] to [the police station] on the night of 6 April 2007 testified that [she] did not have any visible injuries and ... did not complain about her health to Sh.
>
> ...
>
> The records on the initial examination and registration of provision of medical aid to detainees admitted to [the temporary detention centre] ... contain the following entries ... On 6 April 2007 [the applicant] had bruises on her body ... On 7 April 2007 [she] had bruises on the abdomen and scratches on the right clavicle.
>
> The findings of the forensic medical experts are as follows ... [The applicant] had bruises on the abdomen and two areas of subcutaneous haemorrhage on the right side of the chest which were caused by the impact of blunt solid objects approximately one to two days ago and could not cause damage to her health. The origin of the injuries was not indicated. [The applicant] did not inform the forensic medical expert as to the origin of the bodily injuries.
>
> In 2008, when conducting an inquiry in response to the [applicant's] complaint, investigator M. did not examine the findings of the forensic medical expert ... at all.
>
> ...
>
> Regard being had to the above, the court considers that ... investigator M. ... did not conduct a comprehensive and objective inquiry in response to the [applicant's]

> allegations of [ill-treatment]. The investigator's decision ... does not contain an answer as to how and when [the applicant] sustained bodily injuries.
>
> In accordance with the [statutory] rules of criminal [procedure], no party to the proceedings can be subjected to abuse, torture or other inhuman or degrading treatment. Accordingly, the court draws the prosecutor's attention to the fact that a comprehensive and thorough examination is necessary in order to verify the defendants' allegations of ill-treatment."

19. On 26 November 2009 the investigating committee of the regional prosecutor's office informed the Irkutsk Regional Court, in response to the decision of 26 October 2009 (see paragraph 18 above), that investigators M. and T. had been subjected to a disciplinary warning and reprimand respectively for failing to properly discharge their duties. According to the first deputy head of the investigating committee, the decision of 18 June 2009 had been reversed and the committee had conducted an additional pre-investigative inquiry into the defendants' allegations of ill-treatment. The Government did not submit a copy of this decision or state whether its content had been communicated to the applicant.

20. According to the Government, on 6 December 2009 the investigating committee refused to open a criminal investigation into the applicant's allegations. The Government did not submit a copy of this decision or state whether its content had been communicated to the applicant.

C. Criminal proceedings

21. On an unspecified date the investigation against the applicant and the three other co-accused was completed and the case was transferred to the Irkutsk Regional Court for trial.

22. On 29 August 2008 the court found the applicant guilty as charged and sentenced her to twenty years' imprisonment.

23. On 31 March 2009 the Supreme Court of the Russian Federation quashed the applicant's conviction on appeal. The court noted that the trial court had failed to ensure the defendants' right to an adequate defence and had held hearings in the absence of defence counsel.

24. During the new trial, the applicant admitted that she had participated in S.'s abduction and battery but denied any involvement in organising S.'s rape and murder. She further claimed that she had been subjected to ill-treatment while in police custody and forced to confess.

25. In response to the applicant's allegations of ill-treatment by police officers, the trial court questioned forensic expert R., who had examined the applicant on 6 April 2007. R. confirmed his earlier findings and stated that the applicant might have sustained the injuries at least twenty hours prior to the examination. He also considered it impossible, given the nature of the applicant's injuries, that she had been subjected to electrocution.

26. On 26 October 2009 the Regional Court found the applicant guilty as charged and sentenced her to sixteen years' imprisonment. The court relied, *inter alia*, on her statements of 6 and 13 April 2007. As regards the written statement made prior to her first questioning by the investigator (see paragraph 7 above), the court considered it admissible in so far as she had informed the investigator about S.'s abduction. The court also considered admissible the record of the applicant's questioning by the investigator. In this connection, it noted that prior to the questioning the applicant had been advised of her rights, and had been assisted by a lawyer throughout. The applicant appealed.

27. On 17 March 2010 the Supreme Court reclassified the charges against the applicant to bring them in line with amendments to the Russian Criminal Code and reduced her sentence by two years. The court also upheld on appeal the Regional Court's findings concerning the inadequacy of the inquiry in response to the defendants' allegations of ill-treatment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Prohibition of torture and other ill-treatment

28. The relevant provisions of the Constitution of the Russian Federation read as follows:

Article 18

"Human and civil rights and freedoms shall be directly enforced. They shall determine the meaning, content and application of laws, the activities of the legislative and executive authorities, and local self-government and shall be ensured by the administration of justice."

Article 21

"1. Human dignity shall be protected by the State. Nothing may serve as a basis for derogation therefrom.

2. No one shall be subjected to torture, violence or other severe or degrading treatment or punishment ..."

29. Article 9 of the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, "CCrP") prohibits violence, torture or any other cruel or degrading treatment of participants in criminal proceedings.

30. Article 286 § 3 of the Criminal Code of the Russian Federation provides that the actions of a public official which clearly exceed his authority and entail a substantial violation of an individual's rights and lawful interests, committed with violence or the threat of violence, are punishable by three to ten years' imprisonment, with a prohibition on

occupying certain posts or engaging in certain activities for a period of three years.

B. Procedure for examining a criminal complaint

1. Pre-investigation inquiry

31. The CCrP, as in force at the material time, provided as follows:

Article 140. Grounds for opening a criminal case

"1. A criminal case may be opened in the event of:

a) a complaint of a crime ...

2. Sufficient data disclosing elements of a crime shall serve as grounds for opening a criminal case."

Article 144. Procedure for examining a report of a crime

"1. An inquiry officer, inquiry agency, investigator, or head of an investigation unit shall accept and examine every report of a crime ... and shall take a decision on that report ... no later than three days after the filing of the report ... [having] the right to order that the examination of documents or inspection be performed with the participation of experts. ...

3. A head of an investigation unit or head of an inquiry agency ... may extend the time period specified in paragraph (1) of this Article to up to ten days or, where the examination of documents or inspections are to be performed, up to 30 days ..."

Article 145. Decisions to be taken following examination of a report of a crime

"1. An inquiry officer, inquiry agency, investigator or head of an investigation unit shall issue one of the following decisions as a result of the examination of a report of a crime:

1) to open a criminal case, in accordance with the procedure established by Article 146 of the present Code;

2) to refuse to open a criminal case;

3) to transfer the report of a crime [to a competent investigating authority] with the relevant jurisdiction ..."

Article 148. Refusal to open a criminal case

"1. In the event of the absence of grounds for opening a criminal case, a head of an investigation unit, an investigator, inquiry agency or inquiry officer shall issue a decision about a refusal to open a criminal case. ...

5. A refusal to open a criminal case may be appealed against to a prosecutor, head of an investigation unit or court in accordance with the procedures established by Articles 124 and 125 of the present Code.

6. ... Having declared a refusal by an investigator ... to open a criminal case unlawful or unfounded, a head of a relevant investigation unit shall set aside the

decision and open a criminal case, or remit the materials for additional examination together with his or her instructions fixing a deadline for their execution.

7. Having declared a refusal to open a criminal case unlawful or unfounded, a judge shall issue a decision to that effect and transmit it for execution to a head of an investigation unit ... and duly notify the applicant."

Article 149. Referral of a criminal case

"After taking a decision to open a criminal case ... :

2) an investigator shall start a preliminary investigation; ..."

Article 125. Judicial examination of complaints

"1. The decisions of an inquiry officer, investigator, or head of an investigation unit refusing to open a criminal case ... or any other decisions and acts (failure to act) which are liable to infringe the constitutional rights and freedoms of the parties to criminal proceedings or to impede citizens' access to justice, may be appealed against to a district court ...

3. A judge shall examine the legality and the grounds of the impugned decisions or acts ... within five days of receipt of the complaint ...

5. Following examination of the complaint, the judge shall issue one of the following decisions:

(1) to declare the decisions or acts (failure to act) of the official unlawful or unfounded and order the official to rectify the breach committed;

(2) to dismiss the applicant's complaint ..."

32. A criminal case should not be opened or should be discontinued if the alleged offence has not been committed (Article 24 § 1 (1) of the CCrP) or if the constituent elements of a criminal offence are missing (Article 24 § 1 (2) of the CCrP).

2. Preliminary investigation

33. Preliminary investigation is regulated by Section VIII (Articles 150-226) of the CCrP. Investigative measures for establishing the facts of a criminal case and collecting evidence, which can be undertaken in the course of the preliminary investigation, include inter alia the questioning of a suspect, an accused, a victim or a witness; confrontation between persons whose statements are contradictory; on-site verification of statements; identification of a person or object; search of persons and premises; seizure of items and documents; phone-tapping; and reconstruction of acts or circumstances. If, on the completion of a preliminary investigation, there is sufficient evidence to support charges against an accused, the investigating authority should prepare an indictment which, subject to prior approval by a prosecutor, is then forwarded to a court for trial.

34. Such investigative measures as the examination of a crime scene, examination of a dead body and physical examination of a suspect, an

accused, a victim or a witness may be carried out, if necessary, before a criminal case is opened (Articles 176 § 2, 178 § 4 and 179 § 1 of the CCrP).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. The applicant complained that she had been subjected to ill-treatment while in police custody and that the ensuing investigation into her allegations of ill-treatment had not been effective. She referred to Article 3 of the Convention which reads as follows:

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

A. Admissibility

36. The Government submitted that the applicant had failed to exhaust domestic remedies in that she had not applied to a court to challenge the investigator's refusal to open a criminal case. In their opinion, it was also open to her to institute civil proceedings by lodging a separate complaint regarding the prosecuting authorities' alleged failure to act.

37. The applicant did not comment.

38. As regards the Government's first assertion that it was open to the applicant to appeal to a court against the prosecutor's decision dismissing her allegations of ill-treatment in police custody as unsubstantiated, the Court reiterates its finding in earlier cases that in the Russian legal system, the power of a court to reverse a decision not to institute criminal proceedings is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003) and accepts that, under normal circumstances, it would have been incumbent on the applicant to make use of such an avenue of exhaustion.

39. Turning to the facts of the present case, however, the Court is unable to establish whether in the circumstances, it was indeed possible for the applicant to appeal against the prosecutor's decision of 6 December 2009 in court. The applicant did not submit that she had been aware of the existence of that decision. Nor has the Court been familiarised with its contents. In their submissions to the Court, the Government merely referred to that decision without producing a copy of it.

40. The Court further notes that the Government did not submit any other material that would help it to establish whether the applicant was provided with an opportunity to challenge the decision in court should she

have chosen to do so. In such circumstances, the Court cannot accept that the appeal against the prosecutor's decision the Government claimed the applicant was required to lodge was readily available or accessible to her.

41. As regards the Government's argument that the applicant could have complained of the prosecuting authorities' alleged failure to act in response to her allegations of ill-treatment by instituting civil proceedings against the police officers, the Court, without delving into the issue as to the effectiveness of this remedy, considers that it was for the applicant to select which legal remedy to pursue. She opted to lodge a complaint with the prosecutor's office, asking it to institute criminal proceedings against the alleged perpetrators. Consequently, even if it were correct that her choice had fallen on a remedy less suited than others to her particular circumstances, this would be of no moment (see, *mutatis mutandis*, *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32). Accordingly, the Court cannot accept that the applicant was required to institute civil proceedings against the prosecuting authorities.

42. It follows that the applicant cannot be said to have failed to exhaust domestic remedies in respect of her complaint of ill-treatment in police custody. Thus, the Government's objection as to the non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

1. The parties' submissions

44. The Government considered the applicant's allegations unsubstantiated. They submitted that the domestic authorities, both the prosecutor's office and the trial court, had conducted a thorough inquiry into the applicant's allegations of ill-treatment and dismissed them as unsubstantiated. In the Government's opinion, the trial court established that the applicant had sustained injuries prior to her arrest. They also noted that she had raised an issue of ill-treatment in order to evade criminal liability. In this connection, they referred to her conviction of 29 August 2008.

45. The applicant maintained her complaint.

2. The Court's assessment

(a) General principles

(i) Alleged ill-treatment

46. The Court reiterates that allegations of ill-treatment must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

47. Where an individual claims to have been injured by ill-treatment in custody, the Government are under an obligation to provide a complete and sufficient explanation as to how the injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, § 34, Series A no. 336).

48. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. Although the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Matko v. Slovenia*, no. 43393/98, § 100, 2 November 2006).

49. The ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim. In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 94, *Reports of Judgments and Decisions* 1998-VIII).

(ii) Investigation into the allegations of ill-treatment

50. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. Such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental

importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, among other authorities, *Labita*, cited above, § 131).

51. The investigation into serious allegations of ill-treatment must be both prompt and thorough. The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, for example, *Kopylov v. Russia*, no. 3933/04, § 133, 29 July 2010). Thus, the mere fact that appropriate steps were not taken to reduce the risk of collusion between alleged perpetrators amounts to a significant shortcoming in the adequacy of the investigation (see, *mutatis mutandis*, *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, § 330, ECHR 2007-II, and *Turluyeva v. Russia*, no. 63638/09, § 107, 20 June 2013). Furthermore, the investigation must be independent, impartial and subject to public scrutiny (see *Mesut Deniz v. Turkey*, no. 36716/07, § 52, 5 November 2013). It should result in a reasoned decision to reassure a concerned public that the rule of law had been respected (see, *mutatis mutandis*, *Kelly and Others v. the United Kingdom*, no. 30054/96, § 118, 4 May 2001).

52. It falls to the State to have recourse to a procedure which would enable it to take all measures necessary for it to comply with its positive obligation of effective investigation imposed by Article 3 (see, *mutatis mutandis*, *Sashov and Others v. Bulgaria*, no. 14383/03, §§ 64, 68 and 69, 7 January 2010; see also *Vanfuli v. Russia*, no. 24885/05, § 79, 3 November 2011; *Nechto v. Russia*, no. 24893/05, § 87, 24 January 2012; and *Nitsov v. Russia*, no. 35389/04, § 60, 3 May 2012).

(b) Application of the principles to the present case

(i) Alleged ill-treatment

53. The Court firstly observes that the applicant's allegations that she had been subjected to electrocution are not supported by the medical documentation submitted by the parties. Nor did the forensic expert who had examined the applicant note any injuries indicative of electrocution. In such circumstances, the Court finds it impossible to establish "beyond reasonable doubt" whether the applicant's allegations in this respect were true.

54. As regards the other injuries complained of by the applicant, the Court notes that the material submitted by the parties conclusively demonstrate that the applicant sustained multiple bruises and scratches on

the abdomen and chest (see paragraphs 10 and 11 above). The parties disagreed, however, as to their time and cause. The applicant asserted that she had been beaten up by the police officers. The Government, on the other hand, suggested that the applicant had sustained the injuries prior to her arrest and detention at the police station.

55. The Court observes that the applicant was arrested at approximately 11 p.m. on 5 April 2007. However, she was given a medical examination only by the end of the day on 6 April 2007 (see paragraphs 10 and 11 above).

56. In an attempt to elucidate the circumstances in which the applicant sustained the injuries, the Court attaches particular weight to the time of the medical examination. The conduct of such an examination immediately after the applicant's arrest would not only have ensured that she was fit for questioning in police custody, but would also have enabled the Government to discharge their burden of providing a plausible explanation for the applicant's injuries. The Court reiterates that a medical examination constitutes one of the fundamental safeguards against the ill-treatment of detained persons which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc.) (see the 2nd General Report of the European Committee for Prevention of Torture, CPT/Inf/E (2002) 1 - Rev. 2006, § 36).

57. Accordingly, in view of the national authorities' failure to conduct such an examination before placing the applicant in detention and the ensuing delay of several hours in her access to a medical examination, the Court cannot accept the Government's argument that the injuries in question pre-dated her arrest. The Court thus assumes that she was in good health prior to being taken into custody (compare *Türkan v. Turkey*, no. 33086/04, § 43, 18 September 2008).

58. The Court further notes that the applicant provided a detailed description of the ill-treatment to which she had allegedly been subjected and indicated its place and time. Her account of the events did not contradict the medical forensic evidence. In such circumstances, the Court accepts that she made out a *prima facie* case in support of her complaint of ill-treatment. The burden therefore rests on the Government to provide a plausible explanation of how the injuries were caused.

59. The Court notes that the Government did no more than suggest that the applicant might have sustained the injuries prior to her arrest. In the absence of any evidentiary basis for this conjecture, the Court considers that they failed to rebut the presumption of their responsibility for the injuries inflicted on the applicant while she was in the hands of the State. They have not satisfactorily established that her injuries were caused otherwise than – entirely, mainly, or partly – by the treatment she underwent while in police

custody. It follows that responsibility for the ill-treatment lies with the domestic authorities.

60. Lastly, the Court observes that the applicant sustained multiple injuries to her chest and abdomen, which must have caused her mental and physical suffering. Moreover, it appears that the use of force against the applicant was aimed at debasing her, driving her into submission and making her confess to a criminal offence. The Court therefore finds the treatment to which the applicant was subjected sufficiently serious to be considered inhuman and degrading within the meaning of Article 3 of the Convention.

61. In such circumstances, the Court concludes that there has been a violation of Article 3 of the Convention under its substantive limb on account of the inhuman and degrading treatment the applicant was subjected to while in police custody.

(ii) Adequacy of investigation

62. It has been established above that the applicant's allegation that she had been subjected to treatment prohibited by Article 3 at the hands of the police was credible. The authorities therefore had an obligation to carry out an effective official investigation into her allegation.

63. The Court observes that the prosecutor's office conducted three rounds of pre-investigative inquiry into the applicant's allegations of ill-treatment in police custody. Each time the investigator refused to institute criminal proceedings against the alleged perpetrators, finding her allegations unsubstantiated. As a result of this dismissal of the applicant's complaint, the prosecutor's office never conducted a "preliminary investigation" into her allegations, that is to say, a fully-fledged criminal investigation in which a whole range of investigative measures are carried out, including interviews, confrontations, identification parades, searches, seizures and crime reconstructions, and which constitutes an effective remedy for victims of police ill-treatment under the domestic law.

64. In the Court's opinion, the domestic investigating authorities' refusal to open a criminal case into the applicant's credible allegations of serious ill-treatment in police custody amounted to a failure to comply with its obligation under Article 3 to carry out an effective investigation. This conclusion makes it unnecessary for the Court to examine in detail the many rounds of the pre-investigation inquiry conducted in the applicant's case with a view to identifying specific deficiencies and omissions on the part of the investigating authority.

65. By failing in its duty to carry out an effective investigation, the State fostered the police officers' sense of impunity. The Court stresses that a proper response by the authorities in investigating serious allegations of ill-treatment at the hands of the police or other similar agents of the State in compliance with the Article 3 standards is essential in maintaining public

confidence in their adherence to the rule of law and in preventing any appearance of collusion or tolerance of unlawful acts (see, among other authorities, *Gasanov v. the Republic of Moldova*, no. 39441/09, § 50, 18 December 2012; *Amine Güzel v. Turkey*, no. 41844/09, § 39, 17 September 2013; and *Mesut Deniz v. Turkey*, no. 36716/07, § 52, 5 November 2013).

66. The above considerations are sufficient to warrant the conclusion that the Russian authorities failed to carry out an effective investigation into the applicant's allegations of ill-treatment. Accordingly, there has been a violation of Article 3 of the Convention under its procedural limb in this respect.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

67. The applicant complained under Article 6 of the Convention that the criminal proceedings against her had been unfair. In particular, she claimed that her right not to incriminate herself had been violated. Article 6, in so far as relevant, reads as follows:

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

68. The Government submitted that the criminal proceedings against the applicant had been fair. They had been public and adversarial and in compliance with the principle of equality of arms. The applicant had been questioned by the investigator in the presence of her lawyer and had been advised of her right not to incriminate herself. During the trial, she had had ample opportunity to present her case and to challenge the admissibility of the evidence presented by the prosecution. The trial court had thoroughly examined the applicant's allegations of ill-treatment in police custody and the authenticity of the evidence against her.

69. The applicant maintained his complaint.

A. Admissibility

70. The Court notes that this part of the application 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

71. The Court reiterates that it is not its role to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. The

question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (see *Gäfgen v. Germany* [GC], no. 22978/05, § 163, ECHR 2010).

72. Furthermore, particular considerations apply in respect of the use in criminal proceedings of evidence obtained in breach of Article 3. The use of such evidence, secured as a result of a violation of one of the core and absolute rights guaranteed by the Convention, always raises serious issues as to the fairness of the proceedings, even if the admission of such evidence was not decisive in securing a conviction (see *Gäfgen*, cited above, § 165).

73. The Court has found in earlier cases, in respect of confessions as such, that the admission of statements obtained as a result of torture (compare *Örs and Others v. Turkey*, no. 46213/99, § 60, 20 June 2006; *Harutyunyan v. Armenia*, no. 36549/03, §§ 63, 64 and 66, ECHR 2007-III; *Levinţa v. Moldova*, no. 17332/03, §§ 101 and 104-05, 16 December 2008; *Hajnal v. Serbia*, no. 36937/06, § 113, 19 June 2012; and *Grigoryev v. Ukraine*, no. 51671/07, § 84, 15 May 2012), or of other ill-treatment in breach of Article 3 (see *Söylemez v. Turkey*, no. 46661/99, §§ 107 and 122-24, 21 September 2006, and *Iordan Petrov v. Bulgaria*, no. 22926/04, § 136, 24 January 2012), as evidence in establishing the relevant facts in criminal proceedings rendered the proceedings as a whole unfair. This finding applied irrespective of the probative value of the statements and irrespective of whether their use was decisive in securing the defendant's conviction (see, *Gäfgen*, cited above, § 166).

74. In the present case, the Court notes that the self-incriminating statements made by the applicant following her arrest and placement in police custody formed part of the evidence adduced against her. The trial court did not find the statements inadmissible and referred to them when finding the applicant guilty and convicting her.

75. The Court further notes that it has already established that the applicant was subjected to ill-treatment whilst in police custody, that is to say, when she was questioned and made statements implicating herself in the crime with which she was subsequently charged.

76. In such circumstances, the Court is not convinced by the Government's argument that the applicant's confessions should be regarded as having been given voluntarily. It concludes that, regardless of the impact the applicant's statements obtained under duress had on the outcome of the criminal proceedings against her, such evidence rendered the criminal proceedings unfair. There has, accordingly, been a violation of Article 6 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

77. Lastly, the applicant alleged that her pre-trial detention had been unlawful and that the press coverage in relation to the criminal proceedings against her had infringed her private life. She relied on Articles 2, 3, 5 and 8 of the Convention.

78. Having regard to all the material in its possession, and in so far as they fall within its competence, the Court finds that the above complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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."

80. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the alleged treatment in police custody, the ineffectiveness of the ensuing investigation and the use of the coerced confession during the criminal proceedings against her admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb;

3. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 16 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Isabelle Berro-Lefèvre President