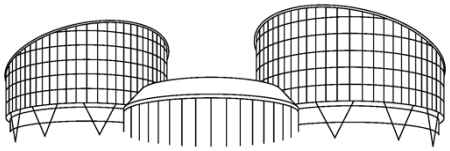

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ADEISHVILI (MAZMISHVILI) v. RUSSIA

(Application no. 43553/10)

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 Adeishvili (Mazmishvili) v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
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. 43553/10) 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 stateless person of Georgian ethnic origin, Mr Shota Petrovich Adeishvili (Shermandin Goderziyevich Mazmishvili) ("the applicant"), on 2 August 2010.

2. The applicant was represented by Ms I. Sokolova, a lawyer practising in Ivanovo. 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 he had been detained in appalling conditions and that his expulsion to Georgia would not be necessary in a democratic society.

4. On 2 December 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in the Ivanovo Region.

A. The applicant's relocation to Russia and subsequent events

6. According to the applicant, in 1991, at the age of fifteen, he moved to Russia from Georgia with his parents. In 1998 he settled in Shuya, Ivanovo Region, whereas his parents moved back to Georgia.

7. On 18 November 1999 the Shuya Town Court of the Ivanovo Region found the applicant guilty of extortion and theft of a passport, and sentenced him to three years and one month's imprisonment. According to the applicant, in order to spare his mother's feelings, he told the prosecuting authorities that his name was Shermandin Goderziyevich Mazmishvili. On 4 June 2001 the applicant was released on parole. Upon release he was issued with an ID card in the name of Shermandin Goderziyevich Mazmishvili.

8. On 26 April 2005 the Town Court found the applicant guilty of theft and sentenced him to three years' imprisonment. Again he claimed that his name was Shermandin Goderziyevich Mazmishvili and presented the relevant ID card. On 1 June 2007 the applicant was released on parole.

9. The applicant was in a relationship with Ms K. On 29 February 2008 Ms K. gave birth to a girl. On 21 September 2009 the applicant was recognised as the girl's father. On 22 September 2009 the applicant and K. got married. On 20 December 2011 Ms K. gave birth to the couple's second daughter. According to the Government, Ms K. and her two daughters are Russian nationals.

B. Issuance and subsequent annulment of the applicant's Russian passport

10. According to the Government, on 19 June 2007 the applicant was found administratively liable for failing to have his residency in Russia duly authorised.

11. On 26 June 2007 the applicant was registered as a migrant under the name of Mazmishvili. The registration remained valid until 26 October 2007.

12. It appears that on an unspecified date the applicant asked the Russian migration authorities to issue him with a Russian passport indicating that his name was Shota Petrovich Adeishvili. Following their refusal, the applicant lodged a claim with the Digora District Court of the Northern Osetiya and Alaniya Republic, asking the court to confirm that he had been residing permanently in Russia since 1991.

13. On 30 October 2007 the District Court granted the applicant's request. The court based its findings on the applicant's birth certificate in the name of Shota Petrovich Adeishvili submitted by him, a certificate issued by the Digora municipal authorities and the testimony of Ms G., stating that the applicant had been renting a flat from her since 1991.

14. On 8 July 2008 the applicant received a Russian passport in the name of Shota Petrovich Adeishvili.

15. On 10 February 2010 the regional migration service asked the District Court to quash the judgment of 30 October 2007 and remit the matter for new consideration.

16. On 17 March 2010 the District Court quashed the judgment of 30 October 2007, noting that the certificate confirming the applicant's residence in Digora had not in fact been issued by the town administration. The matter was remitted for fresh consideration.

17. On 31 March 2010 the District Court noted that the applicant, who had been duly notified of the date and time of the court hearing, had failed to appear in court on two occasions. The Court left the matter without consideration on the merits and discontinued the proceedings. The applicant did not appeal.

18. On 18 April 2010 the migration service terminated the applicant's Russian citizenship and invalidated his passport. According to the applicant, the migration services transmitted the case file to the prosecuting authorities for further inquiry. He did not inform the Court of the inquiry's outcome.

C. Expulsion proceedings and the ensuing detention

19. On 8 July 2010 the applicant was arrested and taken to a police station where he spent the whole day. His passport was confiscated. On the same day an expert from the regional department of the interior confirmed that the applicant's fingerprints corresponded to those belonging to Shermandin Goderziyevich Mazmishvili.

20. In the evening of 8 July 2010 the applicant was taken to the Shuya Town Court, which started the hearing at 11 p.m. The applicant was represented by a State-appointed lawyer. The Town Court considered that the applicant was Shermandin Goderziyevich Mazmishvili. It found that, as a person without citizenship, he had failed to have his residency in Russia duly authorised. It therefore imposed a fine on him and ordered his expulsion from Russia to Georgia. The court also held that the applicant should be remanded in custody pending expulsion until 8 September 2010. In particular, the court noted as follows:

> "When deciding whether to expel Sh. G. Mazmishvili and taking into account that the defendant has a family and a minor child, the court sees no reason not to expel [him] in view of the offences he has committed in Russia, his unlawful acquisition of a Russian passport and his lack of employment."

21. The applicant appealed against the judgment of 8 July 2010 alleging, *inter alia*, that the State-appointed lawyer had not carried out his defence effectively, and that the court had failed to provide him with a copy of the decision of 17 March 2010 or a record of his own questioning of 14 September 1999.

22. On 26 July 2010 the Ivanovo Regional Court upheld the judgment of 8 July 2010 on appeal. The applicant was represented by counsel of his own choosing.

23. On 18 August 2010 the police sent the documents concerning the applicant's expulsion to the Georgian authorities.

24. On 30 August 2010 the President of the Regional Court upheld the judgments of 8 and 26 July 2010.

25. It appears that the regional migration service could not prepare the documents necessary to expel the applicant to Georgia and asked the Town Court to extend the applicant's detention pending expulsion.

26. On 6 September 2010 the Town Court extended the applicant's detention until 7 October 2010. The court noted that the Georgian authorities had not yet prepared the documents necessary for the applicant's expulsion to Georgia. The court considered that the applicant, if released, might abscond or fail to comply with the expulsion order. The applicant's detention was repeatedly extended by the Town Court.

27. On 3 January 2011 the Georgian authorities informed the regional migration service that a real Shermandin Goderziyevich Mazmishvili was residing in Georgia and it was not possible to issue the requested documents in that name for the applicant's expulsion to Georgia.

28. On 7 February 2011 the Town Court ordered the applicant's release. Referring to the information supplied by the Georgian authorities, the court considered that it was not possible to expel the applicant under the name of Mazmishvili.

29. According to the Government, the applicant has not been expelled. He has no document confirming his ID, and the Russian authorities have not established his identity.

D. Refusal to institute criminal proceedings against police captain P.

30. According to the applicant, the Town Court, when deciding to detain him pending expulsion, took into account a certificate prepared by police captain P. on which it was noted that the applicant "had been involved in car thefts, belonged to the Shuya organised criminal group ... [and] was a drug dealer."

31. Despite a complaint lodged by the applicant that P. had knowingly disseminated false information about him, on 18 August 2010 the prosecutor's office refused to institute criminal proceedings against P.

E. Conditions of detention

32. From 9 July 2010 to 7 February 2011 the applicant was held in a special detention centre in Ivanovo.

1. Description of the conditions of the applicant's detention provided by the Government

33. According to the Government, all the inmates detained with a view to expulsion were held in cells nos. 2, 3 and 4. During the period of the applicant's detention, the cell population varied from three to sixteen persons in all three cells. On average, the number of persons detained in a cell was four to five.

Cell no.	Surface area (in square metres)	Number of beds
2	19	8
3	19.5	8
4	15.5	6

34. Each detainee was provided with a mattress, a pillow, sheets and a blanket. The sheets were changed on the days the applicant was allowed to take a shower. According to the relevant ledger, the applicant took showers on 9, 21 and 29 July, 4, 14, 24 and 30 August, 7, 13, 27 and 30 September, 1, 12, 15, 22 and 29 November, 6, 13, 20 and 27 December 2010, and on 13, 19 and 25 January and 1 February 2011.

35. Each cell had a window opening onto a hallway. The window was covered with a metal grill. The light coming from the hallway was sufficient for reading. The window was periodically kept open to ensure proper ventilation of the cell. There was a table and a bench with seating for four persons in each cell. Both the table and the bench were fixed onto the floor.

36. The cells where the applicant was detained from 9 July to 30 September 2010 were not equipped with a toilet. The detainees were taken out of the cell at least twice a day to use the toilet in the building. During the nighttime the inmates had to use buckets placed in the cells. The buckets were emptied and disinfected daily. In September 2010 toilets and wash sinks were installed in all cells of the special detention centre. They became operational in October 2010.

37. Food was provided three times a day. Breakfast consisted of hot tea, sugar and a pastry; lunch comprised of soup, meat or fish with a side dish, and tea with sugar or a fruit drink. The applicant also received food parcels from his family and friends.

38. According to the applicant's file, he declared a hunger strike twice. Each time he was examined by a paramedic. On a number of occasions ambulance doctors attended to the applicant.

39. The special detention centre had an exercise area measuring 4.66 m by 3.7 m covered with a metal grill. The detainees had one hour's outdoor exercise daily.

40. The applicant was allowed to telephone his family on several occasions. The internal regulations did not provide for the right to a family visit.

2. Description of the conditions of the applicant's detention provided by the applicant

41. The applicant provided the following information as regards his detention in the special detention centre:

Period of detention	Cell no.	Surface area (in square metres)	Number of beds	Number of inmates
From 8 July to 7 September 2010	3	17	8	8
From 8 to 28 September 2010	1	7-8	3	2
From 29 September to end of October 2010	8	15	8	8
Four days in October 2010	9	12	6	4
From end of October to 9 November 2010	4	15	8	6
From 9 to 15 November 2010	1	7-8	3	2
From 15 November to 13 December 2010	4	15	8	6
From 14 to 15 December 2010	1	7-8	3	2
From 16 to 21 December 2010	4	15	8	6
From 22 December 2010 to 4 January 2011	1	7-8	3	2
From 5 January to 7 February 2011	4	15	8	6

42. Prior to the refurbishment of the special detention centre, there had been no toilets or wash sinks in the cell. The inmates had had to use a bucket placed in the cell. It had been emptied twice a day. The inmates had been allowed to use toilets outside the cell twice a day. The toilets had offered no privacy. Six to eight inmates had been taken simultaneously to

the lavatory and had had to use the toilet in front of the others waiting for their turn.

43. The toilets installed in the cells offered no privacy either. Only cell no. 8 had a one-metre high partition separating the toilet from the living area of the cell.

44. The applicant did not contest the Government's submissions as regards the frequency of the showers he had been allowed to take. According to him, the hot water had run out after the first ten minutes. Each time the inmates had had from fifteen to twenty-five minutes to take a shower and to do their laundry. They could use only cold water for the laundry. The sheets, which were old and ragged, had been changed every two weeks.

45. The windows in the cell were covered by two sets of metal bars on both sides. Access to daylight was insufficient. The table and the bench allowed for two persons to eat. The rest of the inmates had to eat sitting on their beds. In cell no. 3 the applicant was given a mattress that was infested with lice.

46. Cell no. 9, which was unofficially called "a disciplinary cell", had no windows. During the four days the applicant spent in that cell, he was not taken out for outdoor exercise.

47. The daily outdoor exercise lasted thirty minutes and took place in a yard measuring 12 square metres.

48. The applicant had nothing to do while detained at the special detention centre. There was no library, television or radio. He was not allowed to subscribe to a newspaper or a magazine.

49. Breakfast was served at 7 a.m., lunch was served at 3 p.m. and dinner, if any, was served at 5 p.m. Breakfast consisted of a piece of white bread, a mug of hot water and a piece of sugar. No spoon was provided. For lunch inmates received soup with an unpleasant odour and taste, a minced meat cutlet and a piece of rye bread. For dinner they were given a burger and cabbage. The meals were the same every day. Because of the applicant's condition, he could not eat any of the food served. Drinking water was not provided at all. The foodstuff sent by the applicant's family quickly perished as no fridge was provided and the applicant had to store the food under his bed.

II. RELEVANT DOMESTIC LAW

A. Administrative expulsion of foreign nationals

50. Article 18.8 of the Administrative Offences Code of the Russian Federation provides that a foreign national who infringes the residence regulations of the Russian Federation, including by living on the territory of the Russian Federation without a valid residence permit or by

non-compliance with the established procedure for residence registration, will be liable to an administrative fine of 2,000 to 5,000 Russian roubles (RUB) and possible administrative expulsion from the Russian Federation. Under Article 28.3 § 2 (1) a report on the offence described in Article 18.8 is drawn up by a police officer. Article 28.8 requires the report to be transmitted within one day to a judge or to an officer competent to examine administrative matters. Article 23.1 § 3 provides that the determination of any administrative charge that may result in expulsion from the Russian Federation will be made by a judge of a court of general jurisdiction. Article 30.1 § 1 guarantees the right to appeal against a decision on an administrative offence to a court or to a higher court.

51. A foreign national who has been deported or administratively expelled from Russia may not re-enter it during the five-year period following such deportation or administrative expulsion (section 27 (2) of the Law on the Procedure for Entering and Leaving the Russian Federation).

B. Conditions of detention of persons remanded in custody for administrative offences

52. The detention of persons remanded in custody for administrative offences is governed by the Regulations on conditions of detention of persons remanded in custody for administrative offences, nutrition standards and medical assistance provided to such persons, as approved by Decree No. 627 of the Government of the Russian Federation of 15 October 2003.

53. Section 11 of the said Regulations provides that the detained persons are held in special cells equipped with benches (couches). Each detainee should be afforded no more than two square metres of personal space. Persons whose detention exceeds three hours are to be provided with a sleeping place, if they are detained overnight.

54. In accordance with the Internal Regulations of the special centres for detention of persons subjected to administrative arrest, as approved by Order No. 605dsp of the Ministry of the Interior of the Russian Federation of 6 June 2000, persons detained in the special centres must be provided with an individual sleeping place and bed sheets. The personal space allocated to each individual should be no less than four square metres (section 19 of the Internal Regulations).

55. It is not required that the cells in the special centres be equipped with toilets. The detainees should be allowed to use the toilet at least twice per day (section 20 of the Internal Regulations). They should be given, free of charge, sufficient food in line with the standards established by the Government of the Russian Federation (section 21 of the Internal Regulations). Detainees are entitled to one hour’s outdoor exercise a day (sections 25 of the Internal Regulations).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

56. The applicant complained that he had been detained in the special detention centre in Ivanovo from 9 July 2010 to 7 February 2011 in conditions that were incompatible with the provisions of Article 3 of the Convention, which reads as follows:

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

57. The Government contested that argument. They considered that the conditions of the applicant's detention in the special detention centre in Ivanovo had been in compliance with the standards set out in Article 3 of the Convention. It was impossible to provide any data concerning the daily population of the cells in the detention centre, since the applicable national legislation did not require such data to be kept. In any event, the personal space afforded to the applicant had at all times been in compliance with domestic standards. The Government's submissions were based on a report prepared by the district prosecutor's office on 22 February 2012.

58. The applicant maintained his complaint. He pointed out that the Government had failed to support their description of the conditions of detention in the special detention centre with any evidence. The information provided by them lacked specific details. They could not even indicate the periods during which the applicant had been detained in particular cells in the centre. Nor were there any official records on the detainees at the special detention centre. As regards the cell measurements and furnishings, the Government could have provided data from the official real estate register. The applicant submitted statements signed by twelve other detainees at the special detention centre, which confirmed his description of the conditions of detention there.

A. Admissibility

59. 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. General principles

60. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

61. Ill-treatment that attains such a minimum level of severity usually involves actual bodily injury or intense physical or mental suffering. However, even in the absence of these, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, it may be characterised as degrading and also fall within the prohibition of Article 3 (see, among other authorities, *Vasyukov v. Russia*, no. 2974/05, § 59, 5 April 2011).

62. In the context of deprivation of liberty the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI; and *Popov v. Russia*, no. 26853/04, § 208, 13 July 2006).

63. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as of the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, § 50, 8 November 2005).

64. 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". However, such proof may follow from the coexistence of sufficiently strong, clear and concordant

inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII).

2. Application of these principles to the present case

65. The Court notes that the parties disagreed on most aspects of the conditions of the applicant's detention. However, where conditions of detention are in dispute, there is no need for the Court to establish the veracity of each and every disputed or contentious point. It can find a violation of Article 3 on the basis of any serious allegations which the respondent Government has failed to refute (see *Grigoryevskikh v. Russia*, no. 22/03, § 55, 9 April 2009).

66. In the present case the thrust of the applicant's complaint is the overcrowding of the detention centre where he was detained. He provided a detailed description of the cells in which he had been detained, indicating the cell numbers, measurements and population and the relevant periods of detention. Twelve other persons who were detained together with the applicant at the special detention centre confirmed in writing the truthfulness of the applicant's description of the conditions of detention there. The Government, while contesting the applicant's allegations, did not submit any original documents, claiming that, in the absence of a specific statutory requirement to the contrary, no records were ever kept on the population of the special detention centre where the applicant had been detained. Relying on a report prepared by the prosecutor's office in February 2012 after the case was communicated to the Government, they submitted that on average, the population in the cells where the applicant had been detained had not exceeded four to five inmates per cell and the personal space afforded to the applicant had been in compliance with the regulatory standards.

67. In this connection the Court observes that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* ("he who alleges must prove") because in certain instances, such as in the present case, the respondent Government alone have access to information capable of corroborating or refuting allegations. In such a situation, a failure on the Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004). Accordingly, in the absence of official records and given the Government's failure to provide any specific data on the applicant's situation, the Court will examine the issue concerning the alleged overcrowding of the cells on the basis of the applicant's submissions.

68. The Court accepts as credible the applicant's assertion that the cells in the detention centre where he was detained were overcrowded. On most days the personal space afforded to the applicant did not exceed 3 sq. m. On

certain occasions it was as low as 1.9 sq. m. The Court is mindful of the fact that the periods of overcrowding alternated with periods of relative normality when the applicant shared a cell measuring 8 sq. m with another inmate. However, in the Court's opinion, that fact did not alleviate the applicant's situation. Besides, the applicant was confined to his cell for the whole day, apart from an hour's daily outdoor exercise. He spent seven months in such conditions.

69. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see, among other numerous authorities, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 120-66, 10 January 2012).

70. Having regard to the materials in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court concludes, therefore, that the applicant was subjected to inhuman and degrading treatment in breach of Article 3 of the Convention on account of the conditions of his detention in the special detention centre in Ivanovo from 9 July 2010 to 7 February 2011.

71. In view of the above, the Court does not consider it necessary to examine the remainder of the parties' submissions concerning other aspects of the conditions of the applicant's detention during the period in question.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

72. The applicant complained that, if carried out, his expulsion to Georgia would be in contravention of Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

73. The Government acknowledged that the applicant's expulsion would amount to an interference with his right to respect for his family life. However, such an interference was in accordance with the law and necessary in a democratic society. During the period of his residence in the Russian Federation, the applicant had been convicted twice of criminal offences. In particular, on 18 November 1999 the Shuya Town Court of the Ivanovo Region had found him guilty of extortion committed by a group of persons (a serious crime) and theft of a passport (a minor offence) and sentenced him to three years and one month's imprisonment. On 26 April 2005 the Town Court had found him guilty of theft (an offence of medium

gravity) and sentenced him to three years' imprisonment. The Government stressed that the fact that the applicant committed the theft shortly after having served his first prison sentence should not be overlooked, as it showed his firm propensity to commit crimes against property. Furthermore, on 19 June 2007 and 8 July 2010 the applicant had been held administratively liable for failing to have his residency in Russia duly authorised. According to the information from the police, the applicant was a member of an organised criminal gang, was actively involved in drug dealing and was a drug addict himself. He was unemployed and did not support his wife and children. Accordingly, his expulsion would not have any bearing on his family's financial situation. His wife had been aware of his convictions prior to marrying him. She had never met her parents-in-law in person. She maintained contact with them by telephone or via the internet.

74. The applicant maintained his complaint.

A. Admissibility

75. 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. General principles

76. The general principles concerning expulsion of aliens within the context of Article 8 of the Convention are well established in the Court's case-law and have been summarised in the case of *Üner* (see *Üner v. the Netherlands* [GC], no. 46410/99, ECHR 2006-XII) as follows:

> "54. The Court reaffirms at the outset that a State is entitled, as a matter of international law and subject to its treaty obligations, to control the entry of aliens into its territory and their residence there (see, among many other authorities, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 67, Series A no. 94, and *Boujlifa v. France*, 21 October 1997, § 42, *Reports of Judgments and Decisions* 1997-VI). The Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society, that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued (see *Dalia v. France*, 19 February 1998, § 52, Reports 1998-I; *Mehemi v. France*, 26 September 1997, § 34, Reports 1997-VI; *Boultif*, cited above, § 46; and *Slivenko* v. Latvia [GC], no. 48321/99, § 113, ECHR 2003-X).

...

57. Even if Article 8 of the Convention does not therefore contain an absolute right for any category of alien not to be expelled, the Court's case-law amply demonstrates that there are circumstances where the expulsion of an alien will give rise to a violation of that provision (see, for example, *Moustaquim*, cited above; *Beldjoudi v. France*, 26 March 1992, Series A no. 234-A; and *Boultif*, cited above; see also *Amrollahi v. Denmark*, no.56811/00, 11 July 2002; *Yilmaz v. Germany*, no. 52853/99, 17 April 2003; and *Keles v. Germany*, no. 32231/02, 27 October 2005). In *Boultif* the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria ... are the following:

– the nature and seriousness of the offence committed by the applicant;

– the length of the applicant's stay in the country from which he or she is to be expelled;

– the time elapsed since the offence was committed and the applicant's conduct during that period;

– the nationalities of the various persons concerned;

– the applicant's family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple's family life;

– whether the spouse knew about the offence at the time when he or she entered into a family relationship;

– whether there are children of the marriage, and if so, their age; and

– the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.

58. The Court would wish to make explicit two criteria which may already be implicit in those identified in *Boultif*:

– the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and

– the solidity of social, cultural and family ties with the host country and with the country of destination."

2. Application of the above principles in the present case

(a) Existence of interference and whether it was in accordance with the law and pursued a legitimate aim

77. The Court has no difficulty in accepting the Government's submissions that the applicant's expulsion would constitute an interference with his right to respect for family life, that the impugned measure had a legal basis in Article 18.8 of the Code of Administrative Offences, which provides for the expulsion of foreign nationals who have failed to have their residence in Russia duly authorised, and that it pursued the legitimate aims of protecting public safety and preventing disorder or crime.

78. It remains, accordingly, to be ascertained whether the interference was proportionate to the legitimate aim pursued, and in particular whether the domestic authorities struck a fair balance between the relevant interests, namely the prevention of disorder and crime, on the one hand, and the applicant's right to respect for his family life, on the other.

(b) Whether the interference was necessary in a democratic society

79. The Court notes from the outset that the domestic courts ordered the applicant's expulsion for his unauthorised residence in Russia, which became illegal after the authorities had terminated his Russian citizenship and invalidated his Russian passport. That offence is punishable under the Code of Administrative Offences by a fine of RUB 2,000 to 5,000 (about 40 to 110 euros (EUR)) and possible administrative expulsion. Following his expulsion, the applicant would be unable to return to Russia for a period of five years.

80. The Court further notes that this was not the first time the applicant had been held administratively liable for unlawful residence in Russia. According to the Government, in 2007 he had also been found liable for the same administrative offence. The Court also notes that the domestic courts, when deciding whether to expel the applicant, took into consideration his criminal record. In 1999 the applicant was sentenced to three years and one months' imprisonment for extortion and theft of a passport, and in 2005 he was sentenced to three years' imprisonment for theft. The Court takes the view that, against such a background, the offence that led to the decision to expel the applicant, albeit not a particularly serious one, must weigh heavily in the balance (compare *Liu v. Russia (no. 2)*, no. 29157/09, § 83, 26 July 2011).

81. Turning to the length of the applicant's stay in Russia, the Court notes that this is a matter of some dispute. The applicant maintained that he had moved to Russia in 1991 at the age of fifteen. The Government submitted that there were no objective data supporting the applicant's allegation. In the light of the materials in its possession, the Court is prepared to accept that the applicant has resided permanently in Russia at least since 1999. His stay, however, has included two convictions and the serving of prison sentences.

82. The Court observes that at least since 2008 the applicant has been in a relationship with Ms K., whom he married in 2009. The couple has two daughters, born in 2008 and 2011 respectively. The applicant's wife and two daughters are Russian nationals. In this connection the Court notes that the family life at issue was developed during the period when the applicant and, obviously, Ms K. were aware that the applicant's migrant status in Russia was precarious. In March 2010 the decision confirming his uninterrupted residence in Russia was quashed and the applicant failed to pursue the proceedings. In April 2010 the applicant's Russian citizenship

was terminated and his passport was invalidated. It appears that his presence in Russia at the time was merely tolerated, which cannot be equated with a lawful stay.

83. Lastly, the Court notes that the applicant was born and raised in Georgia, where his parents still reside. Further noting that the applicant's children are of a young and adaptable age, the Court finds that it may reasonably be assumed that they could make the transition to Georgian culture and society, although the Court is aware that this transition might entail a certain degree of social and economic hardship (compare, *Arvelo Aponte v. the Netherlands*, no. 28770/05, § 60, 3 November 2011).

84. Having regard to all the above considerations, the Court concludes that it cannot be said that the Russian authorities have failed to strike a fair balance between the competing interests. The applicant's family life in Russia was not such as to outweigh the risk he presented to society, and his expulsion would therefore be proportionate to the legitimate aim of preventing crime. There would, accordingly, be no violation of Article 8 of the Convention, should the applicant's expulsion to Georgia be carried out.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. Lastly, the applicant complained of the unlawfulness of his detention, the unfairness of the proceedings concerning his application for Russian nationality and the authorities' failure to institute criminal proceedings against a police officer. He relied on Articles 5, 6 and 13 of the Convention, Article 3 of Protocol No. 4 and Article 1 of Protocol No. 7.

86. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

87. 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

88. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

89. The Government considered the applicant's claim to be excessive and in contradiction with the Court's case-law. They proposed that the finding of a violation would constitute sufficient just satisfaction.

90. The Court notes that it is undeniable that the applicant suffered distress, frustration and anxiety caused by the appalling conditions of his detention. It considers that his suffering cannot be compensated for by the mere finding of a violation. However, it accepts the Government's argument that the specific amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 5,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

91. The applicant also claimed 27,100.29 roubles (RUB) for legal costs, RUB 8,695.29 for postal costs and expenses and RUB 7,000 for translation costs incurred before the Court.

92. The Government did not comment.

93. In accordance with the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 725 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 3 and 8 of the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds* that there would be no violation of Article 8 of the Convention, should the applicant's expulsion to Georgia be carried out;

4. *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**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 725 (seven hundred and twenty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

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

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