



Violation of rights of nine-year-old who witnessed her father's violent arrest by the police

In today's **Chamber** judgment¹ in the case of [A v. Russia](#) (application no. 37735/09) the European Court of Human Rights held, unanimously, that there had been:

two violations of Article 3 (prohibition of inhuman or degrading treatment/investigation) of the European Convention on Human Rights.

The case concerned the applicant's allegation that she had been traumatised by witnessing her father's violent arrest by the police when she was nine years old.

The Court found that the applicant's allegations were credible, but that the authorities' only response had been to carry out a pre-investigation inquiry, which was superficial and ineffective.

Moreover, the law-enforcement officers, who had to have been well aware that the applicant was or would be on the scene of the operation, had taken no account of her interests when planning and carrying out their operation against her father, thus exposing her to a scene of violence. That had very severely affected her, as she had suffered in particular from a neurological disorder and post-traumatic stress disorder for several years afterwards.

In the Court's view, the applicant witnessing such a violent incident had amounted to ill-treatment which the authorities had failed to prevent, in breach of Article 3.

Principal facts

The applicant, Ms A, is a Russian national who was born in 1998 and lives in Apsheronk (Russia).

In May 2008 Ms A's father, a police officer at the time, was arrested in the course of an undercover operation organised by the Federal Service for Drug Control ("the FSKN"). The operation took place outside her school after her father had accompanied her to an end of year event and she had been getting into her father's car to go home. According to Ms A, the police knocked her father to the ground and repeatedly kicked him in his torso. She eventually managed to open the car door and run away. She was found in a state of shock in a street by her uncle and taken home.

Shortly afterwards, she was diagnosed with a neurological disorder, enuresis and post-traumatic stress disorder, which she says only improved several years later.

In July 2008 the applicant's mother complained to the prosecutor's office that her daughter being present at the beating had damaged her health and an inquiry was carried out.

However, the prosecuting authorities refused to institute criminal proceedings, finding that no physical force had been used against the applicant's father and therefore that the elements of a crime were not made out. They relied on statements by those who had been present at the incident, mainly the FSKN officers and attesting witnesses to the undercover operation, and records from the detention facility where the father had been held just after his arrest which reported no injuries.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The applicant's mother appealed to the domestic courts, but in October 2008 they endorsed the decision not to carry out a fully-fledged investigation.

The criminal proceedings brought against Ms A's father for selling cannabis were ultimately dropped in December 2009 because the evidence against him had been obtained unlawfully and was therefore inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), Article 13 (right to an effective remedy) and Article 8 (right to respect for private and family life) of the European Convention, Ms A complained that witnessing her father's beating had had serious consequences for her health. She argued in particular that the arrest had taken place near her school and therefore the authorities should have anticipated the likelihood of her being present. She also alleged that the pre-investigation inquiry into the incident had been superficial and inadequate.

The application was lodged with the European Court of Human Rights on 14 April 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

Paul **Lemmens** (Belgium), *President*,
Georgios A. **Serghides** (Cyprus),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Alena **Poláčková** (Slovakia),
María **Elósegui** (Spain),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

The Court found that the applicant's allegation that she had witnessed her father's arrest, which had involved him being beaten, was credible.

The Court could not rule out that the alleged force used against the father – notably being knocked to the ground and kicked several times – had left no visible traces on his body, as he himself had stated. He and another witness had also said that the FSKN officers had been wearing tracksuits, which would suggest that they were wearing trainers, rather than army-type boots, which might not have caused bruising and abrasions.

Furthermore, the statements by the FSKN officers which the prosecuting authorities and the Government had relied on to conclude that no force had been used against the father, sat ill with other witnesses' statements, in particular a Federal Security Service officer present during the arrest, who had acknowledged that the officers had used force.

The violence of the arrest had also been corroborated by an electrician who had been doing maintenance work on traffic lights near the applicant's school. The Court was not convinced by the internal inquiry's reason for dismissing the electrician's statement as unreliable, namely that he was an alleged drug user. No details were given as regards any administrative proceedings brought against him for drug consumption. Nor, despite the importance of his testimony for establishing the facts, had he actually ever been interviewed by the investigative committee which had carried out the pre-investigation inquiry. Indeed, the person who had carried out the internal inquiry was himself an FSKN officer, raising issues as to his independence.

Lastly, the Court considered that the statements by the two attesting witnesses to the undercover operation, according to which no physical force had been used against the applicant's father, had no value. One of those witnesses had later acknowledged in the criminal proceedings against the applicant's father that he had testified falsely, at the request of the FSKN officers. It also transpired from what they said that they could not have seen the father being apprehended. Both their statements, as well as the findings in the decision to terminate the proceedings against the applicant's father, had therefore discredited the FSKN officers' explanations.

The authorities had, however, only responded to the applicant's credible allegations with a pre-investigation inquiry, refusing to institute criminal proceedings and to carry out a fully-fledged investigation. The Court found that the inquiry had not provided the Government with evidence capable of casting doubt on the applicant's credible allegations concerning her exposure to the violent arrest of her father, which the Court therefore found established.

The authorities had, moreover, not taken into account the interests of the applicant, who was only nine years old at the time, at any stage in the planning and carrying out of their operation against her father. The law-enforcement officers, who had been well aware that the applicant was on the scene of the operation, had proceeded without paying any attention to her presence, thus exposing her to a scene of violence against her father in the absence of any resistance on his part. That had very severely affected her and, in the Court's view, had amounted to a failure on the part of the authorities to prevent her ill-treatment, in violation of the State's positive obligation under Article 3.

It held that there had been a further violation of Article 3 as concerned the lack of an effective investigation into the incident on 31 May 2008. The mere carrying out of a pre-investigation inquiry, not followed by a preliminary investigation, was insufficient for the authorities to comply with the requirements of an effective investigation into credible allegations of ill-treatment by the police under Article 3 of the Convention.

Given the above findings, the Court held that there was no need to examine separately the applicant's complaints under Article 13 of the Convention concerning the lack of an effective investigation or under Article 8, which were based on the same facts as her complaints under Article 3.

Just satisfaction (Article 41)

The Court held that Russia was to pay Ms A 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 3,500 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.