



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

THIRD SECTION

**CASE OF GREMINA v. RUSSIA**

*(Application no. 17054/08)*

JUDGMENT

Art 5 § 1 • Arbitrary and unlawful arrest and detention of a seventy-year-old applicant with use of force by the police in order to prevent her from participating in an unauthorised rally • Missing factual basis for the applicant's deprivation of liberty relied on by the respondent Government • No grounds for escorting the applicant to the police station  
Art 3 (material) • Degrading treatment • Unjustified use of force during the arrest causing damage to the applicant's health  
Art 3 (procedural) • Effective investigation • No efforts of the authorities to establish the specific roles or identities of police officers involved despite the video recording of the incident by the police

STRASBOURG

26 May 2020

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Gremina v. Russia,**

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

Paul Lemmens, *President*,  
Helen Keller,  
Dmitry Dedov,  
María Elósegui,  
Erik Wennerström,  
Lorraine Schembri Orland,  
Ana Maria Guerra Martins, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application 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 Liliya Mikhaylovna Gremina (“the applicant”), on 24 December 2007;

the decision to give notice of the application to the Russian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 28 April 2020,

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

## INTRODUCTION

The application concerns the applicant’s arrest with the use of force by the police in order to prevent her from participating in an unauthorised rally, and the alleged lack of an effective investigation into her complaint. The investigating authorities refused to institute criminal proceedings. The applicant’s claim for compensation in respect of non-pecuniary damage was allowed in part and she was awarded 10,000 Russian roubles.

## THE FACTS

1. The applicant was born in 1937 and lives in Nizhniy Novgorod. She was represented by Mr A. Ryzhov, Ms O. Sadovskaya and Mr I. Kalyapin, lawyers with the Committee against Torture, a non-governmental organisation based in Nizhniy Novgorod.

2. The Government were represented initially by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

## A. Events of 24 March 2007

### 1. *The applicant's version of events*

4. In March 2007 the applicant, who was 70 years old at the time, saw leaflets in the streets inviting the local population to take part in a rally called the "Dissenters' March" on 24 March 2007 at Gorkiy Square in Nizhniy Novgorod. She decided to participate and prepared a poster with the slogan in Russian "Those unitedly gnawing on Russia should be brought to account for the misery and oppression of the Russian people" (*"Едиho грызлуцих Россию за вымирающий в бесправии и нищете народ к ответу"*) (a play on words involving the name of the party "United Russia" and its then president, Mr Gryzlov). She did not know that the authorities had refused to agree to the event. She later learned that a public announcement to that effect had been made to people gathered on 24 March 2007 at the location of the rally. The applicant, however, never reached there.

5. On the morning of 24 March 2007 the applicant headed to Gorkiy Square with the poster rolled up and wrapped in a non-transparent plastic bag. In the vicinity of the square she was stopped by some police officers, who asked where she was going and why. She replied that she was going to the "Dissenters' March" and was told that the location of the rally was only accessible from the other side of the square. She headed in that direction and was stopped by another police officer who asked to check her bag. He was joined by several more police officers. She refused to cooperate. She produced her pensioner's certificate as an identity card. The police officers ordered her to get into a bus parked nearby. She again refused to cooperate. A police officer started recording the incident with a video camera.

6. Another police officer took the applicant's bag, took the poster out and unrolled it, showing it to the police officer making the video recording. There were about five officers around her. They continued to insist that she get into a bus. One of them said that if she refused to cooperate, they would take her there by force.

7. The applicant said that she would not go and sat down on the ground to prevent them from taking her to a bus and to attract the attention of passers-by. She did so because she believed that the police officers were acting unlawfully.

8. Three police officers lifted her from the ground and took her to a police car. Two of them held her arms, while the third pushed her from behind. Believing that they were arresting her unlawfully, she attempted to resist, trying to use her arms and legs to make it difficult for them to place her in the car. The police officers twisted her arms and another officer, who was in the car, pulled her inside by her leg. As she was being shoved into the car she was struck in the back. She did not see what she was hit with, but felt severe pain in her lower back.

9. The applicant was taken in the police car to a bus parked nearby. She got into it because she was afraid that the police would use physical force again. There were about six police officers in the bus. Other civilians were brought there afterwards. At about 3 p.m. they were all taken to a police station in the Avtozavodskiy district of Nizhniy Novgorod.

10. At about 4 p.m. the applicant and others were taken to the basement of the police station. She was left standing in the corridor, not allowed to sit down or walk. When she tried to walk, a police officer told her to stand still. Her legs ached. She felt unwell, her blood pressure went up and she had difficulties breathing.

11. At one point the applicant and others were ordered to quickly go upstairs to the third floor. She was questioned by a female officer who did not introduce herself or draw up any documents concerning her arrest. At about 5 p.m., after going down to the basement, the applicant felt so unwell that she was on the verge of fainting. She asked one of the officers to call an ambulance.

12. The ambulance came and the applicant was given an injection. She was then taken to hospital. She asked not to be admitted to hospital and went home.

## *2. The Government's version of events*

13. On 9 March 2007 Nizhniy Novgorod City Hall received notification that an event called the "Dissenters' March" was planned to start at 12 noon on 24 March 2007 at Gorkiy Square. On 12 March 2007 the City Hall refused to authorise the rally at that time and location. Its decision was approved by the Nizhegorodskiy District Court on 22 March 2007. The organisers, however, decided to hold the rally as planned.

14. On 24 March 2007 the Nizhniy Novgorod regional police department carried out measures to ensure public order at Gorkiy Square.

15. At 11.30 a.m. the applicant, who was displaying a propaganda poster, was apprehended by the police at the square. She did not react to their lawful requests and put up resistance. She was subsequently placed in a patrol car and taken to the Avtozavodskiy district police station so that an administrative offence report under Article 20.2 § 2 of the Code of Administrative Offences could be drawn up.

16. In the course of her arrest, the officers lawfully used physical force. No special means of restraint were used. The police made a video recording of the apprehension. The video recording was later examined in the course of an inquiry into a criminal complaint brought by the applicant.

17. At 3.30 p.m. the applicant was taken to the police station. At 4.30 p.m. an investigator held a "preventive talk" (*профилактическая беседа*) with her. At about 5 p.m. she complained that she was feeling unwell and a duty officer called an ambulance.

18. The ambulance staff diagnosed her with high blood pressure, provided her with first aid and took her to hospital. She refused to be admitted.

*3. Medical documents*

19. According to Nizhniy Novgorod ambulance records concerning the emergency first aid provided to the applicant at the Avtozavodskiy police station on 24 March 2007, she complained of headaches, dizziness and nausea. She was diagnosed with “hypertensive crisis without complications” and given an injection and other medication before being taken to hospital, where she refused to be admitted. The ambulance arrived at 4.42 p.m., first aid was provided to her at 4.57 p.m. and the call was “closed” at 6.08 p.m.

20. According to a certificate issued by traumatology polyclinic no. 17 in Nizhniy Novgorod, on 26 March 2007 medical assistance was provided to the applicant for a soft tissue injury of the right shoulder. She was prescribed treatment.

21. An expert from the Nizhniy Novgorod Bureau of Forensic Medical Examinations prepared a report at the applicant’s request. It stated that, according to the applicant, on 24 March 2007 she had suffered bruises to her arm as a result of being dragged into a car by three police officers. An examination on 27 March 2007 revealed two irregular oval shape bruises measuring 2.7 by 2 centimetres and 3.2 by 1.8 centimetres on the inner right shoulder. The bruises had been caused by a hard blunt object. They could have been inflicted on 24 March 2007 and had not caused any damage to her health.

22. The Committee against Torture, which represented the applicant in the domestic proceedings, obtained an opinion from doctor, L.M., dated 18 August 2008, according to which the applicant had chronic hypertension, for which she received treatment. Her hypertensive crisis on 24 March 2007 was the acute manifestation of that condition, potentially caused by psycho-emotional stress, and, in view of her age, was dangerous to her health.

*4. Video recordings*

23. The Government submitted video recordings of the applicant’s apprehension. In so far as the events complained of are concerned, the following scenes are shown:

(i) The applicant is stopped by three police officers. One of them takes a poster out of a non-transparent plastic bag, unrolls it and examines it. A voice off-screen asks to be shown the poster. The police officer shows the poster to the camera so that the slogan on it is visible (see paragraph 4 above). The applicant helps him by taking the other side of the poster. The

police officer then uses his radio to report that an elderly woman with a poster has been apprehended.

(ii) A man in civilian clothing intervenes, asking the police officers to explain the incident involving the applicant. The applicant also asks the police officers why they have taken the poster and are apprehending her.

(iii) There are five police officers surrounding the applicant. She produces what appears to be her identity card. One of the officers tells her to get into a bus. When she asks why, he says that they need to establish her identity and that if she does not cooperate he will use physical force. The applicant asks why they are arresting her and refuses to go. The police officer says that the poster is “against the power”. He tries to take her by the arm, but she sits down on the ground. From that moment, she is silent. Three police officers lift her by holding her by her upper arms and elbows and drag her to a police car parked several metres away. Near the car, they lift her legs and place her into the car, pushing her inside from the side of her back before closing the door. In the scene of the applicant being placed in the car she can barely be seen behind the police officers.

(iv) The applicant’s apprehension is filmed from above, from the window of a nearby building. The recording begins shortly before she sits on the ground. There are several police officers near her. Six of them are in police uniforms standing close to her and five are in riot-type uniforms and helmets with transparent visors. There are two people in civilian clothing among them. When the applicant is being dragged to the car, no active resistance on her part can be seen. Before being placed in the car she puts one foot against the car door sill. The police officers lift her legs and put her into the car, pushing her inside from the side of her back before closing the door (she can hardly be seen behind the police officers).

24. The applicant submitted a video recording made by the Committee against Torture of her leaving the police station and going to an ambulance with two women, one of whom is carrying an ambulance bag with a red cross on it, as well as a video recording obtained from the local investigating authority, which appears to be an extract of the video recording of scenes (i)-(iii) above.

## **B. The applicant’s complaint**

### *1. Refusal to institute criminal proceedings*

25. On 11 May 2007 the applicant lodged an application with the Nizhegorodskiy district prosecutor’s office of Nizhniy Novgorod, requesting the prosecution of the police officers who had unlawfully arrested her and used physical force, subjecting her to degrading treatment and causing damage to her health. She stated, *inter alia*, that she had been arrested by the police half an hour before the announced start of the Dissenters’ March, without her doing anything unlawful. She submitted the

medical evidence of her injuries from the traumatology clinic and the forensic medical expert. She stated that on 26 March 2007 she had been summoned by investigator M. to the Nizhegorodskiy district police station, where she had given “explanations” and submitted a complaint about her arrest by the police two days earlier.

26. Investigator A.A. from the Nizhegorodskiy district prosecutor’s office carried out a pre-investigation inquiry into the applicant’s complaint. The Avtozavodskiy district police informed him, in reply to a request for records of the applicant’s detention on 24 March 2007, that she had not been brought into the police station that day.

27. A transcript of the police video recording of the applicant’s apprehension on 24 March 2007, prepared by investigator A.S. from the Nizhegorodskiy district prosecutor’s office on an unspecified date, reads as follows:

“An unidentified elderly woman’s bag is being checked and a banner with a slogan [as indicated at paragraph 4 above] has been found. She is asked to leave Gorkiy Square. She says she will not go. She falls down on the tarmac in protest, and police officers take her by the arms and lead her to a patrol car. They place her on the back seat. The police officers are behaving correctly. Special means have not been used and [she has not been struck].”

28. On 21 May 2007 investigator A.A. refused to institute criminal proceedings against police officers V.S. and A.F. on the grounds that the constituent elements of an offence under Article 286 of the Criminal Code were not made out. The investigator found that on 24 March 2007 the applicant had gone to Gorkiy Square to participate in an unauthorised rally, the Dissenters’ March. Police officers had informed her that the rally was unlawful. In response, she had unrolled a poster with an anti-government slogan in a crowded place, thereby committing an administrative offence under Article 20.2 § 2 of the Code of Administrative Offences (“the CAO”). The police officers had apprehended her and escorted her to the police station so that an administrative offence report could be drawn up, in accordance with Article 27.2 of the CAO. The police officers’ actions had been lawful and justified. No administrative proceedings had eventually been brought against the applicant because she had felt unwell and an ambulance had been called.

29. In his decision, the investigator referred to statements by police officer V.S. of the Nizhegorodskiy district police, who had been on duty at Gorkiy Square on 24 March 2007 to ensure public order. According to his statements, he and Lieutenant Colonel A.F. had apprehended the applicant, who had tried to unroll a poster with an anti-government slogan. She had been told that the rally had not been approved by the city authorities, and asked to leave Gorkiy Square. She had reacted aggressively by falling down on the tarmac and screaming loudly, attracting the attention of passers-by. She had not responded to requests to stand up. The police officers had had



no other choice but to take her by the arms and escort her to a patrol car. They had not kicked her. The investigator stated that V.S.'s statements were supported by the video recording of the applicant's apprehension, which showed her behaving improperly in response to the police officers' lawful orders. She had fallen down on her bottom and right side. After she had refused to stand up, the police officers had lifted her, trying not to physically harm her in any way, and had carried her to a patrol car, overcoming her resistance. When she was being placed in the patrol car no one had kicked her. The investigator stated that there was no objective evidence that the two bruises on the applicant's right shoulder recorded by the forensic medical expert had been inflicted by the police officers.

30. The applicant, represented by the Committee against Torture, appealed against the investigator's decision of 21 May 2007 to the Nizhegorodskiy District Court of Nizhniy Novgorod, arguing that it was unfounded and unlawful.

31. On 7 December 2007 the Nizhegorodskiy District Court dismissed her appeal, finding the investigator's decision reasoned, lawful and based on a comprehensive inquiry. It endorsed the investigator's findings, stating that the elements of the administrative offence in question were made out, and that her allegations that the police officers had behaved unlawfully and abused their powers, in particular by using physical force against her, had not been based on evidence.

32. On 1 February 2008 the Nizhniy Novgorod Regional Court upheld that decision on the applicant's appeal lodged on her behalf by the Committee against Torture.

33. On 15 October 2008 the Nizhegorodskiy district investigative committee at the Nizhniy Novgorod regional prosecutor's office quashed the refusal to institute criminal proceedings of 21 May 2007 and carried out an additional pre-investigation inquiry.

34. On 23 January 2009 the investigative committee's investigator, I.A., refused to institute criminal proceedings for absence of the event of a crime under Article 286 § 3 (a) of the Criminal Code.

35. He noted that the applicant's complaint concerning the unlawful actions of the police had initially been received by the Nizhegorodskiy district prosecutor's office from the Nizhegorodskiy district police on 27 March 2007, and that a refusal to institute criminal proceedings had been issued on 29 March 2007 and quashed on 15 October 2008.

36. In his decision investigator I.A. examined the applicant's statements, the transcript of the police video recording (see paragraph 27 above) and statements by police officer V.S. According to the statements cited by the investigator, V.S. saw the applicant carrying a bag containing a rolled-up poster. She said that she was going to the location of the "Dissenters' March". She was told that the march had not been authorised. She said that she needed to cross the square and was shown the way. It was then decided

that the poster in her bag should be checked and V.S. and other police officers approached her. V.S. saw the text on the poster expressing disapproval of the authorities. The applicant was told once more, in the video recording, that the march had been banned and she was asked politely to leave Gorkiy Square. The applicant refused to cooperate with the police officers' lawful orders and sat down on the tarmac shouting something, breaching public order. Given that this was happening in March and it was cold, the police officers took her to a police car. They did not hit or strike her.

37. The investigator found that from 12 noon to 12.20 p.m. on 24 March 2007 a group of people had started the "Dissenters' March" at Gorkiy Square despite the ban. Some individuals, who had not been informed by the organisers that the march had been banned, had brought posters and many had unrolled them and shouted slogans, committing an administrative offence under Article 20.2 of the CAO. At about 11.30 a.m. that day the applicant had gone to Gorkiy Square with a poster (see paragraph 4 above) to take part in the unauthorised march. The investigator found that the police officers' request to proceed to a police bus had been to determine whether or not she had broken the law, in particular Article 20.2 of the CAO. It had not been possible to establish all the circumstances of the administrative offence on the spot. She had refused to cooperate. The elements of an offence under Article 19.3 § 1 of the CAO were therefore made out. Referring to section 13(1) of the Police Act, the investigator found that the police officers had lawfully used force against the applicant to overcome her resistance and refusal to cooperate with their lawful orders. The use of "non-aggressive" physical force by the police officers had been justified by her unlawful behaviour and not excessive. The bruising to her shoulder might have appeared as a result of her resistance and attempts to break away from the police officers, which had increased the pressure of their hands on her arms. The applicant had been lawfully escorted to the police station. Because of the large number of people arrested and the fact that the applicant had been taken away by ambulance, no information about her identity had been recorded "for further examination".

## *2. Civil proceedings*

38. In November 2009 the applicant, represented by the Committee against Torture, brought civil proceedings against the Ministry of Finance of the Russian Federation, the Nizhniy Novgorod regional police department and other State bodies, seeking compensation in the amount of 100,000 Russian roubles (RUB) in respect of non-pecuniary damage suffered as a result of the police's unlawful actions on 24 March 2007. She recounted the circumstances of the incident (see paragraphs 4-12 above) and explained that she had refused to give the police officers her bag because they had not explained why they had wanted to search it without drawing up

any documents and in the absence of attesting witnesses. She had refused to proceed to the police bus because there had been no lawful grounds or reasons for the police to ask her to do so and they had not specified any such grounds. She had been exasperated that the police officers, who were meant to protect people's rights, would openly and demonstratively violate her rights in the full view of passers-by and even threaten to use force. She concluded that the police officers had acted unlawfully in using physical force in order to take her to the police station in the absence of any lawful grounds and in depriving her of freedom of movement, thereby violating her human dignity and right to liberty and security of person, as well as causing physical and mental suffering. The medical evidence of the bruising to her shoulder and hypertensive crisis showed that she had experienced physical suffering. She had experienced mental suffering on account of her public humiliation by the police officers who had forced her to comply with their unlawful and unreasonable orders, making her suffer physical pain, stress and shock, discrediting the State and her belief in justice. She had not committed an administrative offence and no administrative offence report, escort record or arrest report had been drawn up by the police.

39. In January 2010 the applicant supplemented her action with a claim in respect of pecuniary damage. She stated that in connection with the alleged deterioration of her health as a result of the incident on 24 March 2007, she had undergone inpatient treatment at the cardiology unit of Town Hospital no. 5 from 13 to 28 November 2008. She had been prescribed medication and had incurred expenses in the amount of RUB 1,141.35 per month starting from December 2008, a total amount of RUB 14,837.55.

40. On 14 March 2011 the Nizhegorodskiy District Court delivered a judgment after hearing the applicant, her representative and the representatives of the respondents, who denied the applicant's claims. In particular, a representative of the Nizhniy Novgorod regional police department argued that the "Dissenters' March" had been banned and that the police officers had acted lawfully. They had seen the applicant with a rolled-up poster and had stopped her in order to prevent her committing an administrative offence.

41. The District Court also heard police officer V.S., who stated that on 24 March 2007 he had seen the applicant being arrested, the reason for which he had ignored. Police officers had approached her and asked her to produce her identity card. She had not complied with their request, had sat down on the tarmac and started shouting. The police officers had taken her by her arms and walked her to a patrol car. He had not arrested the applicant himself, and had ignored who had done so.

42. A police officer from the Volodarskiy district police of the Nizhniy Novgorod region and other police officers were questioned by the court. They stated that on 24 March 2007 they had not been on duty at Gorkiy Square and had not seen the applicant.

43. Having regard to the above statements and having examined the material of the pre-investigation inquiry carried out by the Nizhegorodskiy district investigative authorities and the video recording of the incident, the District Court established the facts as follows.

44. At about 11.30 a.m. on 24 March 2007 the applicant arrived at Gorkiy Square with a rolled-up poster in her bag to participate in the “Dissenters’ March”, unaware that the event had been banned. It could be seen from the refusal to institute criminal proceedings of 23 January 2009 that police officer V.S. had told the applicant that the event had not been approved by the authorities. She continued walking. She was stopped by police officers, who asked her to show them what was in her bag. She refused and they took the poster out. There was a slogan on it (see paragraph 4 above). They then asked her to leave the square and proceed to a bus. She refused and they told her to get into a police car. She refused and sat down on the tarmac. Three unidentified police officers lifted her and carried her to the car. She tried to resist by putting her feet on the car door sill. The police officers, however, placed her in the car and took her to the bus. She was apprehended by the police officers at around 11.45 a.m., and remained in the bus until 3 p.m. Those placed in the bus were not allowed to leave. The applicant was then taken in the bus to the Avtozavodskiy district police station. She stayed there from 4 p.m. until 4.57 p.m., when she was taken away in an ambulance following a hypertensive crisis. She was treated by the ambulance staff, but refused to be admitted to hospital.

45. The court further noted that after being informed by police officer V.S. that the rally had been banned, the applicant had not left Gorkiy Square and had continued walking, carrying the rolled-up anti-government poster with her. Therefore, by stopping her, asking her to produce her bag for examination, leave the square and proceed to a bus, and, after her refusal to cooperate, by placing her in the police car against her will, the police officers had acted within the powers conferred on them under section 10 (1) of the Police Act, notably preventing her from committing an administrative offence. However, their actions had to be carried out in accordance with administrative procedure law. As a result of the police officers’ actions, the applicant had been detained from 11.45 a.m. to 4.57 p.m. Referring to decision no. 9-P of the Constitutional Court of the Russian Federation of 16 June 2009, the court stated that if there were sufficient grounds to believe that it was necessary to prevent an administrative offence, an arrest could only be regarded as lawful if it was to achieve the goals defined by the Constitution and Article 5 of the Convention, was proportionate and was carried out in accordance with the law. Therefore, an arrest, even within the powers conferred on an officer by statute, could not be lawful if carried out in breach of those goals and criteria, without sufficient grounds, arbitrarily or with abuse of authority.

46. The court noted that no escort record or arrest report, required under the CAO, had been drawn up in the applicant's case. No administrative proceedings had been brought against her and she had not been found liable. Her deprivation of liberty had lasted for more than the three hours permitted by law for an administrative arrest.

47. In view of the foregoing, the court found that, while there had been sufficient grounds to consider it necessary to prevent the applicant from committing an administrative offence, her arrest on 24 March 2007 at Gorkiy Square could not be regarded as lawful because it had been disproportionate and carried out in breach of administrative procedure law. Furthermore, according to a forensic medical expert opinion, the applicant's hypertensive crisis might have been caused by the stress of participating in the rally as much as by her arrest and detention at the police station. The applicant had experienced mental suffering as a result of the actions infringing her liberty. Furthermore, she had experienced physical suffering in the form of a hypertensive crisis which could have been caused by the stress of her arrest and detention at the police station. The court took into account the applicant's age, the duration of her unlawful deprivation of liberty (about five hours), the level of her suffering and the degree of the perpetrators' guilt.

48. The court further noted, on the basis of minutes of a police operations meeting on 16 March 2007 on the deployment of forces to ensure public order in the event of the "Dissenters' March" taking place, that on 24 March 2007 public order in Nizhniy Novgorod had been ensured by 500 officers from special units of the Tsentralniy and Privolzhskiy Federal Circuits, 1,000 members of the armed forces, police officers from Nizhniy Novgorod and the Nizhniy Novgorod region and officers from special units from ten other regions, as well as from the federal Ministry of the Interior. The police officers who had arrested the applicant and taken her to the police station had not been identified. However, the court held that this could not be a reason for dismissing her claim in respect of non-pecuniary damage.

49. The court ordered the Ministry of Finance of the Russian Federation to pay the applicant RUB 30,000 in respect of non-pecuniary damage sustained by her as a result of the police officers' unlawful actions.

50. As regards the applicant's claim in respect of pecuniary damage, the court found – on the basis of a forensic medical expert opinion taking into account her medical history – that her inpatient treatment could not be connected to her hypertensive crisis on 24 March 2007, and that there was therefore no causal link between her arrest and the heart problems for which she had received treatment in November 2008. Her claim was dismissed.

51. The applicant, represented by the Committee against Torture, appealed against the judgment. She argued that the court had wrongly found that the police's actions had been to prevent her from committing an

administrative offence. The police had breached her constitutional right to liberty before she had even started participating in the rally. The amount she had been awarded was not enough to compensate her for her suffering. The respondents also appealed against the judgment. The Ministry of Finance argued, in particular, that those who had carried out the applicant's arrest had not been identified and that their guilt had not been established; that no causal link between the police officers' actions and the applicant's hypertensive crisis had been established by a forensic medical expert; and that the amount of compensation had in any event been too high.

52. On 24 May 2011 the Nizhniy Novgorod Regional Court dismissed the applicant's appeal. It acknowledged that she had been deprived of her freedom of movement for more than three hours, the maximum duration for an administrative arrest, and had experienced mental and physical suffering. It also stated that the restriction of freedom of movement was in itself sufficient for awarding compensation in respect of non-pecuniary damage. It considered, however, that the compensation awarded by the District Court had been too high and reduced the amount to RUB 10,000, stating that this would be sufficient and adequate. It upheld the remainder of the judgment.

## RELEVANT LEGAL FRAMEWORK

53. A police officer may use such measures of restraint in administrative cases as escorting to a police station by force or making an administrative arrest (Article 27.1 § 1 (1) and (2) of the Code of Administrative Offences, as in force at the material time – “the CAO”).

54. A police officer may escort an individual to a police station by force for the purpose of drawing up an administrative offence report, if one cannot be drawn up on the spot. He or she must be released as soon as possible. The police officer must draw up an escort record or refer to the escorting in the administrative offence report. The individual concerned must be given a copy of the record (Article 27.2 §§ 1 (1), 2 and 3 of the CAO).

55. In exceptional cases, a police officer may arrest an individual for a short period if this is necessary for the proper and prompt examination of the administrative case and to secure the enforcement of any penalty to be imposed (Article 27.3 § 1 of the CAO). In such cases, an administrative arrest report must be drawn up stating, *inter alia*, the time, place and reasons for the arrest (Article 27.4 of the CAO). The duration of the administrative arrest must not normally exceed three hours (Article 27.5 § 1 of the CAO).

56. On 16 June 2009 the Constitutional Court, in its judgment no. 9-P, found that Articles 27.1 and 27.3 of the Code of Administrative Offences were compatible with the Constitution. It held that an administrative arrest could only be ordered for the purposes specified in Article 5 § 1 (c) of the Convention. The arresting officer had to comply with all substantive and

procedural statutory requirements. The court performing judicial review had to establish compliance with the procedure prescribed by law and whether the administrative arrest was justified, in particular, whether it was necessary and reasonable in the circumstances and whether there was sufficient factual basis for a reasonable suspicion against the arrested person. Administrative arrest would only be lawful if it was necessary and proportionate to the purposes specified in the Constitution and the Convention. It would be unlawful if it was ordered without sufficient justification, in an arbitrary manner, or in abuse of power.

57. Breaches of the procedure established for the organisation and for the holding of public gatherings are punishable by a fine (Article 20.2 § 1 and 2 of the CAO, accordingly).

58. Refusal to obey (cooperate with) a lawful order or request of a police officer is punishable by an administrative fine or up to fifteen days' administrative detention (Article 19.3 of the CAO).

59. The police have the duty to prevent administrative offences (section 10(1) of the Police Act, no. 1026-1 of 18 April 1991, in force at the material time). A police officer resorting to physical force, special means of restraint or a firearm, should warn individuals that force/special means of restraint/firearms are to be used against them. Police officers should ensure that the damage caused is minimal and corresponds to the nature and extent of the danger posed by the unlawful conduct and the perpetrator, as well as to the resistance offered by the perpetrator (section 12 of the Police Act). Police officers may use physical force, including martial arts, to stop a criminal or administrative offence being committed; arrest persons who have committed a criminal or administrative offence; or overcome resistance to a lawful order, if non-violent methods are insufficient to ensure the exercise of their duties (section 13 of the Police Act).

60. Article 286 § 3 of the Criminal Code of the Russian Federation provides that the actions of public officials which clearly exceed authority and result in a substantial violation of an individual's rights and lawful interests, committed with violence or the threat of violence (Article 286 § 3 (a)), are punishable by three to ten years' imprisonment, with a ban on occupying certain posts or engaging in certain activities for a period of up to three years.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

61. The applicant complained under Article 5 of the Convention that she had been taken to the police station unlawfully. There had been no reason to escort her to the police station as she had not committed an administrative offence. No escort record or arrest report had been drawn up, as required by

domestic law. The relevant parts of Article 5 of the Convention read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

62. The Government submitted that the applicant had unlawfully taken part in the unauthorised mass event and had displayed a propaganda poster, which was corroborated by the video recording. She had therefore been apprehended by the police and escorted to a police station in accordance with Article 27.2 of the Code of Administrative Offences (“escorting”) and Article 5 § 1 (c) of the Convention, so that a report could be drawn up for breaching the established procedure concerning public gatherings, an administrative offence under Article 20.2 § 2 of the Code of Administrative Offences. An administrative offence report had not been drawn up on the spot because she had refused to go to the police bus. In the end, no administrative offence report or escort record had been drawn up, because she had been handed over to the ambulance staff for treatment.

63. The Government further argued that, since the applicant had been awarded compensation for her unlawful detention in the civil proceedings, she could no longer claim to be a victim of the alleged violation of Article 5.

64. The applicant maintained that there had been no lawful grounds for arresting and escorting her to the police station. No administrative proceedings had been brought against her. Her deprivation of liberty had been arbitrary.



### A. Admissibility

65. The Court reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention. A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of his or her status as a “victim” for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010). In the absence of such acknowledgment the applicant would remain a “victim” even if he or she received some compensation (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 87-88, ECHR 2012).

66. The Court notes that, in the present case, the domestic courts found in the civil proceedings that the applicant’s deprivation of liberty on 24 March 2007 had been unlawful. However, before the Court the Government denied that there had been a violation of Article 5. In any event, the amount of RUB 10,000 awarded to her in respect of non-pecuniary damage cannot be considered appropriate and sufficient redress for the alleged breach of the Convention (see, for example, *Tsvetkova and Others v. Russia*, nos. 54381/08 and 5 others, § 203, 10 April 2018; *Fortalnov and Others v. Russia*, nos. 7077/06 and 12 others, § 98, 26 June 2018; *Grigoryev and Igamberdiyeva v. Russia* [Committee], no. 10970/12, § 25, 12 February 2019; and *Kalyapin v. Russia* [Committee], no. 6095/09, § 90, 23 July 2019). The applicant can therefore still claim to be a victim of the alleged violation of the Convention. The Government’s objection is dismissed.

67. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

### B. Merits

68. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof (see *Creangă v. Romania* [GC], no. 29226/03, § 101, 23 February 2012; and *Navalnyy and Yashin v. Russia*, no. 76204/11, § 91, 4 December 2014). Furthermore, it is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of “arbitrariness” in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention. In particular, the condition that there be no arbitrariness demands that both the order to detain and the execution of the detention

must genuinely conform with the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, § 91, 22 October 2018; and *Nemtsov v. Russia*, no. 1774/11, §§ 101-02, 31 July 2014).

69. The Court notes that in claiming that the applicant's deprivation of liberty complied with Article 5 § 1 (c) of the Convention, the Government chose to adopt a line of argument essentially the same as that of the investigating authority's first refusal to institute criminal proceedings of 21 May 2007. Notably they submitted that the reason that the applicant had been arrested and escorted to the police station under Article 27.2 of the Code of Administrative Offences had been her participation in an unauthorised rally by displaying a propaganda poster and thereby committing acts constituting elements of the administrative offence of breaching the established procedure concerning public gatherings under Article 20.2 § 2 of the Code of Administrative Offences (see paragraphs 28-32 and 62 above).

70. However, the investigator's decision of 21 May 2007 was subsequently quashed and those findings were in essence disputed in the civil proceedings, in which the national courts found for the applicant. It was established that the applicant had been stopped by the police officers who had first ordered her to produce her bag for a search and then to proceed to a police bus. Both times she had refused to cooperate. The police officers had taken the poster out of her bag, unrolled it and examined the slogan on it, considering it "anti-government" before confiscating it. They had lifted the applicant from the ground, where she had been sitting down to protest against their orders, and had dragged her to a police car in which she had then been taken to the police bus. After her arrest at 11.45 a.m. she had been detained in the police bus for about three hours before being taken to the Avtozavodskiy district police station, where she had suffered a hypertensive crisis. At 4.57 p.m. she had been taken away by ambulance to hospital.

71. The Court reiterates that, as a general rule, 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 that it is for the latter to establish the facts on the basis of the evidence before them. Though the Court is not bound by the findings of domestic courts and remains free to make its own assessment in the light of all the material before it, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by the domestic courts (see *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 61, ECHR 2012).

72. Taking into account the video recordings submitted by the Government (see paragraph 23 above), the Court sees no reason to doubt the above findings of fact reached by the domestic courts in the civil

proceedings, according to which the applicant did not participate in the unauthorised rally by displaying the poster. It was the police officers who took the poster out of her bag, unrolled and examined it, and showed it to the police camera. This signifies that the factual basis for the applicant's deprivation of liberty relied on by the respondent Government is missing. In the absence of the underlying events, the police had no grounds for escorting the applicant to the police station. Their order to get onto the police bus or car to take her to the police station was not therefore a lawful order which the applicant had to obey. Furthermore, contrary to the Government's submissions, which are not based on the domestic law, the fact that the applicant was taken away from the police station by ambulance cannot justify the absence of a record of her deprivation of liberty.

73. It is regrettable that the civil courts, having established the facts, stopped short of examining the applicant's arguments that the police had no grounds for taking her to the police station. The courts did, however, find that no escort record, arrest report or administrative offence report had been drawn up, and that her detention had lasted for more than the three hours permitted by law for an administrative arrest.

74. In view of the foregoing, the Court concludes that the applicant's arrest at 11.45 a.m. on 24 March 2007 and her deprivation of liberty until 4.57 p.m. that day were arbitrary and unlawful.

75. There has therefore been a violation of Article 5 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

76. The applicant complained that by using physical force during her arrest, the police had subjected her to degrading treatment, and that no effective investigation had been carried out into her complaint. She also stated that the conditions of her detention had been such that it had not been possible to use the toilet which, in view of her age, had constituted inhuman treatment. She relied on Article 3 of the Convention, which reads as follows:

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

77. The Government submitted that the police officers' conduct had not constituted treatment in violation of Article 3. The investigation into the applicant's complaints had been thorough and effective. Her state of health had not deteriorated as a result of her arrest and detention at the police station; her hypertension had been chronic and could have occurred regardless of the authorities' actions. As regards the two bruises which had not resulted in any damage to her health according to the forensic medical expert, such minor damage only served to confirm that the police had not used excessive force against the applicant, who had resisted her arrest. In

the course of her arrest, the police officers had applied physical force strictly in accordance with sections 12 and 13 of the Police Act.

78. The applicant argued that the police should have taken into account her age and the fact that she had not broken the law. Although the civil courts had found that the police had acted unlawfully, the investigating authority had not reopened its inquiry. The identity of the police officers who had subjected her to the violent arrest had never been established, and no criminal or disciplinary proceedings had been brought against them.

### **A. Admissibility**

79. The Court notes that in finding that the police officers had arrested and detained the applicant unlawfully, the civil courts did not acknowledge, either expressly or in substance, that the use of force by the police officers during the applicant's arrest had been in violation of Article 3. In particular, no assessment of the use of force resulting in the bruising to the applicant's arm was made by the courts despite the applicant's complaints (see paragraphs 38 and 47 above). Noting also the lack of acknowledgment on the part of the Government, the Court considers that the civil proceedings had no impact on the applicant's status as a victim of the alleged violation of Article 3 of the Convention (see paragraph 65 above).

80. The complaint concerning the use of force by the police during the applicant's arrest is not manifestly ill-founded and not inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

81. As regards the complaint concerning the conditions of the applicant's detention, it does not follow from the material before the Court that it was raised before the national authorities. Accordingly, it must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

### **B. Merits**

82. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). In respect of a person who is deprived of his or her liberty, or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by his or her own conduct diminishes human dignity and is an infringement of the right set forth in Article 3 (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 100 and 101, 28 September 2015). In respect of recourse to physical force during an arrest, Article 3 does not

prohibit the use of force for effecting a lawful arrest (see *Annenkov and Others v. Russia*, no. 31475/10, § 79, 25 July 2017). However, such force may be used only if indispensable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007). The burden to prove that this was the case rests on the Government (see *Rehbock v. Slovenia*, no. 29462/95, § 72, ECHR 2000-XII, and *Boris Kostadinov v. Bulgaria*, no. 61701/11, § 53, 21 January 2016).

83. One of the criteria informing the characterisation of a treatment under Article 3 is the severity of the treatment. Even in the absence of actual bodily injury or intense physical or mental suffering, 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 set forth in Article 3. It should also be pointed out that it may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others. Indeed, it has previously been established that, although a person does not undergo serious physical or mental suffering, an assault on his or her dignity and physical integrity may constitute degrading treatment (see *Bouyid* [GC], cited above, §§ 88, 90 and 112).

84. In assessing the evidence on which to base the decision as to whether there has been a violation of Article 3, the Court has generally applied the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact (see *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

85. Turning to the case at hand, the Court notes that it is undisputed between the parties that the applicant suffered bruising to her arm, as shown by medical evidence, as a result of the use of force by the police during her arrest. As regards the alleged strike to her back (see paragraph 8 above), it is unsupported by medical evidence. Though the video recordings show the police officers pushing the applicant inside the police car, she can hardly be seen behind them and it is not possible to conclude whether or not she was struck (see paragraph 23 (iii)-(iv)). In view of all the material before it, the Court finds that this latter allegation is unsubstantiated.

86. The Court further notes that the parties' assessment of the use of force by the police differed. For the applicant, it was totally unjustified. For the Government, such minor damage served to confirm that the use of force was not only justified by the applicant's resistance and lawful, but also not excessive.

87. The Court observes that the applicant's arrest was part of a large-scale operation organised by the police in advance with a view to ensuring public order in the event of the unauthorised rally going ahead (see paragraphs 13, 14 and 48 above). It cannot therefore be said that the police

were called upon to react without prior preparation (see *Rehbock*, cited above, § 72, and *Saya and Others v. Turkey*, no. 4327/02, § 21, 7 October 2008). Furthermore, the applicant presented no danger to public order (see *Balçık and Others v. Turkey*, no. 25/02, § 32, 29 November 2007).

88. Furthermore, it has been established above that the applicant's arrest was arbitrary and unlawful. The events underlying her arrest, notably her participation in an unauthorised rally by displaying a poster, did not take place, and the police had no grounds for escorting her to the police station. Their orders to proceed to the police bus or car were not therefore lawful orders which she had to obey (see paragraph 72 above). In the circumstances of the present case, therefore, the use of force to overcome the applicant's resistance to those orders and to place her in the police car was entirely unjustified.

89. As a result of the treatment complained of, the applicant suffered bruising to her arm (see paragraphs 20-21 above). She also suffered a hypertensive crisis which could have been caused by the stress of her arrest (see paragraph 47 above). The treatment involving numerous police officers (see paragraph 23 (iv) above) took place in public and the applicant regarded it as humiliating, diminishing her human dignity, causing physical pain, stress and shock and discrediting the State authorities and her belief in justice (see paragraph 38 above).

90. Taking into account that the applicant was 70 years old at the time, her state of health, the circumstances of her arbitrary and unlawful arrest, as well as the damage to her health, the Court finds that the unjustified use of force by the police in order to break the applicant's resistance to their unlawful orders, apart from causing bodily harm and contributing to her hypertensive crisis, humiliated the applicant, showing a lack of respect for and diminishing her human dignity, and aroused feelings of fear, anguish and inferiority on her part.

91. In view of the foregoing, the Court concludes that the use of force during the applicant's arbitrary and unlawful arrest was unjustified and amounted to degrading treatment.

92. There has accordingly been a violation of Article 3 of the Convention under its substantive head.

93. The Court further reiterates that where an individual makes a credible assertion that he or she 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 (see *Labita* [GC], § 131, and *Gäfgen* [GC], § 117, both cited above).

94. The Court observes that the applicant's criminal complaint was dismissed by the investigating authorities as a result of the pre-investigation

inquiry, the first stage in the procedure for examining criminal complaints. The Court has held, however, that the mere carrying out of a pre-investigation inquiry, not followed by an investigation proper, in which the whole range of investigative measures may be carried out, including the questioning of witnesses, confrontations and identification parades, is 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 (see *Lyapin v. Russia*, no. 46956/09, §§ 132-137, 24 July 2014, and, more recently, *Samesov v. Russia*, no. 57269/14, § 51, 20 November 2018). The Court sees no reason to reach a different conclusion in the present case. The authorities responded to the applicant's promptly lodged (see paragraphs 25 and 35 above) credible allegations of treatment proscribed by Article 3 by carrying out a pre-investigation inquiry and refused twice to institute criminal proceedings and carry out a fully-fledged investigation. As a result, police officer V.S., for example, gave divergent "explanations" (see paragraphs 29 and 36 above), which did not commit him in the same way as being examined as a witness in the context of criminal proceedings and did not entail the necessary safeguards inherent in an effective criminal investigation, such as criminal liability for perjury. No confrontation was ever held between the applicant and V.S. Police officer A.F. was never questioned (see paragraphs 28-29 above). There is nothing in the case-file to indicate that efforts were made to establish the specific roles of police officers V.S. and A.F. in the incident, as well as the identity of other police officers involved, despite the video recording of the incident by the police.

95. There has therefore been a violation of Article 3 of the Convention under its procedural head.

### III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

96. Lastly, the applicant complained that the authorities had failed to carry out an effective investigation into her complaint, failing to provide her with an effective remedy as required by Article 13, which reads as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

97. The Government argued that the applicant had availed herself of effective domestic remedies in respect of her complaint under Article 3.

98. The Court notes that this complaint is linked to the issue raised under the procedural aspect of Article 3 of the Convention and must therefore likewise be declared admissible.

99. In view of its finding of a violation of Article 3 under its procedural head (see paragraph 95 above), the Court does not find it necessary to examine separately, under Article 13 of the Convention, the applicant's

complaint concerning the lack of an effective investigation into the incident of 24 March 2007.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

100. 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**

101. The applicant claimed 44,780 Russian roubles (RUB) in respect of pecuniary damage, consisting of RUB 29,400 for sanatorium treatment (from 25 February to 16 March 2008) and RUB 15,380 for medical treatment at the cardiology unit of Town Hospital no. 5 (from 13 to 28 November 2008), organised for her by the NGO Committee against Torture and which she would not otherwise have been able to afford.

102. She claimed a further 5,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of her ill-treatment by the police (EUR 3,500) and the lack of an effective investigation into her complaints about the conduct of the police (EUR 1,500). She submitted that the compensation awarded by the Nizhniy Novgorod Regional Court had related to her unlawful detention and not her claim in respect of police ill-treatment. She had not received any compensation for the lack of an effective investigation either. In view of her age, the harm caused by the police (bruises and the hypertension crisis) had had a serious negative impact on her health. Since the incident, she had suffered from hypertension, anxiety and feelings of vulnerability and hopelessness, which had been exacerbated on account of the authorities' failure to respond properly to her complaint. The police officers' impunity meant that they could cause harm to others.

103. The Government contested the claims. They stated that if the Court were to find a violation of Article 3, this would be sufficient just satisfaction in respect of any non-pecuniary damage. They submitted that the two bruises found on the applicant had not resulted in any damage to her health, and that her hypertension was chronic and had not been “connected” to the actions of the police officers. None of these had required long-term hospital and costly spa treatment.

104. The Court notes the finding reached by the domestic courts in the civil proceedings on the basis of a forensic medical expert opinion, that the applicant's inpatient treatment from 13 to 28 November 2008 could not have been connected to her hypertensive crisis on 24 March 2007, and that



therefore there had been no causal link between the applicant's arrest and the conditions for which she had received treatment. In the absence of convincing evidence to the contrary, the Court sees no reason to depart from that finding. It therefore dismisses the claim in respect of the applicant's medical treatment in November 2008. It further considers that in the absence of supporting medical documents it has no basis to find a causal link between the violations found and the cost of the applicant's sanatorium treatment; it therefore dismisses this claim.

105. The Court notes that the applicant did not submit any claim in relation to the alleged violation of Article 5 § 1 of the Convention. Having regard to the violations it found under Article 3 of the Convention, and, by virtue of the *non ultra petita* principle, the Court allows the applicant's claim in the amount of EUR 5,000 in respect of non-pecuniary damage in its entirety, plus any tax that may be chargeable.

#### **B. Costs and expenses**

106. The applicant also claimed EUR 2,950 for legal services provided to her by the Committee against Torture, consisting of EUR 2,000 for their representation in the domestic proceedings and EUR 950 for their representation before the Court.

107. The Government argued that the sum claimed for legal costs was not detailed. It was unreasonable and not necessarily incurred.

108. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were 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 claimed in its entirety covering costs under all heads, plus any tax that may be chargeable to the applicant.

#### **C. Default interest**

109. 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 concerning the applicant's arrest and deprivation of liberty, the use of force by the police and the alleged lack of an effective investigation into the applicant's complaint in that regard, and the lack of an effective remedy admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive head in that the applicant was subjected to degrading treatment by the police;
4. *Holds* that there has been a violation of Article 3 of the Convention under its procedural head in that no effective investigation was carried out into the applicant's complaint;
5. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
6. *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 2,950 (two thousand nine hundred and fifty 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško  
Registrar

Paul Lemmens  
President