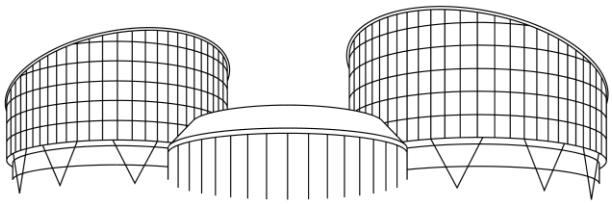

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KLEYN AND ALEKSANDROVICH v. RUSSIA

(Application no. 40657/04)

JUDGMENT

STRASBOURG

3 May 2012

FINAL

03/08/2012

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

In the case of Kleyn and Aleksandrovich v. Russia,

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

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 10 April 2012,

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

PROCEDURE

1. The case originated in an application (no. 40657/04) 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 two Russian nationals, Mr Aleksandr Nikolayevich Kleyn and Mr Roman Aleksandrovich ("the applicants"), on 29 September 2004 and 12 August 2005 respectively.

2. The applicants were represented by the European Roma Rights Centre, an international public-interest law organisation located in Budapest, Hungary, and Ms O. Tseytlina, a lawyer practising in St Petersburg. The Russian Government ("the Government") were represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that Ms Aleksandrovich died as a result of intentional mistreatment in police custody and that the Russian authorities had failed to investigate the circumstances surrounding her death.

4. On 13 November 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant, born in 1981, is the widower of the late Ms Fatsima Aleksandrovich, a Belarus national of Roma ethnicity, who was born in 1979 and died in 2002. The second applicant is her son, born in 2000. The applicants are Russian nationals living in the Pskov Region.

A. Ms Aleksandrovich's arrest and death

6. The applicants provided the following account of the circumstances surrounding Ms Aleksandrovich's arrest and death which was not disputed by the Government.

7. At 8.30 a.m. on 20 May 2002 Ms Aleksandrovich was travelling on a bus in Pskov with the first applicant's sister, Ms Vera Kleyn. Ms P., a police officer who worked for the passport service of the Pskov police department, was travelling on the same bus when she realised that her purse was missing. She told her colleague, police officer Mr M., that her purse was gone. Mr M. searched the bus and found the purse under a seat. Ms Aleksandrovich being of Roma ethnicity, Mr M. assumed that she had stolen the purse and arrested her. She asked why, but Mr M. hit her on the head and said, "Only a Gypsy could steal the purse, who else?" Ms Vera Kleyn was not arrested.

8. Ms Aleksandrovich was taken to the Pskov regional police station. The acting head of the station asked the senior operational officer of the property offences investigations division Mr I. to interview her. When asked about her identity, Ms Aleksandrovich claimed to be one Ilona Kozlovskaya, born in 1990. According to Mr I., she was nervous, complained of stomach pain and often asked for permission to use the toilet. Several times he had to take her to the toilet located on the second floor (in Russian called "third floor") of the police station, where female police officers Ms M. or Ms F. stayed with her. The last visit was just before 11.30 a.m. Since there were no female officers to accompany Ms Aleksandrovich, Mr I. let her go inside alone and waited by the door of the toilet.

9. The door of the toilet was not locked. A witness, Ms Sh., who was in the toilet, saw Ms Aleksandrovich and stated that she was moaning with pain and holding her stomach. Ms Sh. left the toilet shortly after this.

10. At 11.30 a.m. on 20 May 2002 an officer on duty found Ms Aleksandrovich unconscious on the ground in the yard of the Pskov regional police station. It appeared that she had jumped out of the toilet window. An ambulance took her to the Pskov regional hospital, where she died on 24 May 2002 without regaining consciousness.

B. Inquiry into Ms Aleksandrovich's death

11. Between 11.31 and 11.45 a.m. on 20 May 2002 the investigator from the Pskov regional police station compiled a report on an examination of the crime scene, which was carried out in the presence of two attesting witnesses (*понятые*). Photographs were taken of Ms Aleksandrovich's body, the building, the yard, and the toilet door and window.

12. On 24 May 2002 the senior investigator with the Pskov prosecutor's office ordered an inquest into the circumstances of Ms Aleksandrovich's death and an autopsy on her body.

13. The medical report was completed on 10 June 2002. It concluded that she had died as a result of a cerebral trauma and numerous bodily injuries. The expert found: haemorrhages of the soft tissue of the head with cerebral trauma; fracture of the left side of 12th neck vertebra; fracture of the side growths of 2nd, 3rd, and 4th vertebrae; internal tear of the right kidney; extensive haemorrhages of the soft tissue of the left side of the vertebrae; swelling of the left eyelid; swelling of the right forearm; bruises on the extremities. These injuries had been caused by the impact of blunt objects and could have been the result of striking such objects following a fall from the third floor.

14. On 24 June 2002 the senior investigator issued a decision refusing to institute criminal proceedings into Ms Aleksandrovich's death. He had collected statements from police officers Mr M., Ms P., Mr I., Ms F. and Ms M. and the witness Ms Sh., and found as follows:

> "As at the moment of Ms Aleksandrovich's fall out of the window of the toilet situated on the third floor of the Pskov regional police department, there was no one in the toilet but the deceased, the possibility is excluded of actual physical action by anyone wishing to take her life. The actions by Mr M. and Mr I. preceding Ms Aleksandrovich's death had been taken as part of their official duties ... Thus, Mr M. acted in keeping with the requirements of the Police Act, which required him to take measures to prevent and to stop administrative offences or crimes. In the circumstances the measures were taken on the basis of the statement by Ms P., who identified Ms Aleksandrovich as the person who had attempted to steal her purse. Mr I. ... took measures to establish Ms Aleksandrovich's identity. The period between the time of arrest and the time of her fall was no more than the three-hour limit set out in the Administrative Offences Code. During the interview Mr I. did not put any pressure on Ms Aleksandrovich. He had not known her before and he took measures to give assistance to Ms Aleksandrovich, who was unwell, as well as to prevent her from behaving inappropriately."

15. Some eighteen months later, on 26 December 2003, Ms Tseytlina, acting as counsel for the first applicant, lodged an appeal with the Pskov Town Court against the decision refusing to institute criminal proceedings.

16. On 19 January 2004 the Pskov Town Court allowed the complaint. It found that the inquest had been incomplete, that Ms Aleksandrovich's identity had not been conclusively established, that the collected samples

and histological studies had not been examined, and that the causation of the multiple injuries had not been explained.

17. On 9 February 2004 the Pskov town prosecutor revoked the decision of 24 June 2002 and asked the investigator Mr Ts. to carry out a further inquiry.

18. On 13 February 2004 Mr Ts. issued two decisions. One decision refused to institute criminal proceedings in connection with Ms Aleksandrovich's death; the other decision commissioned a new medical study into the reasons for the bodily injuries and death of Ms Aleksandrovich. Further to the applicants' complaint, the Pskov town prosecutor set aside the decision refusing to institute criminal proceedings as taken prematurely in the absence of the findings of the medical examination.

19. On 12 March 2004 the medical expert produced his report. It stated that all the injuries had been caused within a short period of time a few days before the death, possibly on 20 May 2002. The injuries could have resulted from a fall from a height of 9.6 m because of their condensed localisation and great magnitude. No signs of a multi-phased fall or contact with any other objects could be detected.

20. On the same day Mr Ts. issued a new decision refusing to institute criminal proceedings in connection with Ms Aleksandrovich's death. He noted in particular that the first applicant had been invited to make a statement but had never appeared.

21. On 26 October 2004 counsel for the first applicant lodged an appeal against the investigator's decision with the Pskov Town Court.

22. On 6 June 2005 the Pskov Town Court dismissed the appeal as unsubstantiated. It found that there was no evidence, medical or otherwise, to support the theory that the injuries had been caused by ill-treatment rather than by a fall from the window.

23. Following an appeal by the first applicant, on 13 July 2005 the Pskov Regional Court quashed the Town Court's decision. It noted that, under Russian law, experts and witnesses may only be held criminally liable for perjury if they have been examined as part of a criminal case. As criminal proceedings were never instituted, the first applicant's access to justice was barred. It also noted that police officers are responsible for the life and health of those individuals who, like Ms Aleksandrovich, have been taken to a police station under constraint. The Regional Court remitted the matter for a new examination by a different bench of the Town Court.

24. On 29 July 2005 the Pskov Town Court, during a new examination, found the investigator's decision unlawful, for the following reasons:

> "Establishment of the circumstances and cause of Ms Aleksandrovich's death, as well as the mechanism of causation of injuries on her body, is only possible by means of investigative actions and expert examinations carried out as part of a pending criminal case.

> In addition, the official who refused to institute criminal proceedings did not give a legal opinion on the actions of police officers, who have a duty to supervise individuals who have been forcibly taken to the police station, with a view, in particular, to preventing self-harm."

25. The Town Court instructed the prosecutor to carry out a further inquiry. The prosecutor lodged an appeal against the decision but subsequently withdrew it.

26. On 12 January 2006 the Pskov town prosecutor revoked the decision of 12 March 2004 and ordered an additional inquiry.

27. On 16 January 2006 the investigator Mr Ts. issued a further decision refusing to institute criminal proceedings. That decision summarised the existing evidence and reached the conclusion that:

> "...During the last visit to the toilet [Mr I.] could not find – for objective reasons – any female police officers who would be free from their duties, and Ms Aleksandrovich was in the toilet alone. It follows that the fall from the window situated on the second floor of the Pskov regional police station was the result of a deliberate action on the part of Ms Aleksandrovich."

II. RELEVANT DOMESTIC LAW

A. The RSFSR Code of Criminal Procedure (in force until 1 July 2002)

28. A criminal case may be instituted on the basis of, in particular, a complaint or report by a citizen (Article 108 (1)) or the finding of indications of a criminal offence by an investigator or prosecutor (Article 108 (6)).

29. A prosecutor, investigator, police officer or a judge ought to receive reports about any committed or planned crime and act on them within three days of receipt or, in exceptional cases, ten days. They may obtain necessary materials or explanations but not carry out any investigative acts. They should take the decision to open a criminal case, to refuse to institute criminal proceedings, or to refer the case to the competent authority and notify the complainant thereof (Article 109).

30. A prosecutor, investigator, police officer or judge should institute a criminal case if there is a motive and grounds for opening criminal proceedings (Article 112).

B. The Code of Criminal Procedure of the Russian Federation (in force from 1 July 2002)

31. The victim (*потерпевший*) shall have the right to take part in criminal prosecution of the defendant (Article 22). The decision to

recognise the procedural status of a victim may be taken by an investigator or a judge (Article 42 § 1).

32. The victim has in particular the following rights: to submit statements and evidence, to take part in investigative acts which are carried out at his request, to read the findings of a forensic study, to obtain copies of decisions concerning the institution of criminal proceedings and their discontinuation or adjournment, and to participate in the trial and appeal proceedings (Article 42 § 2 (2, 4, 9, 11, 13 and 14)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

33. The applicants complained under Article 2 of the Convention that Ms Aleksandrovich had died as a result of intentional mistreatment in the police custody and that the State authorities had not discharged their obligations to provide medical treatment for her and to undertake a thorough and effective investigation into the circumstances surrounding her death. Article 2 of the Convention provides as follows:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in defence of any person from unlawful violence;
>
> (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
>
> (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Admissibility

1. Exhaustion of domestic remedies

34. The Government claimed that the applicants did not exhaust the domestic remedies, because they did not lodge a judicial appeal against the investigator's decision of 16 January 2006. In their view, this remedy was undoubtedly effective, because the courts had previously set aside the investigator's decisions.

35. The applicants replied that repeated petitions are deemed ineffective for the purpose of exhaustion of domestic remedies (here they referred to *Assenov and Others v. Bulgaria*, 28 October 1998, § 86, *Reports of Judgments and Decisions* 1998-VIII). The applicants maintained that they had done everything reasonably possible to exhaust domestic remedies by making applications containing pertinent information and evidence with the police, the district prosecutor's office and the Prosecutor General, even though all they had to do, under the Court's case-law, was to bring the case to the attention of the competent authorities and then leave it to them to do their job themselves.

36. The Court observes that the Pskov Town Court quashed the investigator's decision not to proceed with a criminal investigation on two occasions, on 19 January 2004 and on 29 July 2005. Each time it found that the investigation that had been carried out so far was incomplete and insufficient in scope. As the Court has found in other Russian cases, a requirement to introduce an appeal against subsequent decisions refusing the institution of criminal proceedings would be over-formalistic and would place an excessive burden on the applicant. Furthermore, owing to the time that has elapsed since the events complained of, another reversal of the refusal to open criminal proceedings would not constitute an effective remedy (see *Georgiy Bykov v. Russia*, no. 24271/03, § 46, 14 October 2010; *Nikiforov v. Russia*, no. 42837/04, § 36, 1 July 2010; and *Samoylov v. Russia*, no. 64398/01, § 45, 2 October 2008). Accordingly, the Government's objection must be dismissed.

2. Compliance with the six-month time-limit

37. The Government submitted firstly that the application was belated because the decision of 24 June 2002, by which the institution of criminal proceedings was refused, had been appealed against by the first applicant's counsel only in 2003. Alternatively, they claimed that if the investigator's decision of 12 March 2004 were to be regarded as the final decision, the application was lodged more than six months after that decision, on 29 September 2004.

38. The applicants responded that the prosecutor had not notified the decision of 24 June 2002 to the first applicant and that the latter had only exercised the right to appeal after retaining a legal representative who had obtained access to the case file and learned about the decision not to proceed with the criminal investigation. The Russian Code of Criminal Procedure does not set any time-limit for challenging the decision of prosecution authorities and the first applicant had availed himself of this possibility in due course, in accordance with the legal advice of his counsel. The applicants further submitted that the State was under a legal obligation to investigate Ms Aleksandrovich's death, without a specific application from the victim's next of kin. In their view, the six-month rule was not

applicable in the instant case, because the non-investigation of the death was a continuous violation. Finally, they considered that the Government's objection was misconceived, because the six-month period only runs from the date of the final decision and does not relate to earlier stages in the proceedings.

39. The Court notes that on 29 September 2004 the first applicant submitted a letter in which he set out an outline of the facts that had given rise to the present case and the complaints about a violation of Ms Aleksandrovich's right to life, the right to protection against torture, inhuman or degrading treatment and a lack of effective domestic remedies. On 12 August 2005 a completed application form was submitted by both applicants, which raised the same complaints. Even taking into account new developments at the domestic level, including a reopening of the investigation and the ensuing judicial proceedings, the eleven-month delay in the submission of the completed application form appears excessive. Accordingly, the Court decides that the date of the application form is the date of introduction of the application (Rule 47 § 5 *in fine* of the Rules of Court).

40. The application was introduced within one month of the judgment of the Pskov Town Court of 29 July 2005, which revoked as unlawful the investigator's decision refusing to institute criminal proceedings and instructed him to take further procedural action. Accordingly, it was not belated. The Court does not share the Government's view that the six-month period started running from the date of the first decision refusing to institute criminal proceedings. An appeal against that decision lay with a court and the first applicant used his right to lodge the appeal within the time-limits established in the domestic law.

41. It follows that the complaints about an alleged violation of Ms Aleksandrovich's right to life and an ineffective investigation into her death were lodged within the time-limit set out in Article 35 § 1 of the Convention. The situation is however different with regard to the complaint of a breach of the State's positive obligation to provide medical treatment to Ms Aleksandrovich during her stay in police custody. This complaint was not mentioned in the original application and was raised for the first time in the applicants' observations in reply to those of the Government, submitted on 2 May 2008. Since more than six months have elapsed since the end of the situation complained about, this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

3. Conclusion

42. The Court considers the complaint about an alleged violation of Ms Aleksandrovich's right to life and an ineffective investigation into her death 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. Alleged violation of Ms Aleksandrovich's right to life

43. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The first sentence of Article 2 enjoins the Contracting States not only to refrain from the taking of life "intentionally" or by the "use of force" disproportionate to the legitimate aims referred to in sub-paragraphs (a) to (c) of the second paragraph of that provision, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, *inter alia*, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

44. The Court further emphasises that persons in custody are in a particularly vulnerable position and the authorities are under an obligation to account for their treatment. As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to whether the State has complied with its obligation to protect that person's right to life (see *Slimani v. France*, no. 57671/00, § 27, ECHR 2004-IX (extracts)).

45. The Government submitted that Ms Aleksandrovich must have been under stress after being apprehended at the scene of a theft and brought to the police station. She attempted to escape from the moment she was apprehended: she tried to run away in the bus and in the police car, then she lied about her name and age. Once she understood that officer I. would not let her go and that her real identity would soon be established, Ms Aleksandrovich began looking for other ways to escape. Although she complained of pains in her stomach, she did not ask for a doctor but deliberately sought to be left alone in the toilet. The toilet window was closed but not locked and it was clearly visible from the window that the yard was not supervised and that a part of the fence was missing. Thus, Ms Aleksandrovich most probably used the toilet window to attempt to flee from the police building through the unguarded yard. The forensic study uncovered abrasions on her left wrist and right knee which could be an indication of her squeezing out through the window frame.

46. The applicants rejected the Russian authorities' assertion that Ms Aleksandrovich had attempted to escape through the toilet window. In their submission, there was no reason to believe that Ms Aleksandrovich,

who may have been pregnant at the time, would have done something as unrealistic as to put her life and probably the unborn child's life at risk and to attempt to escape from a third-floor window for being accused of stealing 700 roubles (about 20 euros). She must have been aware that she would be presumed innocent and that nothing of serious consequence would follow.

47. On the facts, the Court notes that Ms Aleksandrovich was taken to the police station at about 9 a.m. on 20 May 2002 and that approximately two and a half hours later her unconscious body was found in the courtyard of the station. She had spent her time in the police station with the officer Mr I., whom she frequently asked for permission to go to the toilet.

48. In the Government's submission, the death of Ms Aleksandrovich had been the result of her unfortunate attempt to escape from the police custody through the toilet window. According to them, she miscalculated the height and the fall turned out to be fatal. The applicants rejected this version, without however putting forward a different one.

49. The Court reiterates that the applicable standard of proof under Article 2 is the one "beyond reasonable doubt". In the instant case it finds no serious evidence in support of the hypothesis of an intentional taking of Ms Aleksandrovich's life. A mere assertion by the applicants that Ms Aleksandrovich could not have jumped out of the window by her own will does not satisfy this standard. Nor are there sufficiently strong, clear and concordant inferences which would have allowed the Court to consider that the explanation provided by the Government was not satisfactory or convincing (see, by contrast, *Mižigárová v. Slovakia*, no. 74832/01, § 89 *et passim*, 14 December 2010). The Government's account of her failed attempt to escape was backed up by the medical evidence: it confirmed the presence of marks on Ms Aleksandrovich's hand and knee which could have been the result of her squeezing through the narrow frame. Ms Aleksandrovich appears to have been under considerable stress while in police custody, giving a false name and misrepresenting her age. She complained about pains in her stomach, yet it is not established that she was examined by a medical specialist or given any medicine. Instead, she sought permission to go to the toilet and was allowed to do so, more than once, in the presence of different female police officers. When no female officer was available, Ms Aleksandrovich found herself in the toilet alone.

50. In the light of the above, the Court considers that there is an insufficient factual and evidentiary basis on which to conclude that Ms Aleksandrovich was pushed out of the window by the police officers, as the applicants seemed to allege (compare *Erikan Bulut v. Turkey*, no. 51480/99, § 30, 2 March 2006). It is further noted that the applicants did not claim that the police had been negligent in taking reasonable and adequate steps to prevent Ms Aleksandrovich from escaping.

51. It follows that there has been no violation of Article 2 under its substantive limb.

2. Alleged failure to carry out an adequate investigation into Ms Aleksandrovich's death

52. The obligation to protect the right to life under Article 2 of the Convention requires by implication that there should be some form of adequate and effective official investigation when individuals have died in suspicious circumstances (see *Yaşa v. Turkey*, 2 September 1998, §§ 98 and 100, *Reports of Judgments and Decisions* 1998-VI). The essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life. The investigation must therefore be capable firstly of ascertaining the circumstances in which the incident took place and secondly of leading to the identification and punishment of those responsible. Although this is an obligation to make the efforts possible and is not absolute, the authorities should nevertheless have taken the reasonable steps available to them to gather evidence concerning the incident, including, in particular, eyewitness testimony, forensic evidence and, where appropriate, a proper autopsy (see *Gül v. Turkey*, no. 22676/93, § 89, 14 December 2000, and *Salman v. Turkey* [GC], no. 21986/93, §§ 73, 105 *in fine* and 106, ECHR 2000-VII).

53. The Government submitted that the prosecutorial offices, which were an authority independent from the police, had thoroughly checked on the activities of anyone who had been in contact with Ms Aleksandrovich since her arrival at the police station. The investigator had carefully examined all versions of the events, including the possibility that the offences of manslaughter, driving the victim to commit suicide, or exceeding official powers had been committed. The crime scene had been examined twice, two forensic medical studies and one histological study had been commissioned, the trace evidence had been analysed, and witnesses had been interviewed. The Russian authorities had elucidated all the relevant circumstances and had taken all reasonable measures to obtain the evidence in the matter.

54. Furthermore, in the Government's view, the Pskov Town and Regional Courts, in their decisions of 13 and 29 July 2005, had erroneously considered that the cause of Ms Aleksandrovich's death could only be determined in criminal proceedings. The Government claimed that the procedure for commissioning a forensic study at the preliminary stage was no different from the one adopted in the criminal proceedings. This arrangement was compatible with Article 109 of the RSFSR Code of Criminal Procedure and the expert had been notified of criminal liability for perjury. The Government believed that the requirement to open a criminal case had been outside the jurisdiction of the courts because the decision to institute criminal proceedings was within the exclusive competence of the prosecutorial authorities. Finally, the Government alleged that the institution of a criminal case in the absence of evidence capable of showing "beyond reasonable doubt" that a crime had been committed would have

been a serious breach of the law, for which the prosecutor would have been held responsible.

55. The applicants submitted that the investigation had been incomplete and perfunctory. Although the investigation had come to the conclusion that Ms Aleksandrovich had jumped out of the window of her own will, the authorities had not inquired why she would commit suicide or choose a deadly escape route. No evidence was collected on her mental state before and during her arrest or on any possible reasons for her to commit such an act. The injuries on her body were attributed to her lethal fall, without exploring other hypotheses as to their possible source or establishing whether they had occurred on the day of the incident or earlier. The timeline of the events had not been reconstructed: there were discrepancies in the statements by police officers as to the exact time her body had been discovered: the time the ambulance was called and the time the doctors arrived was not recorded. The investigation also failed to preserve the fingerprints from the window ledge and to send them for identification immediately after the incident. The applicants pointed out that in almost six years, the authorities had only questioned one witness, commissioned two autopsy reports and carried out some other acts: these were punctuated by very lengthy periods of inactivity, for which the Government did not put forward any explanation. Finally, the applicants alleged that the investigation had suffered from a number of other omissions and had left many questions unresolved.

56. The Court observes at the outset that the domestic authorities refused to open a criminal investigation into the circumstances of Ms Aleksandrovich's death on at least four occasions (see the decisions of 24 June 2002, 13 February and 12 March 2004 and 16 January 2006). However, on 13 and 29 July 2005 the Pskov Regional and Town Courts determined that the prosecutor's decision refusing to institute criminal proceedings had been unlawful, because the forensic evidence and witness statements should have been collected in the framework of a criminal investigation. The Government's claim that Article 109 of the RSFSR Code of Criminal Procedure made no distinction between the stage of a preliminary inquest and a criminal investigation sits ill with the textual reading of this provision which allowed the investigator to obtain necessary materials or explanations but prevented him from carrying out any investigative acts, such as for instance a forensic study (see paragraph 29 above). Notwithstanding the findings of the domestic courts, a criminal investigation into Ms Aleksandrovich's death has never been instituted. The Court considers that the failure to open a criminal case in a situation where an individual has died or has been seriously injured while in police custody was in itself a serious breach of domestic procedural rules capable of undermining the validity of any evidence which had been collected (compare *Maslova and Nalbandov v. Russia*, no. 839/02, §§ 94-96, 24 January 2008, in which all the evidence collected was declared

inadmissible in court because the procedure for instituting criminal proceedings had not been complied with).

57. The domestic courts also found that the failure to open a criminal case had entailed a breach of the first applicant's right of access to justice. The Court concurs in this finding, noting that in the absence of a pending criminal investigation the applicants' right to effective participation in the proceedings could not be secured. Neither the first nor the second applicant was granted the procedural status of a victim and could not exercise the procedural rights accompanying that status, such as the rights to lodge applications, to put questions to experts or to obtain copies of procedural decisions (see the domestic law in paragraph 32 above and compare with *Denis Vasilyev v. Russia*, no. 32704/04, § 157, 17 December 2009, and *Tarariyeva v. Russia*, no. 4353/03, § 93, ECHR 2006-XV (extracts)). Furthermore, it does not appear that the first decision of 24 June 2002 was officially notified or at least informally communicated to the first applicant. This resulted in an eighteen-month delay, because the proceedings had not been resumed until such time as the first applicant had retained legal counsel who could access the case file and lodge an appeal against that decision. The ensuing loss of time further undermined the adequacy of the investigation.

58. Having regard to its above findings, that a criminal case had not been instituted and that investigative acts had been carried out which were not part of a criminal investigation, the Court does not consider it necessary to analyse every alleged deficiency of the domestic proceedings of the many that were pointed out by the applicants. The absence of an adequate legal framework and the failure to ensure the effective participation of the next of kin lead it to the conclusion that the Russian authorities did not take all reasonable steps to ascertain the circumstances in which Ms Aleksandrovich died.

59. There has therefore been a violation of Article 2 of the Convention under its procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

60. The applicants further complained under Article 3 of the Convention that Ms Aleksandrovich had been submitted to ill-treatment by the police during her arrest and that the authorities had failed to investigate that matter. Article 3 reads as follows:

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

61. The applicants claimed that Ms Aleksandrovich had been tortured in police custody with the purpose of extracting a confession. Although she had complained of stomach pain, she had not been provided with medical assistance and the authorities did not inquire whether the medicine she had

been given could have had a harmful effect on her health. The applicants also alleged that they had seen physical injuries and cigarette burns on her body, for which the Government had not provided any explanation. The investigation into those matters had been incomplete because a possible link between the decision to give her medicine and the fatal outcome had not been explored, and because additional witnesses who could testify about visible injuries on her body had not been interviewed.

62. The Government stressed that the police officers had considered Ms Aleksandrovich to be a twelve-year-old adolescent and, for that reason alone would not have subjected her to any psychological pressure, let alone physical coercion. Moreover, she had stayed at the police station for less than three hours and during that time the officer Mr I. had asked her about her identity and the events in the bus, called his colleagues from Ostrov police station and let her visit the toilet. He had had neither time nor opportunity to take any illegal action.

63. The Court has adopted the standard of proof "beyond reasonable doubt" for assessing evidence in respect of allegations of ill-treatment and that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). Where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused (see *Ribitsch v. Austria*, 4 December 1995, Series A no. 336, § 34, and *Salman*, cited above, § 100).

64. The applicants referred to certain injuries and cigarette burns on the body of Ms Aleksandrovich which, in their view, constituted irrefutable evidence that she had been ill-treated in police custody with a view to extracting a confession. However, the medical experts who examined Ms Aleksandrovich's body after her death made no mention of cigarette burns or of any injuries that could not have been caused by her lethal fall (see the medical reports of 10 June 2002 and 12 March 2004). The applicants did not corroborate their claims with written statements by any witnesses who may have seen those burns or injuries. Likewise, their claim that the medicine she had been given could have had a detrimental impact on her well-being appears to be conjecture without a solid basis in fact. In these circumstances, the Court is unable to detect any evidence of the alleged ill-treatment and considers that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

65. Lastly, the applicants complained under Article 13 of the Convention that the failure of the authorities effectively to investigate, to prosecute and to punish those responsible amounted to a violation of their right to an effective remedy. They also alleged, citing Article 14 of the Convention in conjunction with Articles 2, 3 and 13, that the arrest of Ms Aleksandrovich, her ill-treatment in custody, a subsequent lack of an effective investigation and the absence of a remedy, had all been partly due to her and the applicants' Roma ethnicity.

66. As regards the complaint under Article 13, the Court notes that the only element of this complaint which is not subsumed by the procedural limb of the complaint under Article 2 of the Convention is the alleged unavailability of a civil-law remedy in the absence of an effective criminal investigation. However, the applicants never attempted to introduce a civil claim for compensation or manifested their intention to do so. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

67. As regards the allegations of discrimination, the Court observes that the part of the complaint relating to the discriminatory motive of Ms Aleksandrovich's arrest was obviously belated. As to the remainder, it finds no indication that the established defects in the investigation were somehow connected with her ethnic origin. It follows that this complaint is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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

69. The applicants claimed 150,000 euros (EUR) in compensation for the pain and suffering caused by a violation of their wife's and mother's rights under the Convention.

70. The Government submitted that the amount was excessive.

71. The Court considers that the failure to carry out an investigation into the death of Ms Aleksandrovich which would have been compatible with the requirements of Article 2 must have caused the applicants distress and frustration which cannot be compensated by a mere finding of a violation.

Having regard to the nature of the defects of the investigation it has identified, it finds it reasonable to award the applicants jointly EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

72. The applicants also claimed 1,780 United States dollars (USD) for the work of Ms Tseytlina, who represented the first applicant before the domestic courts, and EUR 12,075 for 161 hours of work carried out by the European Roma Rights Centre, plus EUR 1,000 in respect of administrative expenses. The applicants produced a detailed time sheet from Ms Tseytlina and copies of two legal services agreements, dated 5 October 2003 and 5 October 2004.

73. The Government submitted that the applicants had not produced evidence of payment and that the expenses had not necessarily actually been incurred.

74. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court accepts that the legal assistance rendered by Ms Tseytlina in the domestic proceedings was necessary and adequate in terms of the time spent. It was also supported with appropriate documentation, including legal contracts and time sheets. The situation is however different with respect to the claims by the European Roma Rights Centre, which failed to explain in sufficient detail why so many hours had been necessary for the preparation of the application and memorandum. In the absence of such explanation, their claim appears excessive and the Court considers that it may be granted only in so far as it was reasonable as to quantum. Accordingly, the Court awards the entire amount claimed in respect of the domestic proceedings, that is EUR 1,320, and EUR 4,000 in respect of the Strasbourg proceedings, plus any tax that may be chargeable on the applicants, and rejects the remainder of the claim.

C. Default interest

75. The Court considers it appropriate that the default interest 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 complaint concerning an alleged violation of Ms Aleksandrovich's right to life admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 2 of the Convention under the substantive limb;

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

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 20,000 (twenty thousand euros) in respect of non-pecuniary damage and EUR 5,320 (five thousand three hundred and twenty euros) in respect of costs and expenses, plus any tax that may be chargeable on the applicants, to be converted into Russian roubles at the rate applicable on the date of settlement;
   (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 applicants' claim for just satisfaction.

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

Søren Nielsen	Nina Vajić
Registrar	President