

European Court of Human Rights
Council of Europe
Strasbourg, France

APPLICATION

Under Article 34 of the European Convention on Human Rights and Rules 45 and 47 of the
Rules of the Court

Application no: 40657/04

THE PARTIES

A. APPLICANTS

Surname: **KLEYN**

First name: **Aleksandr**

Nationality: Russian

Gender: Male

Occupation: unemployed

Date of birth: 2 April 1981

Permanent address: Troxina Str. 2 ap. 3, Pskov, Russian Federation

Telephone: + 7 926-34-38-226

Surname: **ALEKSANDROVICH**

First name: **Roman**

Nationality: Russian

Gender: Male

Date of birth: 16 April 2000

Permanent address: Troxina str. 2 ap. 3, Pskov, Russian Federation

Appointed representatives of the applicants:

1. **European Roma Rights Center (ERRC)**, Tel. +(361) 413 2200, Fax: +(361) 413 2201, address: 1386 62, P.O. Box 906/93, Hungary. The ERRC is an international public interest law organization, which monitors the human rights situation of Roma across Europe and provides legal defence in cases of human rights abuse. The ERRC has consultative status with both the United Nations and Council of Europe.

2. **Olga Tseytlina**, Attorney at Law “Yuri Schmidt & Partners”, 42 ap. 12 Gagarinskaya str. St. Petersburg, 191187, Russian Federation. Tel./Fax. +7(812) 579-03-71; +7(812) 327-35-09.

The ERRC and Olga Tseytlina are submitting this application jointly as the appointed representatives of the victims.

B. THE HIGH CONTRACTING PARTY

Russian Federation

STATEMENT OF FACTS

II.1.The applicants, **Alexander Kleyn** and his son¹ **Roman Aleksandrovich** are Russian citizens of Roma ethnicity. **Alexander Klein** is the *widower of the late* Fatsima Aleksandrovich (Hereinafter “the *deceased*”) who was a citizen of Belarus of Roma ethnicity. They and their two-year-old child **Roma Aleksandrovich** lived together in the Russian town of Pskov.

II.2.The facts of this case are as follows. On 20 May 2002 the deceased was arrested by police in Pskov and four days later, on 24 May 2002, she died as a result of a number of a serious bodily wounds she sustained while in police custody.²

II.3.The applicants respectfully state that on 20 May 2002 at approximately 08:30 a.m the deceased was travelling on a bus in Pskov together with her sister in law, Vera Klein³. That morning they met in order to visit the deceased’s gynaecologist because she suspected that she might be pregnant. Ms. Petuhova, a police officer who worked for the visa and passport unit at the Police department in Pskov, was travelling on the same bus when she realized that her purse was missing. Ms Petuhova said in her statement “**maybe [a] woman of Roma ethnicity could do that**”.⁴ She informed her colleague, police officer Mamedov, that her purse was gone. The bus was searched by officer Mamedov who found the purse under one of the seats in the bus. Absent any further information, we can assume nothing was stolen from the purse. Nevertheless, the police officer decided that, as the deceased Fatsima was of Roma ethnicity she had probably stolen the purse, so he arrested her. The deceased asked why, but the officer Mamedov hit her on the head and said, “**Only a Gypsy could steal the purse, who else?**”.⁵

II.4.The deceased was forcibly taken to the Police station and was questioned in the office of police officer Ivanov who is in charge of felony offences. Vera Klein, a Roma relative with the deceased, believes that the reason she was not arrested was because she appeared less like a person of Romani ethnicity.⁶

II.5.The deceased was detained and questioned in the police station for about three hours by Ivanov Dmitrij.⁷ The police did not record her arrest in the official registry. The arrest was not registered in the reports of police officers Mamedov and Ivanov dated 20 May 2002 or in the registry for administratively arrested persons, contrary to the Criminal Procedure Code.⁸

II.6.This code requires registration to be done in 3 hours⁹. However in this case the time of detention/arrest is difficult to confirm. Not registering the detained is a common (albeit illegal) practice in the Russian Federation¹⁰. This is done so the detained are not provided with a lawyer,

¹ See the Document 3

² See the Document 6, 19,26,

³ See the Document 26

⁴ See the Document 9

⁵ See the Document 26

⁶ See also the testimonies provided by Vera Klein on 13.06.2005 included as the document 26

⁷ See the Document 27

⁸ Article 122 of the Criminal Procedure Code of RSFSR (Russian Socialist Federal Soviet Republic)

⁹ The Code of Administrative violations of RSFSR, Article 240 and 242.

¹⁰ "Apart from massive police operations explicitly targeting Romani communities throughout Russia, police officers often stop Romani individuals in the street and take them into custody without offering any explanation for the reasons for their detention. Roma with whom the ERRC spoke reported that they had been subjected to identity checks, photographing and fingerprint taking - operations which police officers had expressly related to their Romani

and also to put psychological pressure on the detained. It also means that there is no record of people who are released following payment of a bribe. The police agree that the deceased was delivered to the police station. However, they disagree on the exact time of her detention with reports varying from 8:30 to 9:00 a.m. The report regarding the detention was made by Ivanov and Mamedov¹¹ on May 20th 2002 and it stated that the deceased did not have visible physical injuries.¹² There is nothing in the prosecutor's report into the deceased's death about the time of her detention, but the detention is not denied.

II.7. Vera Klein, together with her father Mr. Klein and the applicants, visited the police station. There they were told that the deceased was arrested and was being held at the police station on Vogzal'naja Street, Pskov. They were also told that they should call them at 3 p.m. and if they went there after, the deceased would be released.¹³ When the first applicant and his father arrived at the police station they were told that the deceased was at the hospital, where she was in a coma. Vera Klein telephoned the doctor on duty and asked about the condition of the deceased. The doctor, however, stated that he cannot give her many details and that only police officers could give them more information and that she could not see the deceased. The police officers refused to give her any information, other than alleging that the deceased jumped through the window. On 24 May 2002 Vera Klein was informed that the deceased died. The deceased's family was never able to visit her in the hospital¹⁴.

II.8. According to the police officer Mamedov's explanation on 20 May 2002¹⁵, the deceased had been brought to the office of policeman Ivanov for questioning. She was there for about three hours and policeman Ivanov stated that she complained during that time of having pain in her stomach. During her arrest the deceased was not allowed to leave the police officer Ivanov's office without an escort. According to Ivanov, the deceased asked to use the toilet. According to policemen Ivanov, policewomen Moiseeva and Filipova accompanied the deceased to the toilet several times. The last visit¹⁶ was at about 11.30 a.m. Since there were no female officers available to accompany her, policeman Ivanov waited outside the toilet.¹⁷ This is suspicious because, when the policeman on duty asked, officer Ivanov "where is the Gypsy?" he said that "she is in my office".¹⁸

II.9. The door of the lavatory was unlooked.¹⁹ Another witness, Sharakova, N.V. who was in the lavatory also saw the deceased and reported that she was moaning with pain and holding her stomach. It seems that Ms Sharakova left the lavatory shortly after this.

ethnicity. According to ERRC research, police officers regularly detain Romani individuals and keep them in custody for sustained periods of time without initiating any formal procedure, in the (frequently justified) hope that the worried relatives of detained Roma would offer bribes in exchange for the release without charges of the person in question." In Search of Happy Gypsies" European Roma Rights Center, Country Report, Chapter 4.2 "Arbitrary Detention" page. 61

¹¹ Article 122 of the Criminal Procedural Code of the RSFSR

¹² See the Document 27

¹³ See the Document 26

¹⁴ See the Document 26

¹⁵ See the Document 29

¹⁶ See the Document 7

¹⁷ See the Document 26

¹⁸ See the Document 27

¹⁹ See the Document 28

II.10. At 11:20 on 20 May 2002, the deceased was found unconscious on the ground in the yard of the Pskov Police Station by the officer on duty²⁰. According to the police officers, the deceased had jumped out of the window of the toilet situated on the third floor of the police station.²¹ The ambulance took her to the Pskov regional hospital where she died four days later without regaining consciousness.²² However, the applicants submit that since the deceased was aware that she was innocent, that she would be released shortly and that nothing of serious consequences would follow,²³ there is absolutely no reason that she would have jumped from the window of her own volition.

II.11. The applicants and Vera Klein²⁴ believe that the deceased was brutally assaulted. Vera Klein states that when they took the body home, she saw a number of injuries, including burns caused by cigarettes, all over the deceased's body.²⁵ Visible bruises on her body were not present before the arrest.²⁶ The medical report from 18 June 2002 stated that a blunt instrument had caused her death.

II.12. On 24 May 2002, a police investigation of the deceased's death was ordered by Mr A. B. Tokarev.²⁷ As part of this investigation, he ordered a medical autopsy.²⁸

II.13. The medical report was completed on 18 June 2002. It concluded that the deceased died as a result of cerebral trauma and numerous bodily injuries.²⁹ The expert, K Ishchenko, 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 the 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 of the extremities.³⁰ The expert's opinion states that a blunt instrument caused the bodily damages, although the expert said that it could have been caused by a fall from the third floor.³¹ However, the medical report did not state whether she was pregnant therefore, casting doubt on its thoroughness.

II.14. On 24 May 2002 based on a preliminary investigation by the police and the medical report, the Prosecutor's Office of Pskov decided not to initiate a criminal investigation into the death.³² In his refusal to open a criminal case the prosecution repeatedly referred to the deceased using the term "the woman of Gypsy nationality" rather than by her name.³³ This illustrates the racial animus underlying the failure to carry out a thorough investigation, something that should have been recognised as particularly important in a case where a death had occurred in police custody. The total inadequacy of the investigation is also shown by the fact that it was concluded on the same day as it had been ordered.

²⁰ See the Document 27

²¹ See the Document 27

²² See the Document 27

²³ See the Document 27

²⁴ See the Document 26

²⁵ See the Document 26

²⁶ See the Document 26

²⁷ See the Document 7

²⁸ See the Document 7

²⁹ See the Document 6

³⁰ See the Document 7

³¹ See the Document 7

³² See the Document 9

³³ See the Document 7

II.15. On December 26, 2003 the applicants lodged an appeal with the City Court of Pskov Region against the decision of the Prosecutor's Office not to initiate a criminal investigation.³⁴ The appeal contended that the preliminary police investigation had been incomplete and ineffective and that the investigators had only one explanation for the death. In support of this contention the applicants highlighted:

- a) The decision of the Prosecutor's Office not to open a criminal investigation was itself illegal and groundless³⁵
- b) The Prosecution Office has an obligation to initiate a criminal investigation.³⁶

II.16. On 19 January 2004, the City Court of Pskov Region overruled the Prosecutor's decision not to open a criminal investigation and returned the case to the Pskov Prosecutor's Office to carry out a full investigation.³⁷

II.17. On 9 February 2004, in considering the decision of the City Court of Pskov, the Prosecutor requested additional investigation of the materials related to the case.³⁸

II.18. On 13 February 2004, Tsiplakov O. A., the investigator from the Pskov prosecutor office, affirmed by another decree the refusal to initiate a criminal investigation.³⁹

II.19. On the same day Tsiplakov O.A passed a resolution for a second medical expert opinion on the reasons for the bodily injuries and death of the deceased.⁴⁰ The decree not to initiate a criminal investigation on 13 February 2004 was issued in advance of this medical report, which was not issued until 12 March 2004.⁴¹

II.20. On 24 February 2004, the applicants lodged an appeal with the prosecutor's office against the 13 February 2004 decree of refusal to initiate criminal.⁴² The appeal contended that the investigation had been incomplete and groundless. The applicants argued that there had not been a thorough investigation, that it didn't address the question of possible negligence in caring for an ill detainee and that the police failed to ensure the security of the detainee. In support of their arguments, the applicants pointed out that the Prosecutor's order for an additional medical expert opinion was made on the same day as the decree refusing to open a criminal investigation and that the latter was issued without waiting for the conclusion of this medical opinion. The applicants requested that the additional medical expert opinion and documents on the deceased should be part of the investigation.

II.21. On 4 March 2004, Fomin V.M., the prosecutor of the Pskov regional prosecutor office, overruled the 13 February 2004 decree refusing to open a criminal investigation and ordered a new investigation.⁴³ The prosecutor accepted the applicants' argument that the investigation so far

³⁴ See the Document 14

³⁵ See the para. II.20, II.21

³⁶ See the Document 25

³⁷ See the Document 15

³⁸ See the Document 16

³⁹ See the Document 17

⁴⁰ See the Document 18

⁴¹ See the Document 22

⁴² See the Document 19

⁴³ See the Document 20

had been groundless and incomplete, and ordered the investigator to consider the results of the additional medical expert opinion.⁴⁴

II.22. On 12 March 2004, the investigator of the Pskov Prosecutor's Office, Tsiplakova O.A., for the third time refused to initiate a criminal investigation. He stated that he could not find any link between the actions of the police officers and the death. As there were no other suspects, and according to the investigator of the Pskov prosecution office, all possible evidence had been gathered without any proof of responsibility, he issued a decree again refusing to open a criminal investigation.⁴⁵ The applicants received the decree by mail on 2 April 2004.⁴⁶ No witnesses from the applicants' side had been invited to give evidence.

II.23. The medical expert's second opinion⁴⁷, which was made by the same expert K. Ishchenko, who had made the first report, was dated on 12 March 2004. It stated that according to the latest medical examination, the trauma to the body occurred at one time and a couple of days before death, likely around 20 May 2002. The trauma could have resulted from a fall because of the condensed localization and great magnitude of the injury. During the inspection of the corpse there were no signs of a multi-phased fall and no contact with any other objects was seen. On his second opinion,⁴⁸ the expert also stated the following has been found:

II.23.1. The external examination found:

- *A green bruise of the left eye 3 by 5 cm;*
- *A green bruise of the right forearm 10 by 5 cm;*
- *In the area of the proximal phalanx of the second finger of the left hand on the back surface there is an abrasion 5 by 2 cm. All the above-mentioned abrasions are of undetermined forms, covered with brown scabs, higher than the level of the surrounding skin.*⁴⁹

II.23.2 The internal examination found:

- *In the area of the left parietal protuberance on a border of frontal and parietal areas on the left there is haemorrhage into soft parts on the area of 8 by 7 cm;*
- *In the temporal and parietal lobes of the right cerebral hemisphere on the area of 7 by 6 cm in the cerebral cortex there are merging haemorrhages varying in size from dots to 1 by 1 cm.;*
- *The kidneys are 10 x 5,5 x 4,5 cm; the left kidney is saturated with blood. Under capsule of the right kidney on the back surface there are blood clots about 10,0 ml.*
- *While examining the skeleton the following was found out: fractures of neck of the 12th left rib, fractures of the left protrusions of three lumbar vertebrae. In the area of the fractures the soft parts are saturated with blood.*⁵⁰

II.23.3 The conclusion of forensic examination: catastrophic trauma: *haemorrhage into soft parts of the head with the brain injuries; fracture of the 12th left rib; fractures of the left protrusions of three lumbar vertebrae; sub capsular rupture of the left kidney; bruising of the left eye, right forearms; and abrasions of the limbs.*⁵¹

⁴⁴ See the Document 20

⁴⁵ Based on Article 24, para.1, p.1 of the Criminal Procedure Code of the Russian Federation;

⁴⁶ See the Document 25

⁴⁷ See the Document 16

⁴⁸ See the Document 16

⁴⁹ See the Document 16

⁵⁰ See the Document 6

⁵¹ See the Document 16

II.24. On 26 October 2004, the applicants filed a complaint with Pskov City Court against the resolution failing to initiate a criminal investigation issued 12 March 2004 by O. Tsiplakova. The complaint also alleged that the prosecutor from Pskov Prosecutor's Office did not file any requests for an investigation and did not present any facts to the Court. On the prosecutor Tsiplakova's O. suggestion, the case was adjourned without a date for a substantive hearing being fixed.

II.25. The hearing requested by the applicants on 26 October 2004 was scheduled to take place on 13 May 2005. Because the authorities had been interfering with attempts to obtain evidence the applicants had no option but to seek a further adjournment in order to obtain medical records and documents and a report from the emergency room in Pskov region and expert consideration of these. Consequently the hearing was postponed until 6 June 2005.

II.26. On 6 June 2005 in the Pskov City Court the hearing took place and the requested medical documents were received, but the Court rejected the applicants' complaint against the resolution to not initiate a criminal investigation that had been issued on 12 March 2004.

II.27. The applicants appealed the decision of the Pskov City Court. In their appeal the applicants respectfully stated that the medical documents such as the deceased's medical records were not sent to the expert. The medical history sheet is not mentioned in the investigator's report dated 13.02.2004 about the additional forensic expertise, nor is it mentioned in the descriptive part of the additional expert's report.

II.28. According to the conclusion of the first medical report⁵² the bodily injuries had probably been inflicted by a blunt object; effectively contradicting the second opinion.⁵³ The same expert made both medical reports.⁵⁴ The second report did not answer the most important and essential question⁵⁵ that he was asked,⁵⁶ "If there had been any injuries caused by anything but not falling and what had been the mechanism of their formation?" The Pskov City Court⁵⁷ found that the second expert report had not answered this question; however, the Court considered that the question did not need to be answered because the answer to this question, if all the injuries had been caused at the same time, described both the mechanism of formation of body injuries and their character.

II.29. The applicants appealed the Pskov City Court decision on 27 June 2005. On 13 July 2005 the Pskov Regional Court took a decision to reject the Pskov City Court decision and sent the materials for new judicial inquiry to the same Pskov City Court but to another judge. Pskov Regional Court noted that rejecting the Klein's complaint the court did not take into account cited circumstances, did not take into consideration the fact that police officers are responsible for life and health of people forcibly taken to a police department.

II.30. The Court noted that in this case the deceased had not come to the police department in Pskov Oblast herself but had been forcibly taken there and in fact for about 3 hours had been

⁵² See the Document 6

⁵³ See the para. II.13, II.23

⁵⁴ See the para. II.23

⁵⁵ See the Document 16

⁵⁶ See the Document 19, question number 3.

⁵⁷ See the Document 30

detained. An investigator did not give any legal opinion on this fact that is why the resolution on rejection of redress of grievance of Klein cannot be considered as legitimate and reasonable.

II.31. On 29 July 2005 during the new court hearing in the Pskov City Court the Prosecutor's resolution on rejection of initiation of proceeding was considered groundless by the judge and the case again was sent to the Pskov Prosecutors Office for investigation.

III. RELEVANT DOMESTIC LAW

III.1. The applicants have attached the relevant domestic legislation as Document 25.

1. Section 42, 123, 124 and 125 of the Criminal Code of the Russian Federation.
2. Section 108, 112, 116 para. 25, 143, 144, 146 and 150 of the Criminal Procedure Code of Russian Federation.

IV. STATEMENT OF ALLEGED VIOLATIONS OF THE CONVENTION AND OF RELEVANT ARGUMENTS

IV.1. The applicants respectfully submit that this case discloses clear violations of a number of rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (“The Convention”) in particular, of Article 2, Article 3, Article 13 and Article 14 read together with Article 2, 3, and 13.

IV.2. The applicants further submits that these violations of the Convention should be considered in the light of endemic discrimination and police abuse to which the Roma in Russia have been subjected, on a continuing basis and with impunity, for a very long time.⁵⁸

Violation of Article 2

IV.3. In view of the facts of the case, the applicants submit that:

- a) **The deceased died as a result of intentional mistreatment by the police, violating her right to life, which is a violation of the article 2 of the ECHR. (Substantive)**
- b) **The State authorities failed adequately to undertake a thorough and effective investigation into the circumstances surrounding her death in violation of Article 2. (Procedural)**

Claim a)

Concerning the claims a) and b) under Article 2 the applicants submit the following facts:

IV.4. From the moment of her unlawful arrest until her body was found three stores down from the window, the deceased was not free to leave the police custody. The deceased had been informed that nothing serious is going to happen according to police officer Ivanov.⁵⁹

IV.5. The deceased was healthy and did not have visible bruises at the time she first entered the police station on the morning of 20 May 2002.⁶⁰ The testimonies of the witnesses⁶¹, the police officers who observed the deceased up to and including the moment of her detention, are consistent in this one respect: prior to her detention she was in apparently sound condition, showing no sign of any health problems and no visible bruising. The questioning officer Ivanov testified that the deceased had a stomach-ache, but from his statement it is clear that this was not

⁵⁸ See the para. IV.108, IV.103-IV.106

⁵⁹ See the Document II.10

⁶⁰ See the Document 26

⁶¹ See the Document 26 and the Document 27

prior to the moment of arrest but during the interrogation at the police station.⁶² The inconsistencies between the two medical reports by the same expert require explanation.⁶³

IV.6. Although the case was returned several times for additional investigation, the investigator has not addressed the allegations that the deceased was ill-treated by police officers. Neither did he address the events leading up to her death. He did not ask: whether the deceased jumped from the window in order to escape the torture or other ill-treatment to which she was being subjected; whether she was trying to escape (notwithstanding that she was shortly due to be released); or whether she was pushed through the window by one or more police officers. The applicants consider that the investigation into the death of their wife and mother has been woefully inadequate and that the authorities have failed to undertake an effective investigation into the circumstances surrounding her death.

IV.7. Under the Russian Criminal Procedural Code (CPC), in force at that time and guided by section 2, article 112, the prosecutor [...] is obliged within the scope of his competence to initiate a criminal investigation. Under Article 25, 116 CPC, prosecutors must abide by procedures for the fair initiation of a criminal action, and are obliged at all stages of criminal legal proceedings, in due time, to take measures stipulated by law to eliminate all infringements of the law. The prosecutor supervises the legality of the initiation and implementation of a criminal case [...]. In case of an unfounded refusal to initiate action, the prosecutor by a resolution can abolish the investigator's decision. The basis for initiating an investigation consists of having enough evidence that points to suspicion that a crime has taken place. This case is an example of an unfounded refusal. The applicants presented a *prima facie* case of serious criminality that should have formed the basis for an investigation.

In support of their claim under a) the applicants rely on the following jurisprudence:

IV.8. The clear and unequivocal judicial standards that have been applied to the protection of Article 2 rights are in keeping with the pre-eminence of the right to life in other relevant conventions and instruments. Article 3 of the Universal Declaration on Human Rights, for the example, provides: "*Everyone has a right to life*". That right was confirmed by the International Covenant on Civil and Political Rights on 16 December 1966.⁶⁴

IV.9. Article 2 of EHRC requires that the relatives of those who have died must be regarded as "victims" within the meaning of article 34 of the Convention.⁶⁵

IV.10. "The Court has noted repeatedly that Article 2 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 in [the] Convention"⁶⁶, protects one of the most fundamental rights of the Convention, the right to life".⁶⁷

⁶² See the Document 27

⁶³ See the para. II.27; II.28

⁶⁴ The European Court has held that the convergence of the above-mentioned instruments is significant: "It indicates that the right to live is an inalienable attribute of human beings and forms the supreme value in the hierarchy of human rights".

⁶⁵ *W v UK* Application no 9360/81, 32 D.R. 211.

⁶⁶ *Kaya v. Turkey*, (158/1996/777/978), Judgment, 19 February 1998, para. 86.

⁶⁷ *McCann and others v. UK*, para. 147, (1995).

IV.11. The first sentence of Article 2 (1) enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.⁶⁸ This obligation may involve the provision of information regarding a possible risk to life caused by actions of the State.⁶⁹ Equally the State is under an obligation to take particular steps to protect certain categories of people who are known to be vulnerable [...] including ethnic minorities⁷⁰ [...] and women. [...].⁷¹

IV.12. "The Court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of State agents but also all the surrounding circumstances. Detained persons are in a vulnerable position and the authorities are under a duty to protect them."⁷²

IV.13. In *Osman v UK*⁷³ The Court also emphasized the vulnerable position of prisoners and the duty of the authorities to protect them.

IV.14. In *Tomasi v. France*, the Court affirmed that, "where an individual is taken into police 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 as to the cause of the injury"⁷⁴.

IV.15. In *Ribitsch v. Austria*, the Commission reaffirmed and applied the reasoning "that a State was morally responsible for any person in detention, since he was entirely in the hands of the police"⁷⁵. "The Court reiterates that, under the Convention system, the establishment and verification of the facts is primarily a matter for the Commission"⁷⁶.

IV.16. The Court stated, "The states are also under a positive obligation to provide proper medical treatment to those detained."⁷⁷

IV.17. With regard to the standard to be applied in *Yasa v Turkey*⁷⁸ the Court stated, "Where an individual dies in custody, the state is under a burden to provide a satisfactory explanation. In the absence of such an explanation, the Convention organs will conclude that the death occurred as a result of the facts or omissions of the state authorities"⁷⁹.

⁶⁸ *LCB v UK* (1998) 27 E.H.R.R. 212 para.36.

⁶⁹ *LCB v UK* (1998) 27 E.H.R.R. 212 para 36-41.

⁷⁰ *Menson v UK* (2003) 37 E.H.R.R. CD 220.

⁷¹ *MC v Bulgaria*, 15 B.H.R.C. 627.

⁷² Case of *Aktas v Turkey*, Application no. 24351/94, Judgment 24 April 2003, para.290; *Salman v. Turkey* [GC], no. 21986/93, para. 87, ECHR 2000-VII; and *Velikova v. Bulgaria*, no. 41488/98, ECHR 2000-VI

⁷³ (1998) 29 E.H.R.R.245 paras 115-116.

⁷⁴ *Tomasi v. France*, Judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, paras. 108-111.

⁷⁵ *Ribitsch v. Austria*, para. 31.

⁷⁶ *Ribitsch v. Austria*, para.32.

⁷⁷ *Mc Feeley v UK* (1981) 3 E.H.R.R. 161.

⁷⁸ (1999) 28, E.H.R.R. 408 para. 2438; See also *Kaya v Turkey* (1999) 28 E.H.R.R. 1 (para.78).

⁷⁹ *Salman v Turkey* (2002), (Comm. Rep. March 1, 1999), Judgment, 27 June 2000, death in custody, para 34; See also *Aksoy v Turkey* (1997) para. 61; *Cackici v Turkey*, Application no. 23657/94; *Tanrikulu v Turkey*, Application no 23763/94; (2000) para.70, *Jordan v UK*, 2001para. 103; *McShane v UK*, para. 92, (2002).

IV.18. The Convention case law holds that the authorities must take appropriate care to ensure that any risk to life is minimized. The Court must examine whether the authorities were not negligent in their choice of action.⁸⁰

The conclusion under the claim a)

IV.19. In view of the facts of the instant case and the above-cited jurisprudence, the applicants submit that the Russian authorities failed in their duty to ensure no harm came to anyone in custody. The deceased died in police custody, and in spite of a positive duty to do so, no explanation has been forthcoming from the police to rebut the inference that she died due to unlawful and deliberate use of force by police officers. Thus, there was a violation of her right to life, which guarantees that law enforcement agencies of the High Contracting Parties will use force "no more than absolutely necessary" and for very limited purposes. Thus, the use of force by police officers against a woman suspected (on racist grounds) of a non-violent offence was in violation of Article 2.

IV.20. The deceased had a number of bruises, which were caused in custody. Bruises and cigarette burns on her body justify a suspicion that she was tortured (or at least physically mistreated) in the police custody. No plausible explanation for injuries to her body has been given by the Russian authorities. The applicants ask the Court to note that this case reflects a systematic pattern of police misconduct in the Pskov region⁸¹ of the Russian Federation.

Claim b)

In support of their claim under b) the applicants rely on the following jurisprudence:

IV.21. Effective protection of the right to life includes a procedural element,⁸² amounting to an obligation on the authorities to investigate any death of which they are aware, irrespective of how they found out about the death,⁸³ where the State agents were involved,⁸⁴ or the circumstances surrounding the death require such an investigation.⁸⁵ This procedural obligation to investigate is not confined to circumstances in which an individual has lost his life as a result of an act of violence.⁸⁶

IV.22. The system of investigation must be at least as effective where it is alleged that agents of the State were involved in the killing or death.⁸⁷ The investigation must also be effective in the sense

⁸⁰ See *McCann and Others v. the United Kingdom*, Judgment of 27 September 1995, Series A no. 324, pp. 45-46, para.146-50 and p. 57, para. 194, *Andronicou and Constantinou v. Cyprus*, Judgment of 9 October 1997, Reports of Judgments and Decisions 1997-VI, pp. 2097-98, para. 171, p. 2102, para. 181, p. 2104, para. 186, p. 2107, para. 192 and p. 2108, para. 193; *Hugh Jordan v. the United Kingdom*, no. 24746/95, ECHR 2001-III.

⁸¹ The *Northern-Western Centre of Social and Legal Protection of Roma (NWCSLPR)* "THE ROMA OF RUSSIA: The subject of multiple forms of discrimination international fact-finding mission", November 2004.

⁸² *McCann v UK* (1996) 21 E.H.R.R. 97 (Comm. Rep., para. 193, Court Judgment, para.161).

⁸³ *Egry v Turkey* (2001) 32 E.H.R.R. 18 para 82; *Salman v Turkey* (2002) 34 E.H.R.R. 17 para.105; *Jordan v UK* (2003) 37 E.H.R.R. 2 para. 105.

⁸⁴ *Yasa v Turkey* (1999) 28 E.H.R.R. 408; *Kaya v Turkey* (1998) 28 E.H.R.R. 1; *Cakici v Turkey*, Judgment of 8 July 1999 para 87.

⁸⁵ *Gulec v Turkey* (1998) 28 E.H.R.R.121.

⁸⁶ *R. (Sacker) v West Yorkshire Coroner* [2004] 1 W.L.R. 796 (concerning state negligence in relation to a suicidal prisoner); *McShane v UK* (2002) 34 E.H.R.R.23.

⁸⁷ *McCann v UK* (1996) 21E.H.R.R. 97 paras. 191 -193.

that it is capable of leading to a determination of whether the force used was or was not justified in the circumstances and to the identification and punishment of those responsible.⁸⁸ The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eyewitness testimony and forensic evidence. The investigation's conclusions must be based on thorough, objective and impartial analysis of all relevant elements and must apply a standard comparable to the “no more than absolutely necessary” standard required by Article 2 para. 2 of the Convention. Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required measure of effectiveness.⁸⁹

IV.23. Article 1 of the Convention read together with the articles guaranteeing substantive rights, requires governments not only to refrain from violating rights guaranteed under the Convention, but also to undertake appropriate measures and provide effective remedies for such violations. The failure properly to investigate a death will constitute a violation by the State of its obligation under Article 2 of the Convention.⁹⁰

IV.24. The obligation to ensure everyone's right to life is “protected by law” includes a procedural aspect.⁹¹

IV.25. “[i]n the event of injuries being sustained during police custody, it was for the government to provide evidence establishing facts which cast doubts on the account of events given by the victim, particularly if this account was supported by medical certificates”.⁹²

IV.26. The Court reiterates that the obligation to protect the right to life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention to “secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, *inter alia*, agents of the State.” The essential purpose of the investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving state agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigator procedures.⁹³

⁸⁸ *Öğür v. Turkey* [GC], no. 21954/93, ECHR 1999-III Para.88.

⁸⁹ *Kelly and Others v. the United Kingdom*, no. 30054/96, para. 96-97, 4 May 2001; and *Anguelova v. Bulgaria*, para.139 and 144; see also *Nachova and others, Applications nos. 43577/98 and 43579/98*, 6 July 2005 para.113.

⁹⁰ *Yasa v Turkey* (1998) E.H.R.R.408; In *McCann v UK* the Court did not find it necessary to decide what form such as an investigation should take, since it considered the public inquest that had taken place into the deaths and the circumstances surrounding the killings to have been sufficiently thorough, impartial and careful; (1996) 21 E.H.R.R. 97 paras 162- 163.

⁹¹ *McCann v UK* (1996) 21E.H.R.R. 97 para. 193.

⁹² *Ribitsch v. Austria* para. 34 (concluding that “the Government have not satisfactorily established that the applicant's injuries were caused otherwise than [...] entirely, mainly, partly...by the treatment he underwent while in police custody”).

⁹³ See, *mutatis mutandis*, the *McCann and Others* Judgment, cited above, para. 161; *Kaya v. Turkey* Judgment of 19 February 1998, Reports 1998-I, para. 105.

IV.27. "The government has a responsibility to demonstrate that its agents did not cause the victim's death".⁹⁴

IV.28. The requirement of an effective investigation is further set forth in the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions⁹⁵ which states that there shall be a thorough, prompt and impartial investigation of all suspect cases of extra-legal, arbitrary and summary executions [...] Article 10 through 17 of the same instrument; establish a number of safeguards to ensure as effective investigation are carried out.

IV.29. In the instant case the Russian Judicial authorities failed to comply with their obligation under Article 2 of the ECHR and the UN Principles on Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. The applicants contend that the investigation in the instant case has been plagued by a number of omissions, which left unanswered some of the most glaring questions surrounding the death of their wife and mother. Their right to moral and material damages was violated, which could be requested only after the lawful investigation was conducted.⁹⁶

IV.30. Nor did the prosecution authorities address the questions surrounding the deceased's detention. The detention was unlawful, without an order of authorization and the police officers unlawfully failed to record the detention in the police registry. The measures taken by the investigating authorities after the death were limited to formalities, which did not satisfy the requirements described in the Russian Criminal Procedure Code. The formalities were limited to local officials questioning the police officers involved in the arrest. This shows a lack of objectivity and impartiality.⁹⁷

IV.31. The refusal of the Prosecution Office to open a criminal investigation was based solely on the testimony of the police officers. According to their allegations the deceased jumped from the window in the absence of witnesses and no other person caused her fall. The investigating authorities could not properly have accepted this without a thorough independent and impartial criminal investigation that considered the evidence of all possibly material witnesses, together with all possibly material medical evidence.⁹⁸ No such investigation has ever taken place. With the passage of time the possibility of a satisfactory investigation diminishes.

IV.32. The prosecution never asked the police officers to explain the reason for the alleged fall from the window or whether the police officers had in any way caused this. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished.⁹⁹

⁹⁴ *Arthur Hilton v. UK*, Application No. 5613/72, Decision of 2 March 1976

⁹⁵ "UN Principles on Prevention and Investigation of Executions", cited in the Court's *McCann* judgment Article 9 of the UN principles on Prevention and Investigation of Executions require that "

⁹⁶ See Article 42 of the Criminal Procedural Code of RSFSR.

⁹⁷ See the case *Akkos v Turkey*, (Com rep.) 100 October 2000, (about inadequate forensic medical exam).

⁹⁸ See the para. IV.7.

⁹⁹ See *Öneriyi İdi z v. Turkey* [GC], no. 48939/99, para. 91, ECHR 2004, *mutatis mutandis*, *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, para. 54, ECHR 2002-II, see also *Trubnikov v Russia*, Application no. 49790/99 para. 85.

IV.33. The State is obliged to investigate a death in police custody. Effective protection of the right to life includes a procedural element¹⁰⁰, amounting to an obligation on the authorities to investigate any death of which they are aware, irrespective of how they found out about the death¹⁰¹, whether State agents were involved, or the circumstances surrounding the death¹⁰².

IV.34. In the case of *Taş v. Turkey*, “[...] the Court would observe that it is incumbent on the competent authorities to ensure that persons in detention enjoy the safeguards accorded by law and judicial process. The lack of any reaction to a report that the security forces had “lost” a person detained on suspicion of committing serious offences is incompatible with this obligation”.¹⁰³

IV.35. The Court elaborated on the precise contours of the domestic remedy that must be afforded: “[W]here an individual has an arguable claim that he has been tortured by agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for complainant to the investigation procedure.”¹⁰⁴

IV.36. In the *Salman v. Turkey* the Court states that “[t]he burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation¹⁰⁵ why the victim died’. Also in the case of *Nachova and others* the Grand Chamber considers that “any evidence of racist verbal abuse being uttered by law enforcement agents in connection with an operation involving the use of force against persons from an ethnic or other minority is highly relevant to the question whether or not unlawful, hatred-induced violence has taken place. Where such evidence comes to light in the investigation, it must be verified and – if confirmed – a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives.”¹⁰⁶

IV.37. States have a general obligation under Article 2 of the Convention to conduct an effective investigation in cases of deprivation of life. That obligation must be discharged without discrimination, as required by Article 14 of the Convention. The Court reiterates that where there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence. Compliance with the State's positive obligations under Article 2 of the Convention requires that the domestic legal system must demonstrate its capacity to enforce criminal law against those who unlawfully took the life of another, irrespective of the victim's racial or ethnic origin.¹⁰⁷

¹⁰⁰ *McCann v UK* (1996) Judgment, para. 161” amounting to an obligation to the authorities to investigate any death of which they are aware, irrespective of how they found out about the death, whether the state agents were involved, or the circumstances surrounding the death”.

¹⁰¹ *Egri v Turkey* (2001) para. 82; *Salman v Turkey* (2002) para.105; *Jordan v UK* (2003) para.105.

¹⁰² *Gulec v Turkey* (1998) para. 121.

¹⁰³ *Taş v. Turkey* no. 24396/94, para. 69, 14 November 2000.

¹⁰⁴ *Ibid*, Para.98

¹⁰⁵ See *Salman v. Turkey* [GC], no. 21986/93, para. 100, ECHR 2000-VII

¹⁰⁶ *Nachova and others v Bulgaria, Applications nos. 43577/98 and 43579/98, Judgment 6 July 2005, para.164*

¹⁰⁷ See *Menson and Others v. the United Kingdom*, no. 47916/99.

IV.38. In *Nachova v. Bulgaria, supra*, the Court considers that when investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention.¹⁰⁸

IV.39. The Grand Chamber in *Nachova* would add that the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 2 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2 to secure the enjoyment of the right to life without discrimination.

Conclusion under Claim b)

IV.40. In view of the facts of the instant case and the above cited case law, the applicants respectfully submit that the Russian investigative authorities failed adequately to undertake a thorough and effective investigation into the circumstances surrounding the death, which also violated a right to moral and material damages, which could be requested only after the lawful investigation was conducted.

IV.41. In light of the foregoing, the applicants maintain the position that the prosecution authorities have not complied with their obligations under the law. They have left fully unanswered a series of questions concerning the conduct of the police during the detention of the deceased. In so doing, they have failed to provide a plausible explanation for failure to investigate the case.¹⁰⁹ The failure properly to investigate a death will constitute a violation by the state of its obligation under Article 2 of the Convention.

¹⁰⁸ See, *mutatis mutandis*, *Thlimmenos v. Greece* [GC], no. 34369/97, para. 44, ECHR 2000-IV.

¹⁰⁹ See the para. IV.31.

Violation of Article 3 of the ECHR

IV.42. In view of the facts of the case, the applicants submit the following:

- a) During the arrest and subsequent detention the deceased was submitted to acts of police brutality inflicting on her great physical and mental suffering amounting to torture, inhuman and/or degrading treatment or punishment (substantive violation), and
- b) That with respect to the incident at issue, the Russian investigative and prosecuting authorities have simply failed to proceed with a prompt, comprehensive and ultimately effective official investigation (procedural violation).

Claim a)

Concerning the claims a) and b) under Article 3 the applicants submit the following facts:

IV.43. The applicants allege that at the police station, following her arrest the deceased suffered ill treatment contrary to Article 3 of the Convention. She was exposed to acts of police brutality and great mental suffering. She, at the time of the arrest, did not complain of any health problems and did not have visible bruises or burns. However after approximately two hours at the police station, police officer Ivanov reported, later she was complaining of pain in the stomach.¹¹⁰ Either she was ill, or she was beaten and tortured. If she was ill, the police are mandated to give her assistance. The applicants allege that in spite of the deceased's obvious need for medical assistance, the police officers did not provide her with medical assistance, which caused her pain and suffering in violation of Article 3. If she was beaten and tortured, the police have violated Article 3. However the failure of the investigation and the refusal to gather proper and sufficient medical evidence has prevented the applicants from establishing the correctness of either or both possibilities. The burden of proof lies with the State, which is obliged to prove that the deceased did not suffer torture or beating.¹¹¹

IV.44. The applicants' relatives state that they saw the corpse of deceased.¹¹² They state that the deceased had numerous bruises on her body on the inner surface of her hips, bruises at the bottom of her stomach, big bruises under her eyes, a green bruise on the left eye, hecatombs on the hands, bruises at the area of the forearms and burns caused by cigarettes.¹¹³ These injuries are consistent with torture.¹¹⁴

IV.45. The facts¹¹⁵ establish that the injuries were inflicted while the deceased was in police custody following her racism-based apprehension and arrest.

IV.46. According to the conclusion of the first medical report, which was completed on 10 June 2002 the deceased died as a result of cerebral trauma and numerous bodily injuries.¹¹⁶

¹¹⁰ See the para. IV.5.

¹¹¹ *Tomasi v France* 1992 15 E.H.R.R. 1 (Com Rep. Para.31)

¹¹² See the para. II.11.

¹¹³ See the para. II.11.

¹¹⁴ See the Document 26.

¹¹⁵ See the para. II.1 - II.28.

¹¹⁶ See the para. II.28, IV.5.

IV.47. The investigation did not address the source of the injuries, despite the fact that these were inconsistent with injuries caused by a fall.¹¹⁷ The deceased was detained and transported to the police precinct at 8:30, as indicated by Ivanov's report made on 20 May 2002. Her body was allegedly found on the pavement at 11:20, as indicated by the report of the head of police office Mr. Kolosov on 20 May 2002 and from the investigation of the scene report. The report indicates 11:31 as the time when injuries were sustained.

IV.47.1. Applicants also rely on the facts previously stated in Paragraphs II.12-22, II.24-27, II.29 and II.31 in support of the claim of a violation of Article 3 of the Convention (procedural).

IV.48. The applicants respectfully submit that being of Romani ethnicity, and as such a member of a particularly vulnerable minority, can only have served to reinforce the deceased's feelings of degradation, utter helplessness and lack of any legal protection.¹¹⁸ They further submit that consequently the abuse suffered by the deceased must have risen to the level of ill treatment required for a violation of Article 3 of the Convention.

In support of their claim under a) the applicants rely on the following jurisprudence:

IV.49. Article 3 is intended to protect an individual's dignity and physical integrity¹¹⁹ and is primarily aimed at preventing States from subjecting individuals within their jurisdiction to mistreatment.

IV.50. *Ireland v. UK*¹²⁰ makes clear that Article 3 prohibits both physical injury and mental suffering. The terms used in Article 3 are defined as follows:

IV.50.1. "Torture" the distinction between inhuman and degrading treatment and torture in Article 3 derives primarily from the intensity of the suffering inflicted,¹²¹ a distinction that is also recognized in the 1984 United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

IV.50.2. In *Selmouni v France*¹²² the Court reiterated that: In order to determine whether a particular form of ill treatment should be qualified as torture, the Court must have regard to the distinction, embodied in Article 3 between this notion and that of inhuman and degrading treatment. As the European Court previously found, it appears that it was the intention that the convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering. The *United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* (UN Convention)¹²³, also makes such a distinction, as can be seen from Articles 1¹²⁴ and 16.¹²⁵

¹¹⁷ See the para.II.28.

¹¹⁸ Russian Country Report "In search of Happy Gypsies" European Roma Rights Center, May 2005.

¹¹⁹ *Trier v UK* (1978) 2 E.H.R.R. 1 para. 38.

¹²⁰ *Ireland v. UK*, A-25 (1978).

¹²¹ *Ireland v UK* (1978) 2 E.H.R.R.25 (para. 167).

¹²² (2000) 29.

¹²³ Which entered into force on 26 June 1987.

¹²⁴ [...] 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected or having committed, or intimidating or coercing him or third person, for any reason based of discrimination of any kind, when such pain or suffering is inflicted by or at

IV.50.3. “*Inhuman*” Suffering must attain a particular level before treatment or punishment can be classified as inhuman.¹²⁶

IV.50.4. “*Degrading*” In considering whether “*punishment*” or *treatment is “regarding”* with the meaning of Article 3, regard will be had to “whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned it adversely affected him or her personally in a manner incompatible with Article 3”.¹²⁷ Treatment or punishment of an individual may be said to be degrading if it is grossly humiliates him before others or drives him to act against his will or conscience.¹²⁸

IV.50.5. “*Inhuman and degrading*” The treatment can be both “*Inhuman*” when it was premeditated, was applied for hours at a stretch and “caused, if not actual bodily injury at least intense physical and mental suffering”, and also “*degrading*” because it was such as to arouse in [its victims] feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance”.¹²⁹

IV.50.6. As the European Commission explained in the *Greek case*, “the notion of inhuman treatment covers at least such treatment as deliberately causes severe suffering, mental or physical, which in particular situation, is unjustifiable [...] treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience”.¹³⁰

IV.51. In addressing the requisite level of harm, which must occur in order to amount to a violation of Article 3, in *Ireland v. UK*, the Court held that “ Ill treatment must held a minimum level of severity... The assessment of this minimum is in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the things, its physical or mental affects and in some cases, the age, sex, and state of health of the victim, etc.”¹³¹

the instigation of or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.¹²⁴

¹²⁵ Each state party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman and degrading treatment or punishment which do not amount to torture as defended in article 1, when such as act are committed by or at the investigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, In particular, the obligation contained in Articles 10, 11,12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment. In the case of *Selmouni v France*, the Court relied upon article 1 of the United Nations Convention to determine whether the treatment at issue constituted “torture” for the purposes of Article 3.

¹²⁶ *Tyrer v UK* (1978) 2 E.H.R.R. 1 (para. 29).

¹²⁷ *Raninen v Finland* (1997) 26 E.H.R.R. 563 (para.55); *Albert and Le Compte v Belgium* (1983) 5 E.H.R.R. 533 (para.22) E.H.R.R. 403.

¹²⁸ The *first Greek case* 12 Y.B.1; Comm. Rep. CM Res. DH (70).

¹²⁹ *Ireland v UK* (1978) 2 E.H.R.R.25 (para. 167); See also *Rivas v France*, Application No. 59584/00, Judgment of April 1,2004 (para. 42).

¹³⁰ Report of 5November of 1969, year book XII; the *Greek case* (1969) para.186.

¹³¹ Judgment of 18 January 1978, EHRR25, para.162 (see also *Aydin v. Turkey*, Judgment of 25 September, 1997, para. 84; *Tyrer v. United Kingdom*, 2 EHRR 1 (1978) para. 30; *Costello- Roberts v. United Kingdom*, 19 EHRR 112 (1993), paras.26-28.)

IV.52. Also in *Ireland v. UK*, the Commission held that “where the alleged victim of physical abuse is in the custody of government forces at the time, the government bears the burden of showing that its agents were not responsible for the resulting injuries”.¹³²

IV.53. Discrimination on grounds of race could never be justifiable under Article 14. Indeed, in *East African Asians v UK*,¹³³ the Commission considered that the race discrimination could itself constitute degrading treatment contrary to Article 3.¹³⁴ In *Cyprus v Turkey*¹³⁵ The Turkish government was found to violate Articles 2, 3, [...] in conjunction with article 14, in so far as less favourable treatment had been directly entirely at the Greek Cypriot community resident in the Turkish Republic of Northern Cyprus.

IV.54. In *Arthur Hilton v. United Kingdom*, the Commission noted that “The author’s allegation of assault, abuse, harassment, victimization, racial discrimination and the like raise an issue under Article 3 of the Convention [...]”¹³⁶ The court also states in the case of *Moldovan and others v Romania* that “the racial discrimination to which they have been publicly subjected [...] constitute an interference with their human dignity which, in the special circumstances of this case, amounted to “degrading treatment” within the meaning of Article 3 of the Convention.”¹³⁷

VI.55. A given level of physical abuse is more likely to amount to degrading and/or inhuman treatment or punishment when it is racially motivated and/or coupled with racial epithets, than such animus or statements are absent.¹³⁸

IV.56. In *Rabitsch v. Austria* the ECHR held “that a State was morally responsible for any person in detention, since he was entirely in the hands of the police”.¹³⁹ An acquittal in the criminal proceedings does not absolve the State from its obligations under the Convention.

IV.57. Where an individual has sustained injuries in the course of arrest or during a period of detention, it is for the state to prove that they were not caused by its servants or agents, or it did not amount to treatment contrary to Article 3.¹⁴⁰

Conclusion under Claim a)

IV.58. In view of the facts of the instant case as well as the above-cited jurisprudence, the applicants submit that the victim was tortured and suffered inhuman and degrading treatment and punishment, which can be proved by the injuries sustained by the victim while in custody¹⁴¹.

¹³² *Ireland v. UK*, B 23I Commission Report pp. 412-413 (1976).

¹³³ Application Nos. 4403/70 et al.; (1973) 3 E.H.R.R. 76.

¹³⁴ Application Nos. 4403/70 et al.; (1973) 3 E.H.R.R. 76 (Comm. Op, para.207); See also *Moldovan and others Applications nos. 41138/98 and 64320/01*, para.111.

¹³⁵ *Cyprus v Turkey* (1976) 4 E.H.R.R. 482 para.503.

¹³⁶ *Arthur Hilton v. UK*, Application No. 5613/72, Decision of 2 March 1976.

¹³⁷ *Moldovan and others v Romania*, Applications nos. 41138/98 and 64320/01 Judgment 12 July 2005 para.113.

¹³⁸ *Menson v. UK, Patel v. UK*; See also *Moldovan and others v Romania, Applications nos. 41138/98 and 64320/01* para. 113.

¹³⁹ *Rabitsch v. Austria* Judgment of 04 December 1995, para. 31.

¹⁴⁰ *Labita v Italy* Application No.267721/95, Judgment 6 April 2000 and *Akkos v Turkey* 2002 34 E.H.R.R. 51

¹⁴¹ See the para. II.11, II.23.

IV.59. In addition, the applicants respectfully submit that in evaluating their Article 3 claims the Court should take into account the deceased's Romany ethnicity. Her membership in a discrete and historically disadvantaged minority rendered her particularity vulnerable to torture, inhuman and /or degrading treatment or punishment. State agents of a mind to abuse their powers and to mistreat the deceased would have had every reason to believe that this would not be investigated or punished.

Claim b)

In support of the procedural claim under b) the applicants rely on the following jurisprudence:

IV.60. The Court has recognized the difficulties of proof, which confront applicants claiming torture, and/or inhuman and degrading treatment or punishment and failure to investigate under Article 3 of the Convention.¹⁴² The government has an obligation to carry out a prompt, thorough investigation.

IV.61. The European Commission of Human Rights also held that, where the alleged victim of physical abuse is in the custody of government forces at the relevant times, the government bears the burden of showing that its agents were not responsible for the resulting injuries.¹⁴³

IV.62. The Court has stated in the judgment of *Assenov and others v. Bulgaria* that “where an individual raises an arguable claim that he has been seriously ill treated by the police or other such agents of the State unlawfully and in breach of Article 3, 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. This investigation, ...should be capable of leading to the identification and punishment of those responsible ... If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance [...] would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.”¹⁴⁴

IV.63. In the case of *Aksoy v. Turkey* the Court affirmed that “Where an individual is taken into police 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 as to the causing of the injury.”¹⁴⁵

IV.64. Again, in *Rabitsch v. Austria*, the Court held as follows: “It is not disputed that ... [the applicant’s] ... injuries were sustained during his detention in police custody... while he was entirely under the control of police officers. Police Officer acquittal in the criminal proceedings by a court bound by the principle of presumption of innocence does not absolve Austria from its responsibility under the Convention. The Government was accordingly under an obligation to provide a plausible explanation of how the victim’s injuries were caused. But the Government did no more than refer to the outcome of the domestic criminal proceedings, where the high standard of proof necessary to secure a criminal conviction was not found to have been satisfied. It is also

¹⁴² *Aksoy v. Turkey*, Judgment of 18 December 1996.

¹⁴³ *Ireland v. UK*, B 23-I, Commission report pp. 412-413 (1976).

¹⁴⁴ *Assenov and Others v. Bulgaria* (90/1997/874/1086) Judgment of 28 October 1998, para.102.

¹⁴⁵ *Aksoy v. Turkey*, Judgment of 18 December 1996.

clear that, in that context, significant weight was given to the explanation that the injuries were caused by a fall against a car door. Like the Commission, the Court finds this explanation unconvincing; it considers that, even if *Mr Ribitsch* had fallen while he was being moved under escort, this could only have provided a very incomplete, and therefore insufficient, explanation of the injuries concerned.¹⁴⁶

IV.65. Similarly in *Qani halimi- Nedzibi v Austria* the United Nations Committee against torture held that “a delay of 15 months before an investigation of allegations of torture is initiated, is unreasonably long and not in compliance with the [...]”.¹⁴⁷ With respect to the incident at issue, the Russian investigating and prosecution authorities have failed to proceed with a prompt, comprehensive and ultimately effective official investigation (procedural violation). In spite of three attempts to convince the prosecutor to open an investigation, he failed to do so. The passing of more than 3 years without any investigation since the detention and death of the deceased speaks for itself evincing a failure to value and to respect the rights of a female member of a disadvantaged ethnic minority.

IV.66. In order to comply with the requirements of article 3 of the Convention, the prosecuting and law enforcement authorities of the respondent state had to conduct not just an investigation but an investigation capable of leading to the identification and punishment of those responsible. The investigation should have also comprehensively determined the nature and circumstances of the incident at issue. Relevant and possibly relevant witnesses should have been questioned. This never happened.¹⁴⁸

Conclusion under claim b)

IV.67. In view of the facts of the instant case and the above-cited case-law, the applicants submit that the Russian investigating and prosecuting authorities have failed to carry out a prompt, comprehensive and effective official investigation capable of leading to the identification and punishment of the perpetrators.

IV.68. In particular, the applicants note that the applicants’ allegations of the deceased’s torture, inhuman and/or degrading treatment or punishment were at the very least “arguable” and thus should have triggered a prompt, comprehensive and effective official investigation. The Russian investigative authorities have done nothing to explain what caused these injuries. The prosecuting authorities have solely accepted the police denial that physical force was employed against the deceased. The applicants have submitted the available medical record to an independent medical specialist for analysis and will submit the report to this Court when it is received.

IV.69. The applicants maintain that with respect to the incident at issue, the Russian authorities have failed to proceed with an effective, or indeed any, official investigation capable of leading to the identification and punishment of the police officers responsible, in spite of numerous requests and even a Court order.

Violation of Article 13

¹⁴⁶ See *Rabitsch v. Austria*, Judgment of 04 December 1995.

¹⁴⁷ *Qani halimi- Nedzibi v Austria*, 30/11/93. CAT/C/11/D/8/1991, para.13.5, emphasize added.

¹⁴⁸ See the para. IV.31

IV.70. In view of the facts of the case, the applicants submit that the failure of the Russian authorities effectively to investigate, to prosecute and ultimately to punish the crime committed against the deceased constitutes a violation of their right to an effective remedy before a national authority and as such a compelling violation of Article 13 of the Convention.

Concerning Article 13 the applicants submit the following facts:

IV.71. The applicants respectfully submit that the Russian authority's failure to effectively investigate and prosecute the cause of the death constitutes a separate and independent violation of the right to an effective remedy before a national authority.

IV.72. The prosecuting and the law-enforcement authorities of the respondent State had to conduct not just an effective investigation but also an investigation capable of leading to the identification and punishment of those responsible.¹⁴⁹ The investigation should also have comprehensively identified the nature and circumstances of the incident at issue.

IV.73. Law-enforcement officials have failed to carry out a prompt, thorough and effective investigation by ignoring the existing evidence and not enforcing the relevant domestic legislation.¹⁵⁰ The public prosecutor had a power to institute criminal proceedings, to interrogate the employees of the police office, to invite witnesses, to visit the place of the incident, to analyse the expert opinions, to collect the judicial proof and to undertake other necessary steps to protect the right of the applicants.

IV.74. The General Prosecutor's Office refused to initiate the criminal investigation on 24 June 2002 and 9 February 2004. On 4 March 2004 the decision refusing the initiation of the case was rejected again by the Prosecutor of Pskov and was sent back to the investigator pursuant to the court order.

IV.75. On 26 October 2004 the applicants filed a complaint with Pskov City Court against the resolution passed on 4 March 2004, was received by the court on 03 November 2004, which was rejected again on 6 June 2005.¹⁵¹ The rejection to initiate a criminal investigation was appealed with the Pskov Regional Court again on 27 June 2005. Thus 4 complaints (3 to the court and 1 to the Prosecutor Office) have been submitted to the court on behalf of the applicant and 3 years have passed and still no effective remedy has been obtained.

In support of the claim under Article 13 the applicants rely on the following jurisprudence:

IV.76. The authorities' failure to carry out an effective and thorough investigation into the allegations of a violation of Articles 2 and 3 of the Convention constitutes a separate and independent violation of the applicants' right to an "effective remedy before a national authority" under Article 13. This claim is raised in addition to the claims of inadequate investigation, set under the alleged violations of Articles 2 and 3 of the Convention. The Court has suggested that the cumulative approach to the provision of remedies may not be adequate: each remedy proposed must be of itself effective.¹⁵²

¹⁴⁹ See the para. II.5, II.6.

¹⁵⁰ See the para. II.22.

¹⁵¹ See the para. II.24.

¹⁵² *Peck v UK* (2003) 36 E.H.R.R.41 para. 103-104.

IV.77. In *Silver and Others v. UK*¹⁵³, the Court established that in order to comply with the requirements of Article 13 of the Convention, the decision-making authority capable of providing a remedy should be "sufficiently independent" of the authority alleged to be responsible for the violation of the Convention.

IV.78. Article 13 entitles a person to a direct means of punishing perpetrators and/or claiming compensation for them for an arguable breach for a right to live without prejudice to the separate entitlement to a rigorous public investigation under Article 2¹⁵⁴ and the applicants could have done this under Article 1069 Civil Code of the Russian Federation.

IV.79. The Court has affirmed, "Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of this article is thus to require the provision of domestic remedy allowing the competent national authority both to deal with the substance of the relevant Convention complaint and to grant appropriate relief [...]."¹⁵⁵ The Grand Chamber would add that the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations.¹⁵⁶

IV.80. With respect to the allegations of no effective remedy, the applicants note that the preamble to the Convention explicitly refers to the principle of the "*rule of law*" as being one of the driving forces and founding principles of the Convention.

IV.81. The applicants note that in the context of Article 13 of the Convention this founding principle requires *inter alia* that each individual have sufficient guarantees for his effective protection against arbitrary or unlawful decisions of the authorities, which violate his rights under the Convention. The lapse of time, the effect on evidence and the availability of the witnesses, may inevitably render an investigation an unsatisfactory or inconclusive exercise, which fails to establish important facts or put to rest doubts and suspicions.

The conclusion under the Article 13

IV.82. In view of the facts as outlined above¹⁵⁷ the applicants submit that their right to an effective remedy before a national authority has been violated.

IV.83. The State has failed to identify the officers responsible and has failed to punish them. Consequently, the applicants have obtained no effective domestic remedy for the harm suffered by the deceased while in police custody. Hence there has been a violation of Article 13 together with Article 3 of the Convention.

IV.84. The prosecuting and investigative authorities¹⁵⁸ had a role according to the Russian legislation but they failed to carry out a prompt, thorough, and effective investigation into well documented (or at the very least arguable) allegations of serious police brutality. The failure of the

¹⁵³ *Silver and Others v. UK*, Judgment (1983) para. 116.

¹⁵⁴ *Onen v Turkey*, Application no. 22876, Judgment of April 23, 2002 para.100.

¹⁵⁵ *Aksoy v Turkey* (100/1995/606/694), 18 December 1996, para. 95.

¹⁵⁶ *Nachova and others v Bulgaria*, Applications nos. 43577/98 and 43579/98, para.161.

¹⁵⁷ See the para. II.1- IV.31.

¹⁵⁸ See the para. II.18.

Russian prosecutor to do a prompt, thorough and effective investigation resulted in the violation of the applicants' right to an effective remedy before a national authority. It cannot be assumed that an investigation could be usefully carried out now or that this would provide sufficient redress to the family of the deceased.

Violation of Article 14 of the Convention read together with Article 2, 3 and 13

IV.85. The applicants allege the following:

- a) **The deceased was arrested and suffered ill treatment. That along with the subsequent lack of an effective investigation and prosecution of the perpetrator responsible, and indeed the ultimate absence of a remedy, were all in part due to her and applicants Romani ethnicity and as such in violation of Article 14 taken together with Article 2, 3, and 13.**
- b) **Roma, in general and in particular Roma women, were and are still discriminated against in the Russian Federation.**

Concerning the violation of Article 14, the applicants submit the following facts:

IV.86. The deceased was arrested because she was Roma.¹⁵⁹ Ms. Petuhova, a police officer who worked for the visa and passport unit at the Police department in Pskov, was travelling on the same bus when she realized that her purse was missing. Ms. Petuhova said in her statement that when she looked around she thought, “[a] **woman of Gypsy ethnicity could do that**”.¹⁶⁰ She informed her colleague, police officer Mamedov. The bus was searched by officer Mamedov who found the purse under one of the seats in the bus. Nevertheless, the police officer decided that, as the deceased was of Roma ethnicity she had probably stolen the purse, so he arrested her. The deceased asked what happened but the officer Mamedov hit her on the head and said, “**Only a Gypsy could steal the purse, who else?**”¹⁶¹

IV.87. When the deceased was detained **she had no visible physical injuries**. The injuries that caused the death were suffered during the detention by of the deceased by police. The police department’s position is that she jumped out of the window, although **they have conducted no effective investigation**. However, when the relatives were finally able to pick up her body from the morgue they could see numerous wounds and bruises. Other visible injuries included trauma to the head, cigarette burns on her body and her hands, bruises by her ribs and on her legs, similar to those that can be inflicted with a stick. The investigation did not address the source of the injuries, despite the fact that these were inconsistent with injuries caused by a fall.¹⁶²

In support of the claim under Article 14, the applicants rely on the following jurisprudence:

Claim a)

IV.88. The racist treatment, by the police and governmental authorities affected the deceased’s enjoyment of rights under the Conventions. Specifically the right to life under Article 2, the right not to be subjected to torture or to inhuman and degrading treatment under Article 3 and the right to an effective remedy under Article 13.

¹⁵⁹ See the para. II.3.

¹⁶⁰ See the Document 9.

¹⁶¹ See the Document 26.

¹⁶² See the para. II.28.

IV.89. The Grand Chamber reiterates that in certain circumstances, where the events lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of death of a person within their control in custody, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation of, in particular, the causes of the detained person's death.¹⁶³

IV.90. The court also states in the case of *Moldovan and others v Romania* that "the racial discrimination to which they have been publicly subjected [...] constitute an interference with their human dignity which, in the special circumstances of this case, amounted to "degrading treatment" within the meaning of Article 3 of the Convention."¹⁶⁴

IV.91. The Grand Chamber considers that "any evidence of racist verbal abuse being uttered by law enforcement agents in connection with an operation involving the use of force against persons from an ethnic or other minority is highly relevant to the question whether or not unlawful, hatred-induced violence has taken place. Where such evidence comes to light in the investigation, it must be verified and - if confirmed - a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives."¹⁶⁵

IV.92. Individuals are only discriminated against, for the purposes of this provision, if (i) persons in analogous situation are treated differently on the basis of their "status" and (ii) that differential treatment has "no objective and reasonable justification". Differences in treatment based on gender, race [...] have been found to be particularly serious and to require particularly weighty reasons in order to be justified.

IV.93. In *Nachova and Others v. Bulgaria* the Court stated that "The right to life under Article 2 of the Convention and the prohibition of discrimination in general and of racial and ethnic discrimination in particular, under Article 14 reflect basic values of democratic societies that make up the Council of Europe. Acts motivated by ethnic hatred that lead to deprivation of life undermine the foundations of those societies and require vigilance and an effective response by the authorities".¹⁶⁶

IV.94. States have a general obligation under Article 2 of the Convention to conduct an effective investigation in cases of deprivation of life. That obligation must be discharged without discrimination, as required by Article 14 of the Convention. Compliance with the State's positive obligations under Article 2 of the Convention requires that the domestic legal system must demonstrate its capacity to enforce criminal law against those who unlawfully took the life of another, irrespective of the victim's racial or ethnic origin. The Court reiterates that where there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence.¹⁶⁷

IV.95. In *Nachova v. Bulgaria* the Court considers that when investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all

¹⁶³ *Nachova and Others v. Bulgaria* Applications nos. 41138/98 and 64320/01 Judgment 12 July 2005 para. 157.

¹⁶⁴ *Moldovan and others v Romania*, Applications nos. 41138/98 and 64320/01 Judgment 12 July 2005 para.113.

¹⁶⁵ *Nachova and others v Bulgaria*, Applications nos. 43577/98 and 43579/98, Judgment 6 July 2005, para.164

¹⁶⁶ The Applications nos. 43577/98 and 43579/98 Judgment 6 July 2005 para. 156.

¹⁶⁷ See *Menson and Others v. the United Kingdom*, no. 47916/99.

reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. It may constitute unjustified treatment irreconcilable with Article 14 of the Convention.¹⁶⁸

IV.96. In the *Nachova v Bulgaria*¹⁶⁹ the Court held that the Government had breached Article 14 taken together with Article 2 procedural by failing to take into account evidence that the killing of two Roma by a military policeman was possibly racially motivated.

IV.97. Discrimination on grounds of race could never be justifiable under Article 14. Indeed, in *East African Asians v UK*,¹⁷⁰ the Commission considered that the race discrimination could itself constitute degrading treatment contrary to Article 3.¹⁷¹ In *Cyprus v Turkey*¹⁷² The Turkish government was found to violate Articles 2, 3, [...] in conjunction with article 14, in so far as less favourable treatment had been directly entirely at the Greek Cypriot community resident in the Turkish Republic of Northern Cyprus.

IV.98. The Russian investigative and prosecutor authority have violated their obligations under the ECHR by allowing racial animus to influence their investigation; thereby, failing to carry out an adequate and effective investigation into alleged criminal offences in circumstances that give rise to strong suspicions. The racial animus evident in this case began at the outset and continued throughout. First there was an arrest based on racist assumptions, evidenced in the views of two police officers: “maybe a woman of Roma ethnicity could do that” and “only a Gypsy could steal the purse, who else?” and the prosecutor’s repeated references (in a context where this would not be justified) to “the woman of Gypsy nationality”.¹⁷³ The deceased had bruises and burns that were inconsistent with a fall, which the investigating authorities failed to investigate. No rational explanation for these injuries has been provided. The casual comment by the duty officer to officer Ivanov in the police station referred to the “gypsy woman” and Ivanov claimed she was in his office when he knew or should have known she was not. We submit, therefore, that the applicants’ Roma ethnicity appears to have been decisive for the length and the result of the domestic proceedings.¹⁷⁴

IV.99. Thus the actions of the Russian authorities were contaminated from the beginning to the end by the fact that the deceased was Roma. They wrongfully detained her. They have no explanation for the death that occurred after custody. They refused to do a proper investigation. They refused to investigate the racial animus, all because of her ethnicity.

The conclusion under claim a)

¹⁶⁸ See, *mutatis mutandis*, *Tblimmenos v. Greece* [GC], no. 34369/97, para. 44, ECHR 2000-IV.

¹⁶⁹ Application Nos. 43577/98 and 43579/98, Judgment of 26 February 2004.

¹⁷⁰ Application Nos. 4403/70 et al.; (1973) 3 E.H.R.R. 76.

¹⁷¹ Application Nos. 4403/70 et al.; (1973) 3 E.H.R.R. 76 (Comm. Op, para.207); See also *Moldovan and others* Applications nos. 41138/98 and 64320/01, para.111.

¹⁷² *Cyprus v Turkey* (1976) 4 E.H.R.R. 482 para.503.

¹⁷³ See the para. II.28

¹⁷⁴ *Moldovan and others v Romania*, Applications nos. 41138/98 and 64320/01, Judgment, para 139.

IV.100. It is very clear from the racist language used by the officers at issue¹⁷⁵ that the deceased was arrested and ill treated because she was Romani¹⁷⁶. She was informed by police officer Ivanov that nothing serious is going to happen¹⁷⁷. She was found unconscious in the Pskov police office courtyard, under highly suspicious circumstances.¹⁷⁸

IV.101. The clear and proper inference is that prejudices and hostility towards Roma played a decisive role in this case. Some of the injuries she sustained were not consistent with a fall.

Claim b)

IV.102. Roma in Russia face widespread governmental discrimination, and, increasingly, racially motivated attacks.¹⁷⁹

IV.103. Police brutality is a general problem in Russian law-enforcement in recent years, and has been a primary concern of international and Russian human rights organisations. Roma, along with several other ethnic minorities, are particularly vulnerable due to their being stereotyped as "criminals" by law-enforcement officials. Many Roma testified to the ERRC that law-enforcement officials often make generalizing comments about the criminal proclivity of Roma.¹⁸⁰ The most extensive racial profiling of Roma in Russia occurred in 2002 -2004 in the framework of the series of police raids targeting Romani communities and officially named "Operation Tabor".

IV.104. Roma in police custody face serious risks of being subjected to physical abuse by law-enforcement officials. Torture and ill treatment of Roma at the hands of the police appears to be on the rise, both in terms of frequency and severity, yet law-enforcement officials are rarely prosecuted or even disciplined when abuses are plausibly alleged.¹⁸¹ The ERRC has documented scores of cases in which police officers severely beat and humiliated Romani detainees, most often with the purpose of extracting confession of a crime.¹⁸²

IV.105. Regarding arbitrary identity checks of Roma and "persons of Caucasian nationality", the *United Nations Committee on the Elimination of Racial Discrimination* stated in March 2003: "The Committee is concerned at reports of racially selective inspections and identity checks targeting members of specific minorities, including those from the Caucasus and Central Asia and Roma. The Committee recommended that the State party take immediate steps to stop the practice of arbitrary identity checks by law enforcement authorities."¹⁸³

IV.106. It is also stressed in Moscow Helsinki Group's annual report of 2004 that the Roma get stopped and checked more often than other persons.¹⁸⁴

¹⁷⁵ See the para. II.3.

¹⁷⁶ See the para. II.3, II.11.

¹⁷⁷ See the Document 27.

¹⁷⁸ See the para. IV.92.

¹⁷⁹ Country Reports on Human Rights Practices - 2004 that was submitted to the Congress by the Department of State; Released by the Bureau of Democracy, Human Rights, and Labor February 28, 2005.

¹⁸⁰ "In Search of Happy Gypsies" Russian Federation Country Report, 2005 ERRC, pages 55-56.

¹⁸¹ "In Search of Happy Gypsies" Russian Federation Country Report, 2005 ERRC, page 65.

¹⁸² "In Search of Happy Gypsies" Russian Federation Country Report, 2005 ERRC, pages 64-72.

¹⁸³ United Nations Committee on the Elimination of Racial Discrimination. *Concluding observations of the Committee on the Elimination of Racial Discrimination: Russian Federation. 21/03/2003. CERD/C/62/CO/7. (Concluding Observations/Comments)*, paragraph 13.

¹⁸⁴ Moscow Helsinki Group, "Human Rights in Russian Regions", Moscow, 2005, page 146.

IV.107. In June 2002, the *UN Committee Against Torture* recommended that the Russian authorities should promptly undertake impartial and comprehensive investigation because of the numerous complaints of torture against Roma. The report urged that people responsible for torture should be punished and that victims should be protected from further harassment.¹⁸⁵

IV.108. According to *The Northern-Western Centre of Social and Legal Protection of Roma (NWCSLPR)* many Romani women are targeted by the police.¹⁸⁶

IV.109. The term “discrimination” appears in the Russian Constitution only in the context of equal pay and employment conditions, but no definition is offered. The equal-treatment provisions are elaborated in some sectoral laws, but again with no definition or guidance as to interpretation. Russian law does not provide for specific disciplinary measures against public officials.¹⁸⁷

Conclusion under claim b)

IV.110. Romani women occupy a special place in the popular racist perception of Roma in Russia. These racist stereotypes often translate into violent and abusive police actions targeting especially Romani women.¹⁸⁸ They are targeted by police on the basis of racial prejudice, and face serious risk to be subjected to torture and ill treatment as well as to unfair trial procedure.

IV.111. In view of the facts of this case as well as the previously cited jurisprudence, it is clear that the deceased’s arrest and ill treatment and the subsequent lack of an effective investigation and of prosecution of the perpetrator or perpetrators responsible were all (at least in part) due to the deceased’s and applicants’ Romani ethnicity. As such there has been a violation of Article 14 taken together with Article 2, 3, and 13.

V. STATEMENT RELATIVE TO ARTICLE 35 OF THE CONVENTION

V.1. At approximately 11:20 on 20 May 2002, the deceased was found unconscious on the ground in the yard of the Pskov Police Station by the officer on duty¹⁸⁹. She died 4 days later without regaining consciousness.¹⁹⁰

V.2. On 24 May 2002 a police investigation of the deceased’s death was ordered by Mr A. B. Tokarev.¹⁹¹ As part of this investigation, he ordered a medical autopsy.¹⁹²

V.3. On 24 May 2002 based on a preliminary investigation by the police and the medical report, the Prosecutor’s Office of Pskov decided not to initiate a criminal investigation into the death.¹⁹³

¹⁸⁵ CAT/C/CR/28/4, 6 June 2002, para 8i.

¹⁸⁶ THE ROMA OF RUSSIA: The subject of multiple forms of discrimination international fact-finding mission, November 2004.

¹⁸⁷ “In Search of Happy Gypsies” Russian Federation Country Report, 2005 ERRC, page 31.

¹⁸⁸ “In Search of Happy Gypsies” Russian Federation Country Report, 2005 ERRC, pages 197, 198.

¹⁸⁹ See the Document 27

¹⁹⁰ See the Document 27

¹⁹¹ See the Document 7

¹⁹² See the Document 7

¹⁹³ See the Document 9

It is unclear how this decision could have been based on the “medical report” when such report was not yet available.

V.4. On 26 December 2003, the applicants lodged an appeal with the City Court of Pskov Region against the decision of the Prosecutor's Office not to initiate a criminal investigation.¹⁹⁴ The appeal contended that the preliminary police investigation had been incomplete and ineffective and that the investigators had only one explanation for the death. In support of this contention the applicants highlighted:

- a. The decision of the Prosecutor's Office not to open a criminal investigation was itself illegal and groundless.¹⁹⁵
- b. The Prosecution Office has an obligation to initiate a criminal investigation.¹⁹⁶

V.5. On 19 January 2004, the City Court of Pskov Region overruled the Prosecutor's decision not to open a criminal investigation and returned the case to the Pskov Prosecutor's Office to carry out a full investigation.¹⁹⁷

V.6. On 9 February 2004, in considering the decision of the City Court of Pskov, the Prosecutor requested additional investigation of the materials related to the case.¹⁹⁸

V.7. On 13 February 2004, Tsiplakov O. A., the investigator from the Pskov prosecutor office, affirmed by another decree the refusal to initiate a criminal investigation.¹⁹⁹

V.8. On the same day Tsiplakov O.A passed a resolution for a second medical expert opinion on the reasons for the bodily injuries and death of the deceased.²⁰⁰ The decree not to initiate a criminal investigation on 13 February 2004 was issued in advance of this medical report, which was not issued until 12 March 2004.²⁰¹

V.9. On 24 February 2004, the applicants lodged an appeal with the prosecutor's office against the 13 February 2004 decree of refusal to initiate criminal.²⁰² The appeal contended that the investigation had been incomplete and groundless.

V.10. On 4 March 2004, Fomin V.M., the prosecutor of the Pskov regional prosecutor office, overruled the 13 February 2004 decree refusing to open a criminal investigation and ordered a new investigation.²⁰³ The prosecutor accepted the applicants' argument that the investigation so far had been groundless and incomplete, and ordered the investigator to consider the results of the additional medical expert opinion.²⁰⁴

¹⁹⁴ See the Document 14

¹⁹⁵ See the para. II.21.

¹⁹⁶ See the Document 25

¹⁹⁷ See the Document 15

¹⁹⁸ See the Document 16

¹⁹⁹ See the Document 17

²⁰⁰ See the Document 18

²⁰¹ See the Document 22

²⁰² See the Document 19

²⁰³ See the Document 20

²⁰⁴ See the Document 20

V.11. On 12 March 2004, the investigator of the Pskov Prosecutor's Office, Tsiplakova O.A., for the third time refused to initiate a criminal investigation. He stated that he could not find any link between the actions of the police officers and the death.

V.12. On 26 October 2004, the applicants filed a complaint with Pskov City Court against the resolution, failing to initiate a criminal investigation issued 12 March 2004 by O. Tsiplakova. The complaint also alleged that the prosecutor from Pskov Prosecutor's Office did not file any requests for an investigation and did not present any facts to the Court. On the prosecutor Tsiplakova's O. suggestion, the case was adjourned without a date for a substantive hearing being fixed.

V.13. The hearing requested by the applicants on 26 October 2004 was scheduled to take place on 13 May 2005. Because the authorities had been interfering with attempts to obtain evidence the applicants had no option but to seek a further adjournment in order to obtain medical records and documents and a report from the emergency room in Pskov region and expert consideration of these. Consequently the hearing was postponed until 6 June 2005.

V.14. On 6 June 2005 in the Pskov City Court the hearing took place and the requested medical documents were received, but the Court rejected the applicants' complaint against the resolution to not initiate a criminal investigation that had been issued on 12 March 2004.

V.15. The applicants appealed the decision of the Pskov City Court on 27 June 2005.

V.16. The Pskov Regional Court took a decision to reject the Pskov City Court decision and sent the materials for new judicial inquiry to the same Pskov City Court but to another judge. Appeal court noted that rejecting the Klein's complaint the court did not take into account cited circumstances, did not take into consideration the fact that police officers are responsible for life and health of people forcibly taken to a police department.

V.17. The Pskov Regional Court took a decision to reject the Pskov City Court decision and sent the materials for new judicial inquiry to the same Pskov City Court but to another judge.

V.18. On 29 July 2005 during the new court hearing in the Pskov City Court the Prosecutor's resolution on rejection of initiation of proceeding was considered groundless by the judge and the case again was sent to the Pskov Prosecutor Office.

The Conclusion under Article 35

V.19. In the present case, the applicants made four attempts from December 2003 to June 2005 to force the Russian authorities to carry out an appropriate investigation. An applicant is not required to try more than one avenue of redress.²⁰⁵ The choice of remedy is for the applicant to determine.²⁰⁶ Further, the applicant is not required to seek redress more than once by way of a repeated request or application to the same body.²⁰⁷ This applicant has gone above and beyond the requirements to seek a remedy and has exhausted domestic remedies.

²⁰⁵ *Yagiz v. Turkey*, App. No. 19092/92; 75 D; R. 207.

²⁰⁶ *Airey v. Ireland* (1979) 2. E.H.R.R. 305 (para23).

²⁰⁷ *Granger v. U.K.* (1990) 12 E.H.R.R. 469.

V.20. By failing to fulfill their positive duty to properly investigate the death of a person in detention, the State has already breached their obligations in violation of the Convention.²⁰⁸

²⁰⁸ See footnotes 78, 106 and 107.

VI. STATEMENT OF THE OBJECTIVE OF THE APPLICATION

The applicants request the European Court of Human Rights to find violations of the victims' rights under Articles 2, 3, 13, and 14 of the European Convention, and to adjudicate a fair compensation for such violations by the Respondent Government.

VII. STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

No complaint has been submitted to any other international procedure of investigation or settlement.

VIII. LIST OF DOCUMENTS

1. The copy of the passport of Fatsima Alexandrovich;
2. The copy of the death certificate of Fatsima Alexandrovich;
3. The Copy of the certificate, which confirms the applicant paternity establishment of Klein, issued on 8 October 2002;
4. The protocol of the examination of the scene of the event made on 20 May 2002;
5. Foto table attachments to the protocol of the examination of the scene of the event from 20 May 2002;
6. The expert conclusions of the medical record issued on 18 June 2002;
7. Pskov Prosecutor office -Resolution on the refusal to initiate the criminal investigation made 24 June 2002;
8. Resolution of initiation of a criminal case on the fact that wallet has been stolen from 30 May 2002;
9. The Declaration on the fact of the wallet theft from Petuhova I.P. from 20 May 2002;
10. The resolution about recognizing Petuhova I.P. to be as a victim from 30 May 2002;
11. The protocol of explaining to Petuhova I.P. her rights about presenting a Civil claim from 30 May 2002;
12. The applicant complaint to Pskov city court, Pskov region from 24 December 2002;
13. The resolution of Pskov City Court, Pskov region from 19 January 2004;
14. The prosecutor office resolution of Pskov city of canceling the resolution of refusing to institute a criminal case and resending the material to the additional check from 09 February 2004;
15. The resolution of refusing to initiate a criminal case 13 February 2004 of the Pskov prosecutor office;
16. The resolution about initiating an additional forensic-medical expertise from 13 February 2004;
17. The attorney complaint for the resolution of refusing to initiate a criminal case 26 December 2004;
18. The prosecutor office resolution of the Pskov about canceling the resolution of refusing to institute a criminal case from 4 March 2004;
19. The additional expert's conclusions from 12 March 2004
20. The act of АКТ of judicial-histological of the investigation from 24 May 2002;
21. The prosecutor office resolution of the Pskov city about refusal to institute a criminal investigation from 12 March 2004;
22. The envelope of receiving the mentioned resolution A. Klein from 02 April 2004;
23. The power of attorney on the name of Tseytlina Olga from 06 January 2004;
24. The power of attorney of the European Court from 24 September 2004 for ERRC;
25. Relevant domestic legislation;

26. Statement of Vera Klein from 13 June 2005;
27. Police officer Ivanov statement from 12 February 2004;
28. Ms Petuhova statement from 30 May 2002;
29. The police officer Mamedov's explanation from 20 May 2002.
30. Ms Sharkovo explanation from 20 May 2002.
31. The complain of Pskov City Court from 06 June 2005;
32. The complaint to the Pskov City Court 27 June 2005
33. The decision of the Pskov Regional Court from 13 July 2005.
34. The decision of the Pskov City court from 29 July 2005.

IX. STATEMENT OF PREFERRED LANGUAGE

We would prefer to receive the Court's judgment in English.

X. DECLARATION AND SIGNATURE

We hereby declare that, to the best of my knowledge and belief, the information we have given in my application is true and correct.

Place: Budapest, Hungary

Date: 10 August 2005

On behalf of the applicants:



Olga Demian, Legal advisor
European Roma Rights Centre

Olga Tseytina
Attorney at Law

Dianne Post, Legal Director
European Roma Rights Centre