



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

THIRD SECTION

CASE OF DAURBEKOV AND OTHERS v. RUSSIA

*(Applications nos. 60844/11 and 2 others –
see appended list)*

JUDGMENT

STRASBOURG

22 March 2022

This judgment is final but it may be subject to editorial revision.

In the case of Daurbekov and Others v. Russia,

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

Darian Pavli, *President*,

Peeter Roosma,

Mikhail Lobov, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 60844/11 and 2 others) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by three Russian nationals (“the applicants”), on the various dates indicated in the appended table;

the decisions to give notice to the Russian Government (“the Government”) of the complaints concerning the alleged ill-treatment of the applicants and the lack of due investigation and to declare inadmissible the remainder of the applications;

the parties’ observations;

Having deliberated in private on 1 March 2022,

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

INTRODUCTION

1. The applications concern, among other things, alleged ill-treatment of the applicants at the hands of State officials and the lack of a proper investigation in that regard.

THE FACTS

2. The applicants are Russian nationals who live in different regions of Russia. A list of the applicants is set out in the Appendix.

3. The Russian Government (“the Government”) were initially represented by Mr M. Galperin, the then Representative of the Russian Federation to the European Court of Human Rights, and lately by Mr M. Vinogradov, his successor in that office.

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

I. DAURBEKOV v. RUSSIA, APPLICATION No. 60844/11

A. Alleged ill-treatment

5. According to the applicant, on 14 May 2010 he was summoned to a police station in Achkhoy-Martan, the Republic of Chechnya, on suspicion

of having committed a rape and robbery. Upon his arrival, in order to obtain his confession, several police officers beat him on different parts of his body and threatened to rape him. The applicant subsequently confessed.

6. On 16 May 2010 a medical examination conducted upon the applicant's transfer at the detention facility found no injuries.

7. On 17 May 2010 the applicant was brought back to the police station. In order to obtain his confession to other crimes, police officers hung him by the arms tied behind his back on a bar fixed between two tables. The applicant confessed.

8. On the next day the applicant jumped through a window at the police station. He was apprehended and beaten.

B. Inquiry into the alleged ill-treatment

9. On 25 May 2010 the applicant complained about the ill-treatment.

10. On the next day a forensic medical examination of the applicant established bruising and abrasions on the upper and lower limbs inflicted with a blunt object "more than three or five days prior to the examination". On the same day the applicant's medical examination at the detention centre recorded bruises on the left hip, shin and shoulder.

11. On 11 June 2010 the investigator refused to open criminal proceedings. He referred to explanations of the police officers who had denied the allegations. He further cited the forensic report of 26 May 2010 and concluded that the injuries had been inflicted "between three and five days prior to the examination, that is between 20 and 22 May 2010", allegedly contradicting the applicant's allegations.

12. On 16 August 2010 the investigator again refused to open criminal proceedings. Domestic courts dismissed the applicant's complaints against the refusal.

II. AKHMEDOV v. RUSSIA, APPLICATION No. 43067/13

A. Alleged ill-treatment

13. On 19 November 2007 several officers of the special security unit (OMON) arrested the applicant at a café in Grozny. According to the applicant, during his escorting to the OMON premises they beat him on different parts of the body and threatened him with firearms. Upon arrival, they hung the applicant from a tree by his arms tied behind his back and continued beating. They also burnt his skin with cigarettes. Then they placed the applicant in a basement and handcuffed him to a radiator and beat him again.

B. Inquiry into the alleged ill-treatment

14. On the next day the applicant complained about the ill-treatment.

15. On 26 November 2007 a forensic medical examination of the applicant established bruises under the left eye and right shoulder, abrasions on the left cheekbone, right shoulder and both shins inflicted with blunt objects within the timeframe he had described.

16. On 3 December 2007, that is thirteen days after the complaint had been lodged, the investigative authorities opened criminal proceedings. On 3 March 2008 it was suspended.

17. On 26 March 2008 a deputy head of the Leninskiy District Department of the Investigative Committee of Grozny annulled the decision to suspend the investigation. He further instructed the investigator, among other things, to question the police officers who had arrested the applicant.

18. Between 27 April and 25 August 2008 the investigator issued three decisions to suspend the investigation. They all were subsequently annulled as the investigation had not carried out the measures ordered on 26 March 2008.

19. On 11 October 2008 the investigator again suspended the investigation. On 26 November 2008 the deputy prosecutor of Chechnya found that the investigator still had not questioned the police officers and other relevant witnesses and ordered to remedy the deficiencies. On 10 December 2008 the suspension was annulled.

20. Between 11 January 2009 and 29 March 2012 the investigator issued three more decisions to suspend the investigation which were subsequently annulled as premature. Quashing the latest suspension, the deputy head of the Leninskiy District Department of the Investigative Committee of Grozny again ordered to question the police officers who had carried out the applicant's arrest.

21. Between 9 May 2012 and 23 March 2013 the investigator issued three more decisions to suspend the investigation which were subsequently annulled as premature.

22. On 12 February 2013 the Leninskiy District Court of Grozny rejected the applicant's complaint about ineffectiveness of the investigation. On 19 March 2013 that decision was upheld on appeal.

23. On 22 May 2014 the Leninskiy District Court of Grozny granted the applicant's civil action regarding the ineffectiveness of the investigation and awarded a compensation of 15,000 Russian roubles (RUB).

24. Between 24 March 2016 and 26 August 2019 the investigator issued several more decisions to suspend the investigation.

III. BEROV v. RUSSIA, APPLICATION No. 53922/15

A. Alleged ill-treatment

25. On 6 March 2012 at around 5 p.m. police officers arrested the applicant in Nalchik at his workplace. According to the applicant, during the arrest they beat him on the head with rifle butts and threatened to rape him and his parents. At the police department, they continued beating him on different parts of the body and applied electric shocks to his thumbs. They also threatened to kill him and “infect with AIDS”. The applicant was released at around 11 a.m. next morning.

26. A forensic medical examination of the applicant conducted on the next day established a spinal fracture, closed head injury, concussion, chest contusion, bruises and abrasions on the head, face, chest, upper and lower limbs and scrotum inflicted within one day prior to the examination with blunt objects such as fists or shod feet. It also confirmed that the applicant might have been subjected to electric shocks.

B. Inquiry into the alleged ill-treatment

27. On 7 March 2012 the applicant complained about the ill-treatment to the prosecutor’s office of Nalchik. He informed the authorities that his arrest had been recorded on cameras at his workplace.

28. On 4 April 2012, that is almost one month later, the investigation instituted criminal proceedings.

29. On 4 April 2013 the investigation decided to suspend the investigation. On 29 April 2013 the suspension was annulled for incomplete inquiry.

30. In June 2013, that is more than one year after the investigation had started, the investigator questioned the police officers the applicant had identified as the perpetrators and conducted their confrontations. The officers denied the applicant’s allegations.

31. On 25 June 2013 the investigator again suspended the investigation. On 28 February 2014 the decision was annulled.

32. On 25 March 2014 the investigator examined the video footage of the applicant’s arrest.

33. Between 16 April and 1 November 2014 the investigator issued three decisions to suspend the investigation. They all were subsequently annulled.

34. Since 3 December 2014 the applicant had been repeatedly requesting access to the materials of the investigation but to no avail.

35. On 10 March 2015 the Nalchik Town Court found the applicant’s restricted access to the case-file unlawful. On 24 April 2015 the Supreme Court of the Kabardino-Balkaria Republic upheld that decision. It does not

appear that the applicant subsequently acquired access to the materials of the investigation.

36. On 30 December 2015 the Nalchik Town Court found that the investigation had failed to carry out necessary investigative measures and to take into account forensic medical reports. It ordered to rectify the omission.

RELEVANT LEGAL FRAMEWORK

37. For the relevant provisions of domestic law on the prohibition of torture and other ill-treatment and the procedure for examining a criminal complaint, see *Lyapin v. Russia*, no. 46956/09, §§ 96-102, 24 July 2014, and *Ryabtsev v. Russia*, no. 13642/06, §§ 48-52, 14 November 2013.

THE LAW

I. JOINDER OF THE APPLICATIONS

38. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

39. The applicants complained under Article 3 of the Convention that they had been subjected to ill-treatment by State officials and that the State had failed to conduct an effective domestic investigation into those incidents. They also complained under Article 13 of the Convention that they had no effective remedy in respect of their complaints of ill-treatment. The relevant parts of the Convention provisions read as follows:

Article 3

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

Article 13

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

A. Admissibility

40. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

41. The applicants maintained their complaints, claiming that they had sustained the injuries as a result of their ill-treatment by the State officers.

42. The Government maintained the conclusions of the domestic inquiries.

2. The Court's assessment

(a) The applicants' allegations of ill-treatment

43. The Court observes that all the applicants were arrested by the police on suspicion of their having committed various crimes. After spending different periods of time at the hands of State officers, they were found to have sustained injuries of various degrees, as recorded by forensic medical experts (see paragraphs 10, 15 and 26 above).

44. The above factors are sufficient to give rise to a presumption in favour of the applicants' accounts of events and to satisfy the Court that their allegations of ill-treatment in police custody were credible.

(b) Effectiveness of the investigation into the alleged ill-treatment

(i) The first applicant

45. The Court notes that, in response to the first applicant's allegations, the domestic authorities conducted only a pre-investigative inquiry. It should normally be followed by the opening of a criminal case and an investigation, if the information has disclosed elements of a criminal offence (see *Lyapin v. Russia*, no. 46956/09, §§ 129 and 132-36, 24 July 2014). The authorities' refusal to institute a fully-fledged criminal investigation into credible allegations of ill-treatment is indicative of the State's failure to comply with its procedural obligation under Article 3 of the Convention.

46. Nevertheless, in the present case the authorities dismissed the applicant's credible allegations of ill-treatment after a summary inquiry. The investigator essentially referred to explanations of the police officers and made an inference from the forensic report that the injuries had not been inflicted within the timeframe given by the applicant (see paragraph 11 above). However, the report in any event indicated that the applicant had sustained the injuries in State custody and that occurrence was never addressed within a proper criminal investigation.

47. Thus, the authorities failed to carry out an effective investigation into the applicant's allegations as required by Article 3 of the Convention.

(ii) The second and third applicants

48. Following the second and third applicants' complaints, the domestic authorities instituted criminal proceedings. Yet, they were tainted with significant shortcomings which had a serious negative impact on their effectiveness, as attested by the decisions of domestic authorities (see paragraphs 23 and 36 above).

49. First, the investigations in both cases were initiated almost two weeks and one month respectively after the applicants had lodged their criminal complaints (see paragraphs 16 and 28 above). Thus, no investigative activities were carried out during the crucial opening period of the inquiries (see, for example, *Boychenko v. Russia*, no. 8663/08, § 98, 12 October 2021).

50. In the case of the third applicant the investigation was impaired with further inexplicable delays. Apparently, the alleged perpetrators he had identified were questioned more than a year later (see paragraph 30 above). Similarly, it took the authorities around two years to examine the video footage of the incident that the applicant had furnished himself (see paragraph 32 above). In addition, as the domestic courts indicated, the investigator had not given a proper assessment of the injuries recorded in the applicant's forensic examination report (see paragraph 36 above). Lastly, it appears that his access to the criminal investigation was impeded and the investigative authorities ignored the domestic court's order to rectify that deficiency (see paragraph 35 above).

51. The alleged perpetrators in the case of the second applicant were not questioned at all in spite of repetitive instructions of superior authorities (see paragraphs 17-20 above) (see, for example, *Şakir Kaçmaz v. Turkey*, no. 8077/08, § 90, 10 November 2015). This is particularly striking given that the criminal proceedings has lasted for, at least, twelve years, which is in itself a strong indication of serious procedural defects (see *Mazepa and Others v. Russia*, no. 15086/07, § 80, 17 July 2018).

52. The above shortcomings amount to a failure to carry out an effective investigation into the applicants' allegations of police violence.

(c) The Government's explanations

53. The Government maintained the conclusions of the investigating authorities (see paragraph 42 above). In particular, they argued that the applicants' injuries had not been attributable to the conduct of the police officers or that the application of force had been lawful.

54. Given that the Government's explanations were provided as a result of superficial domestic inquiries falling short of the requirements of Article 3 of the Convention, the Court finds that they cannot be considered satisfactory or convincing. It holds that in these cases the Government have failed to discharge their burden of proof and produce evidence capable of casting doubt on the account of events provided by the applicants, which it therefore

finds established (see *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 83-85, 2 May 2017, and *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, §§ 102-04, 12 December 2017).

(d) Legal classification of the treatment

55. The applicants alleged that they had been subjected to torture and inhuman and degrading treatment.

56. Having regard to the applicants' injuries confirmed by medical evidence, the Court finds that the police subjected the first and second applicant to inhuman and degrading treatment. It finds unsubstantiated their allegations of torture by hanging by the tied arms and with cigarette burns. However, their injuries clearly originated from the force applied by the State officers, and in this connection the Court concludes that they had been subjected to inhuman and degrading treatment.

57. The Court further observes that the third applicant alleged that he had sustained serious injuries as a result of ill-treatment. Indeed, a forensic medical examination recorded, among other things, a spinal fracture, closed head injury and concussion. It also concluded that he might have been subjected to electric shocks (see paragraph 26 above). In these circumstances the Court finds that the third applicant's particularly severe physical pain and suffering are sufficiently established and his statements regarding the ill-treatment were not refuted by the Government.

58. In such circumstances, the Court concludes that, taken as whole and having regard to its purpose and severity, the ill-treatment of the third applicant amounted to torture within the meaning of Article 3 of the Convention.

(e) Conclusion

59. There has accordingly been a violation of Article 3 of the Convention under both substantive and procedural limbs in respect of the all the applicants. In the light of this finding, the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

60. Lastly, the Court has examined the complaint under Article 5 of the Convention submitted by the first applicant regarding the lawfulness of his detention. Having regard to all the material in its possession and in so far as the complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

62. The applicants claimed various amounts in damages and costs and expenses.

63. The Government submitted that Article 41 of the Convention should be applied in accordance with the established case-law.

A. Damage

64. The Court considers that the applicants must have suffered anguish and distress as a result of the violations found above. In those circumstances, the Court considers it reasonable to award the sums indicated in the appended table, where relevant with an indication of sums claimed.

B. Costs and expenses

65. As to costs and expenses, the Court reiterates that an applicant is entitled to their reimbursement only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. That being so, the Court awards the sums in this respect indicated in the appended table.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints concerning the applicants’ alleged ill-treatment by the State officers and the lack of an effective investigation into their complaints admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs in respect of all the applicants;
4. *Holds* that there is no need to examine the complaints under Article 13 of the Convention;

5. *Holds*

- (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement. The amount in respect of costs and expenses should be paid directly into the representative's bank account;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 22 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Darian Pavli
President

DAURBEKOV AND OTHERS v. RUSSIA JUDGMENT

APPENDIX

List of cases:

No.	Case name Application no. Lodged on	Applicant Year of Birth Nationality Represented by	Amount awarded for non- pecuniary damage	Amount awarded for costs and expenses
1.	Daurbekov v. Russia 60844/11 22/09/2011	Aslanbek Abdullayevich DAURBEKOV 1979 Russian Igor Aleksandrovich KALYAPIN	EUR 26,000 (twenty-six thousand euros)	-
2.	Akhmedov v. Russia 43067/13 24/06/2013	Alikhan Bislanovich AKHMEDOV 1984 Russian Igor Aleksandrovich KALYAPIN	EUR 25,700 (twenty-five thousand seven hundred euros)	-
3.	Berov v. Russia 53922/15 23//2015	Inal Muradinovich BEROV 1983 Russian Vanessa KOGAN	EUR 52,000 (fifty-two thousand euros)	EUR 3,000 (three thousand euros).