



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

THIRD SECTION

CASE OF RAGIMOVY v. RUSSIA

(Application no. 54611/18)

JUDGMENT

STRASBOURG

22 March 2022

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

In the case of Ragimovy 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 application (no. 54611/18) 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”) on 15 November 2018 by two Russian nationals, Mr Murad Firuddinovich Ragimov, born in 1994 and detained in Novo-Tyube, the Republic of Dagestan, and Mr Firuddin Dursun ogly Ragimov, born in 1957 and living in Krasnodar (“the applicants”), who were represented by Ms Y. Vanslova, Mr I. Kalyapin and Ms O. Sadovskaya, lawyers with the Committee against Torture, a non-governmental organisation based in Nizhniy Novgorod;

the decision to give notice of the complaints concerning Article 3 of the Convention in respect of both applicants and concerning Article 5 and Article 6 §§ 1 and 2 of the Convention in respect of the first applicant to the Russian Government (“the Government”), initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov, and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 1 March 2022,

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

SUBJECT-MATTER OF THE CASE

1. The second applicant is the father of the first applicant.
2. The applicants complained about ill-treatment during arrest and lack of effective investigation in this regard, under Article 3 of the Convention; about the first applicant’s unrecorded detention under Article 5 § 1 and that his conviction had been based on allegedly planted evidence under Article 6 § 1. Finally, the first applicant complained under Article 6 § 2 about a breach of the presumption of innocence.

THE APPLICANTS’ ALLEGED ILL-TREATMENT ON 30 AUGUST 2016 AND RELATED INQUIRY

3. On 30 August 2016 at 6 a.m. about fifteen armed officers came to the rented flat in Moscow, where the applicants stayed with their family

members, Ms A.G., the first applicant's mother and the second applicant's wife, and their other relatives.

4. The first applicant provided detailed account of his beating and ill-treatment, which lasted for about half an hour and included punching and kicking him in different parts of his body. The officers also handcuffed him and applied a taser to him. At some point an officer strangled him with a plastic bag and stuck a knife in his right foot.

5. It appears that during the operation some items of furniture fell to the floor and a mirror broke (see paragraph 18 below).

6. According to the second applicant, two officers came to his room, kicked and punched him in his head fifteen or twenty times, applied a taser to him twice and strangled him with a blanket. According to him, his ill-treatment lasted about thirty minutes.

7. At around 7.30 a.m. two medical assistants provided assistance to Ms A.G., as requested, and then left. At around 8.30 a.m. two dog trainers arrived with dogs, inspected the flat and then left.

8. At 10 a.m., an investigator, in the presence of two attesting witnesses, carried out a body search of the first applicant and found a foil package in his pocket. Another officer found two plastic cans with drugs in his bag.

9. According to the applicants, the drugs discovered had been planted by the officers during the operation. The second applicant allegedly saw an officer putting the foil package in the pocket of the first applicant's pants before his body search.

10. At around 1 p.m. the first applicant was taken to a police department in Moscow.

11. From the police department the first applicant was taken to a city hospital twice.

12. According to the forensic report of 7 February 2017, on 30 and 31 August 2016 the first applicant was diagnosed with abrasions and bruises to his head, face, chest and wrists inflicted as a result of at least seven impacts with blunt hard objects, a hematoma on the right side of his head inflicted in a similar manner, and an incised wound to his foot. The expert indicated that other injuries had not been confirmed.

13. On 30 August and 8 September 2016 the second applicant applied for medical assistance. According to the forensic reports of 7 February 2017 and 27 April 2018, the second applicant was diagnosed with abrasions to his shoulders, chest, stomach area, right knee joint inflicted as a result of at least five impacts with blunt hard objects, and a hematoma on the left side of his head. The expert did not confirm other injuries.

14. On 31 August 2016 at 2.40 p.m. the first applicant's arrest was recorded.

15. On 31 August 2016 the second applicant and the applicants' relatives lodged a complaint with the prosecutor's office about the ill-treatment of the applicants.

16. On 9 November and 13 December 2016 an investigator refused to open a criminal a case in respect of the first applicant's alleged ill-treatment. On 13 February 2017 an investigator refused to open a criminal case in respect of both applicants' ill-treatment.

17. Between 14 November April 2016 and 16 June 2018 the investigators issued at least ten decisions not to open a criminal investigation that were subsequently set aside by their superiors.

18. On 24 August 2018 an investigator again refused to open a criminal investigation. The officers explained that on 30 August 2016 they had applied force and handcuffs against the first applicant, since he had offered active resistance. In particular, when an officer had tried to enter the flat, the first applicant had tried to push him out, punching and kicking his shield. In the hallway the first applicant had pushed down a cupboard with a mirror, trying to barricade the entry, the mirror had broken and its fragments scattered over the floor. The officers suggested that the first applicant could have been injured by one of those fragments. They further explained that they had not applied force against the second applicant. The investigator concluded that the applicants' injuries had been sustained as a result of lawful use of force by the officers during the operation, since they had offered active resistance. It does not appear that the investigator made an assessment of the proportionality of the use of force by the officers.

19. It appears from the Government's submissions that several other decisions not to open a criminal investigation followed, and were then set aside as being incomplete, the latest such decision dated 27 July 2020.

THE FIRST APPLICANT'S TRIAL

20. On 18 January 2018 the Tushinsky District Court of Moscow convicted the applicant of possession of illegal drugs on a large scale.

21. The District Court examined the statements of two attesting witnesses who participated in the inspection of the flat as of 7 a.m. and in the applicant's body search at 10.05 a.m. They described the circumstances in which the drugs had been discovered. Their statements did not confirm the applicants' allegations in respect of planted evidence (see paragraph 9 above).

22. The District Court questioned dog trainers, who refuted the applicants' version about planted evidence. The District Court further questioned the expert, who on 30 August 2016 between 7.30 and 10 a.m. participated in the inspection of the flat, who also did not confirm the applicants' allegations in respect of planted evidence.

23. The District Court questioned the officers who had participated in the operation. Their statements were similar to those given in the course of the inquiry into the applicants' alleged ill-treatment (see paragraph 18 above). They further submitted that they had not seen any evidence planted and confirmed use of handcuffs upon the second applicant.

24. Relying on the witnesses' statements (see paragraphs 21, 22 and 23 above), the District Court dismissed the applicants' allegations in respect of planted evidence.

25. According to the conviction, the period of imprisonment was to be calculated from 30 August 2016, the date of the applicant's initial arrest.

26. The applicant's lawyer appealed. He submitted, among other things, that the investigating authorities had not verified all the versions of the crime, in particular, that the drugs discovered could belong to other family members or that they could have been planted. He also complained about alleged bias of the judge of the District Court. In particular, in her decision of 6 July 2017 permitting a visit to the first applicant in remand, the judge of the District Court stated that the first applicant was held there for committing a crime.

27. On 15 May 2018 the Moscow City Court upheld the conviction. The City Court dismissed the applicant's allegations in respect of planted evidence, as refuted by the witnesses' statements. The City Court found that the lawyer's motions alleging the judge's bias had been lawfully dismissed.

THE COURT'S ASSESSMENT

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

28. In so far as the Government argued that the applicants had failed to apply to the courts in respect of their alleged ill-treatment, the Court observes that between 2016 and 2020 the investigators issued numerous decisions not to open a criminal investigation that were subsequently set aside for being incomplete. Given a considerable lapse of time and the noted defects of the decisions to dispense with an investigation, an appeal to a court could only have the same effect and would be devoid of any purpose (see *Chumakov v. Russia*, no. 41794/04, § 91, 24 April 2012). Accordingly, the Court rejects this objection.

29. As regards the Government's objection about non-exhaustion of domestic remedies in respect of the first applicant's unrecorded detention, the Court notes that the applicant raised this complaint during his trial and the District Court calculated the applicant's imprisonment term from 30 August 2016, as claimed by him (see paragraph 25 above). Accordingly, the Court rejects this objection.

30. It is not necessary to examine whether the applicant exhausted the domestic remedies in respect of his complaint under Article 6 § 2, since this complaint is in any event inadmissible for the reasons indicated below.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

32. The Court is satisfied that both applicants made a credible claim of ill-treatment by State officials, supported by detailed statements and medical evidence. The domestic authorities were therefore under an obligation to carry out an effective investigation into those allegations.

33. The investigating authorities confined themselves to carry out a pre-investigation inquiry and refused to open a criminal investigation. The Court reiterates that a pre-investigation inquiry is incompatible with the standards established under Article 3 of the Convention for an effective investigation into credible allegations of ill-treatment by State officials (see *Lyapin v. Russia*, no. 46956/09, §§ 125-40, 24 July 2014).

34. When concluding that the applicants had sustained injuries as a result of lawful use of force by the officials during the operation, the investigator did not make any assessment whether the use of force had been indispensable and not excessive, in particular, in view of the fact that the force had been applied within the framework of planned operation by a group of armed and trained officers (see paragraph 18 above). The investigator's conclusion concerning the origin of the second applicant's injuries was not based on any evidence and was inconsistent with the officials' statements that no force had been applied against him (see paragraph 18 above).

35. The above considerations are sufficient to conclude that no effective investigation, as required by Article 3 of the Convention, has been carried out into the applicants' allegations of ill-treatment. It follows that the explanations provided as a result of the domestic inquiries cannot be considered satisfactory or convincing, capable of casting doubt on the applicants' accounts of events.

36. As regards the first applicant's allegation that his foot had been stabbed with a knife (see paragraph 4 above), the Court rejects it as unsupported. Given that the parties did not contest that a mirror had broken (see paragraph 5 above), the Court accepts that the wound may have been accidentally sustained during the operation. At the same time, in the light of the applicants' injuries confirmed by medical evidence in the case file (see paragraphs 12 and 13 above), the Court finds that the officials had used excessive force during the operation and had subjected the applicants to inhuman and degrading treatment (see *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, §§ 102-04, 12 December 2017).

37. There has accordingly been a violation of Article 3 of the Convention under its both limbs.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

38. The first applicant's complaint under Article 5 § 1 of the Convention is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

39. The Court notes that it is not contested between the parties that the first applicant was apprehended during the operation on 30 August 2016 (see paragraph 10 above). However, his arrest was recorded only the following day (see paragraph 14 above). The Court finds the first applicant's unrecorded detention between 30 and 31 August 2016 incompatible with the requirement of lawfulness of Article 5 § 1 of the Convention (see *Fartushin v. Russia*, no. 38887/09, §§ 49-54, 8 October 2015). Accordingly, there has been a violation of this provision.

IV. REMAINING COMPLAINTS

40. As regards the first applicant's complaint under Article 6 § 1 of the Convention about allegedly planted evidence, the Court notes that those allegations were not confirmed by evidence. In particular, the attesting witnesses, dog trainers and an expert witness confirmed the manner in which that evidence had been obtained and refuted the applicant's allegations (see paragraphs 21 and 22 above). The applicant, assisted by lawyers, was able to challenge that evidence and to present his version of events. The domestic courts verified the applicant's allegations in this regard and found them unsubstantiated. Having examined the safeguards which surrounded the evaluation of reliability of the evidence concerned, the Court finds that the proceedings in the first applicant's case, considered as a whole, were not contrary to the requirements of a fair trial (see *Bykov v. Russia* [GC], no. 4378/02, §§ 95 and 104, 10 March 2009). It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

41. As regards the first applicant's complaint under Article 6 § 2, the Court finds that the wording of the impugned decision of the District Court did not amount to a pronouncement on the applicant's guilt. Consequently, the first applicant's right to the presumption of innocence was not adversely affected. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

42. The first applicant also raised other complaints under various Convention provisions. The Court considers that, in the light of all the material in its possession, these complaints do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention and must be rejected in accordance with Article 35 § 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. The applicants claimed compensation for non-pecuniary damage in the amount to be determined in accordance with the Court's case-law. The Court awards each of the applicants EUR 26,000 (twenty-six thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable to them.

44. The applicants did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award any sum on that account.

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 3 of the Convention in respect of both applicants and concerning Article 5 of the Convention in respect of the first applicant admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limb in respect of both applicants;
3. *Holds* that there has been a violation of Article 5 of the Convention in respect of the first applicant;
4. *Holds*
 - (a) that the respondent State is to pay each of the applicants, within three months, EUR 26,000 (twenty-six thousand euros), 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, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

RAGIMOVY v. RUSSIA JUDGMENT

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