



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

THIRD SECTION

CASE OF SHISHKIN AND OTHERS v. RUSSIA

(Applications nos. 30050/09 and 2 others – see appended list)

JUDGMENT

STRASBOURG

1 September 2020

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

In the case of Shishkin and Others v. Russia,

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

Alena Poláčková, *President*,

Dmitry Dedov,

Gilberto Felici, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having deliberated in private on 30 June 2020,

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

PROCEDURE

1. The case originated in three applications 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 the various dates indicated in the appended table.

2. The Russian Government (“the Government”) were represented by Mr M. Galperin, Representative of the Russian Federation to the European Court of Human Rights.

3. Notice of the applications was given to the Government.

4. The Government did not object to the examination of the applications by a Committee.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. Mr Shishkin and Mr Kramchaninov are Russian nationals. Mr Martyshev is an Uzbek national.

6. Between 2006 and 2012, the applicants were arrested on suspicion of having committed crimes in different regions of Russia. They alleged, among other things, that they had been ill-treated by the police. The criminal proceedings opened into the ill-treatment of Mr Kramchaninov and Mr Martyshev resulted in the convictions of perpetrators.

A. Shishkin v. Russia, no. 30050/09

1. Alleged ill-treatment

7. On 2 March 2006 officers of the Department of the Interior in the Kstovskiy District of the Nizhegoroskiy Region searched the applicant’s flat. On the same day the applicant and his sister, Ms O., went to the Department to enquire about the items seized during the search. According to the applicant, the officers took him to an office and ill-treated him, forcing to confess to a crime. They tied his legs, handcuffed him, kicked and

punched him on the body and in the chest, and threatened to kill him. The ill-treatment lasted for about four hours. The applicant signed the confession and was then released.

8. On the following day the applicant went to a hospital, where he was diagnosed with a contusion of the lumbar area and right kidney, and a hematoma of the left eye. The applicant explained to a doctor that he had been beaten by the police officers. The hospital staff informed the police about the origins of the applicant's injuries.

2. Official inquiry into the alleged ill-treatment

9. On 16 March 2006 an investigator decided not to open a criminal case. On 18 March 2006 the decision was quashed as incomplete by a superior authority.

10. Between April 2006 and June 2007 the investigators issued ten decisions, including the decision of 22 June 2007, the latest at the time, refusing to open a criminal case for the absence of evidence of a crime. The decisions were mainly based on the explanations of the police officers, denying the applicant's allegations of ill-treatment. They were all quashed as incomplete.

11. On 5 June 2007 the applicant underwent a forensic medical examination. According to report no. 433, the applicant's injuries recorded at the hospital on 3 March 2006 could have resulted from blows by hands and legs between one and three days before the examination at the hospital.

3. The appeal against the refusal of 22 June 2007

12. On 21 December 2007 the applicant challenged the refusal of 22 June 2007 at the Kstovskiy District Court.

13. Meanwhile, on 23 April 2008 the Kstovskiy District Court convicted the applicant and dismissed his allegations of ill-treatment as unfounded.

14. On 18 February 2008 the Kstovskiy District Court granted the applicant's complaint against the refusal. It found that the investigator had failed to explain why he had relied on the explanations of the police officers and dismissed the explanations of witnesses supporting the applicant's version of the events, including the explanations of Ms O., and that the investigator had not assessed the conclusions of the applicant's forensic examination.

4. The appeal against the refusal of 9 December 2008

15. On 9 December 2008 the investigator again refused to open a criminal case for the absence of evidence of a crime.

16. On 19 January 2010 the Kstovskiy District Court dismissed the applicant's complaint about the refusal, referring to his conviction of 23 April 2008.

17. On 23 April 2010 the Nizhegorodskiy Regional Court quashed the court decision of 19 January 2010. It found that the trial court had addressed the issue of admissibility of his confession statements as evidence in the case, but not his allegations of ill-treatment. It also noted that the investigator had failed to correct deficiencies which the court had indicated in its decision of 18 February 2008. The Regional Court remitted the case to the first instance court for a new examination.

18. On 16 June 2010 the Kstovskiy District Court granted the applicant's complaint, referring to its own decision of 18 February 2008.

19. On 1 October 2010 the investigator issued the latest refusal to open a criminal case. The decision was quashed. Further outcome is unclear.

5. Civil proceedings against the Ministry of Finance

20. On an unspecified date the applicant lodged a civil claim against the Russian Ministry of Finance. The applicant complained about the investigators' inactivity and procrastination in his case. He claimed compensation of 500,000 Russian roubles (RUB) (about 6,944 euros (EUR)).

21. On 3 December 2014 the Nizhegorodskiy District Court partially granted his claim. The court found that the investigators had failed to take all the necessary measures to investigate the case. It noted that the latest decision of 1 October 2010 not to open a criminal case had been eventually quashed as incomplete. The court decided that the amount of RUB 10,000 (about EUR 140) would constitute sufficient compensation for the applicant's grievances.

22. On 21 April 2015 the Nizhegorodskiy Regional Court upheld the court decision on appeal.

B. Kramchaninov v. Russia, no. 47008/16

1. Alleged ill-treatment

23. On 15 July 2010 police officers of the Shakhunskiy Department of the Interior of the Nizhegorodskiy Region arrived to the applicant's home and invited him to the police station. The applicant followed. According to the applicant, at the station the officers punched him in his face, chest and kidney area, forcing him to confess to a crime. They squeezed his little finger with pliers, put a gas mask on him and forced him to squat. They also punctured his neck with a needle. The applicant was released after he had confessed.

24. On 15 July 2010 the applicant went to a hospital where he stayed until 2 August 2010. He was diagnosed with a craniocerebral injury.

25. On 16 July 2010 the applicant underwent a forensic medical examination. According to report no. 198, he had a closed craniocerebral

injury, brain concussion, bruises on his left eye, right temple, back of his head, a punctured wound to his neck, and bruises on his left little finger.

2. Investigation into the alleged ill-treatment

26. On 16 July 2010 the applicant complained to an investigator about the ill-treatment.

27. Between August 2010 and March 2016 the investigators issued at least nine decisions refusing to open a criminal case for the lack of evidence of crime.

28. On 29 May 2017 a criminal case against police officer T. was opened under Article 286 § 3 (a) of the Criminal Code (the CC) for abuse of power with the use of violence. The applicant was granted victim status.

29. On 17 January 2018 the Shakhunskiy District Court convicted police officer T. The court found, among other things, that with a view to extracting a confession, officer T. had kicked and punched the applicant causing a brain concussion, put a gas mask on him, squeezed his little finger with pliers, forced him to squat, and punctured his neck with a needle. It sentenced T. to a suspended sentence of four years and banned him from working in law-enforcement bodies for two years and six months. The court considered that it was possible to commute the sentence given the defendant's excellent police service and positive references from his superiors, the absence of previous criminal or administrative records, and due to him having a minor child. On 30 January 2018 the conviction became final.

3. Civil proceedings against the Investigation Committee and the Ministry of Finance

30. On 25 October 2016 the applicant lodged a civil claim against the Investigation Committee and the Ministry of Finance, seeking to obtain compensation of non-pecuniary damage caused by the ill-treatment. He claimed in total RUB 570,000 (about EUR 7,917).

31. On 16 August 2017 the Nizhegorodskiy District Court partially granted the applicant's claim awarding RUB 30,000 (about EUR 417). On 13 February 2018 the Nizhegorodskiy Regional Court upheld the decision on appeal.

32. On 12 February 2019 the applicant appealed against the court decision of 16 August 2017 and the appellate court decision of 13 February 2018 to the Nizhegorodskiy Regional Court on points of law. Further outcome is unclear.

4. Civil proceedings against the Ministry of Internal Affairs

33. On an unspecified date the applicant lodged a civil claim against the Ministry of Internal Affairs for compensation of non-pecuniary damages of RUB 700,000 (about EUR 9,722).

34. On 31 May 2018 the Shakhunskiy District Court partially granted the applicant's claim awarding RUB 350,000 (about EUR 4,860).

35. The Ministry of Internal Affairs appealed against the court decision. On 5 February 2019 the Nizhegorodskiy Regional Court upheld the decision of 31 May 2018 on appeal.

C. Martyshev v. Russia, no. 62972/16

1. Alleged ill-treatment

36. On 9 March 2012 at around 2 p.m. police officers of the Criminal Investigation Department of the Voronezh Region (*Управление уголовного розыска ГУ МВД России по Воронежской области*) arrested the applicant and took him to the police department.

37. According to the applicant, officers M. and K. applied electric shocks to his fingers, kicked and punched him, stepped on his head and on the back of his knees, forcing him to confess. The ill-treatment lasted until 1 a.m. on 10 March 2012.

38. On 10 March 2012 at around 2.30 a.m. the applicant was taken to a hospital where he stayed until 19 March. He was diagnosed with a liver rupture, intra-abdominal haemorrhage, and a fracture of the fourth to seventh right ribs and multiple bruises on his body.

39. Between 22 and 28 March 2012 the applicant underwent a forensic examination. According to report no. 308.12, the applicant had multiple surface injuries to his fingers which did not exclude the impact of electric shock. The liver rupture was qualified as serious harm to health. The ribs fracture was qualified as significant harm to health.

2. The applicant's expulsion from Russia

40. On 8 July 2013 the Head of the Department of Migration (*УФМС России по Воронежской области*) ordered the applicant's expulsion to Uzbekistan and a ban to enter Russia until 22 October 2015. On 12 December 2013 the applicant left Russia.

3. Proceedings concerning the alleged ill-treatment

41. On 22 March 2012 a criminal case was opened against police officer M. The applicant was given victim status. Officer M. was charged, among other things, with the infliction to the applicant of serious and life-threatening injuries (liver rupture) and abuse of power with the use of

violence under Article 111 § 3 (a) and Article 286 § 3 (a) (b) of the CC. He was also charged with other crimes in respect of several other victims.

(a) First set of the court proceedings

42. On 15 July 2014 the Buturlinovskiy District Court convicted police officer M. as charged. As to the applicant's ill-treatment, the court relied on the applicant's statements given as a victim during the investigation since he could not be questioned in trial due to his expulsion from Russia. According to his statements, officers M. and K. had arrested him and took him to the police department where he had been ill-treated. The conviction judgment also cited witness statements given at the trial by officer K. that officer M. had hit the applicant several times in the car on the way to the police department. The court sentenced officer M. to two years and six months of imprisonment in a colony of strict regime.

43. On 17 November 2014 the Voronezh Regional Court quashed the conviction of officer M. in part concerning the applicant's ill-treatment and remitted the case for a new examination. The court found that the authorities had failed to verify whether the applicant had in fact left Russia and to ensure his presence in trial in order to confirm his statements given during the investigation. It changed M.'s sentence to be served in a colony of general regime.

(b) Second set of the court proceedings

44. On an unspecified date the prosecutor dropped charges under Article 111 § 3 (a) against M. for the infliction of liver rupture for the lack of evidence that it had been M. who had inflicted it to the applicant.

45. On 30 November 2015 the Zheleznodorozhniy District Court convicted officer M. under Article 286 § 3 (a) (b) of the CC for abuse of power with the use of violence. It relied on witness statements of officer K. and the applicant's statement given during the investigation. The court also heard other police officers who had been on-duty at the police department on 9 March 2012. They submitted that no violence had been applied to the applicant at the department and that he had been taken to the hospital in view of his bad state of health. The court concluded that, following the applicant's arrest, M. had handcuffed the applicant and had inflicted at least two blows in his chest in the car on the way to the police station.

46. By a separate decision of 30 November 2015 the Zheleznodorozhniy District Court terminated criminal proceedings against M. under Article 111 § 3 (a). It found that following the applicant's arrest, M. and an unidentified person had inflicted several blows in his chest, stomach, and subjected him to electric shocks at the police station. The court further noted that, as a result of the joint actions of officer M. and an unidentified person, the applicant had sustained liver rupture and multiple bruises on the body. It

was unable to conclude definitively that the liver rupture had been caused by officer M.

4. *Appeal proceedings*

47. On 31 December 2015 the applicant appealed against the judgment and the decision on the termination of the criminal proceedings of 30 November 2015.

48. In the appeal against the judgment, the applicant argued that the sentence was disproportionate to the gravity of charges. In the appeal against the termination of the proceedings, he argued that there were no grounds to terminate the proceedings under Article 111 § 3 (a) since the charges of infliction of liver rupture were based on the same set of facts and evidence as the charges of infliction of other injuries, and apart from officers M. and K., there had been no other officers who had ill-treated him.

49. By two separate decisions both dated 18 April 2016, the Voronezh Regional Court dismissed the applicant's appeals against the judgment and the court decision of 30 November 2015.

50. Regarding the judgment, the appellate court found that the sentence was adequate to the charges. As to the termination of the criminal proceedings, the court found that there was no evidence that the applicant's liver rupture had been inflicted by officer M.

II. RELEVANT DOMESTIC LAW AND PRACTICE

51. 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.

52. For the relevant provisions of domestic law on compensation of non-pecuniary damage (physical and mental suffering), see *Artur Ivanov v. Russia*, no. 62798/09, §§ 13-17, 5 June 2018.

THE LAW

I. JOINDER OF THE APPLICATIONS

53. 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

54. The applicants complained 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. Mr Shishkin and Mr Kramchaninov also complained that the low amount of compensation awarded to them in the domestic civil proceedings had not provided them with a proper redress. The applicants also complained under Article 13 of the Convention that they had not had an 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

1. Submissions by the parties

(a) The Government

(i) Alleged loss of victims status

55. The Government contested the applicants’ arguments and submitted that they had lost their victim status for the following reasons.

56. Referring to the court decision of 3 December 2014 (see paragraph 21 above), they argued that the court had granted Mr Shishkin’s complaint about the inactivity of the investigators.

57. In the case of Mr Kramchaninov, the Government submitted that the perpetrator, accused of the applicant’s ill-treatment, had been found guilty by a final court decision. The court granted the applicant’s claim against the Ministry of Internal Affairs for non-pecuniary damage amounting to RUB 350,000 and that he had been satisfied with that amount as he had not challenged the court decision. Moreover, he was granted RUB 30,000 by a court decision against the Investigation Committee and the Ministry of Finance for non-pecuniary compensation (see paragraphs 31 and 34 above).

58. Regarding Mr Martyshov, the Government submitted that officer M. had been convicted for the applicant’s ill-treatment (see paragraph 49 above). He therefore could not claim to be a victim under Article 34 of the Convention.

(ii) Exhaustion of domestic remedies

59. According to the Government, Mr Kramchaninov had failed to appeal against the court decision of 31 May 2018, by which he had been granted RUB 350,000 as non-pecuniary compensation (see paragraph 34 above).

60. The Government argued that Mr Martyshev had failed to appeal against the conviction of officer M. and to pursue any civil proceedings to claim non-pecuniary compensation for the ill-treatment. They further submitted that even if the applicant could still claim to be a victim, he had not exhausted domestic remedies.

(b) The applicants

61. Mr Shishkin contended that the authorities had not acknowledged a violation of his rights under Article 3 of the Convention as no criminal investigation had been opened. He stated that the awarded compensation of RUB 10,000 was inadequate for his grievances. He therefore retained his victim status.

62. Mr Kramchaninov submitted that the sentence imposed on the perpetrator had been disproportionate to the charges. He further argued that the awarded compensation was insufficient.

63. Mr Martyshev stated that the domestic authorities had failed to acknowledge that he had been subjected to torture, in particular, that the liver rupture had been caused by officer M. He appealed against both the judgment with conviction and the court decision of 30 November 2015 but in vain. He claimed that he had retained his victim status and that he had exhausted all domestic remedies.

2. The Court's assessment

(a) Victim status

64. The Court summarised the principles governing the assessment of an applicant's victim status in paragraphs 178-192 of its judgment in the case of *Scordino v. Italy (no. 1)* ([GC], no. 36813/97, ECHR 2006-V). It follows from the foregoing principles that the Court must verify whether the authorities acknowledged, at least in substance, that there had been a violation of a right protected by the Convention. In cases of wilful ill-treatment by State agents in breach of Article 3, in addition to acknowledging the violation, two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Secondly, an award of compensation is required where appropriate or, at least, the possibility of seeking and obtaining compensation for the damage sustained as a result of the ill-treatment (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010).

(i) Mr Shishkin (application no. 30050/09)

65. The Court notes that the investigators refused to open a criminal case into the applicant's allegations of ill-treatment. The decision of the

Nizhegorodskiy District Court partially awarding compensation to the applicant for the inactivity of the investigators did not amount to an acknowledgment of ill-treatment, but only concerned the incomplete investigation (see paragraph 21 above). In view of the absence of an acknowledgment of a violation by the authorities, the applicant remains a “victim” of the alleged violation (see *Albayrak v. Turkey*, no. 38406/97, §§ 33, 31 January 2008). The Government’s objection must be dismissed.

(ii) Mr Kramchaninov (application no. 47008/16)

66. The domestic courts acknowledged that the applicant had been ill-treated by a police officer and had sustained injuries. In particular, it was established that police officer T. had inflicted upon Mr Kramchaninov numerous bodily injuries and brain concussion. He was sentenced to a suspended sentence of four years (see paragraph 29 above). The Court therefore accepts that the authorities had acknowledged in substance that the applicant had been subjected to ill-treatment contrary to the guarantees of Article 3 of the Convention. The Court must further examine whether there was sufficient redress in the form of an adequate investigation and compensation. Therefore, the question of whether Mr Kramchaninov may still claim to be a victim of a violation of Article 3 of the Convention in respect of his ill-treatment is closely linked to the merits of his complaint under that provision. The Court therefore decides to join this matter to the merits.

(iii) Mr Martyshev (application no. 62972/16)

67. The domestic court found that the applicant had sustained at least two blows to his chest inflicted by officer M. (see paragraph 45 above). However, Mr Martyshev also sustained other injuries, such as liver rupture and ribs fracture, which were qualified as serious and significant harm to health accordingly (see paragraph 39 above). The domestic court concluded that it was not sufficiently established that the liver rupture had been inflicted by police officer M. Nevertheless, the court accepted that it had been inflicted after the applicant had been arrested by officer M. (see paragraph 46 above). In fact, the authorities never assumed the responsibility for the liver rupture, referring to an “unidentified person” whose actions had caused the injury (*ibid.*). In such circumstances, the Court does not accept that there has been an acknowledgment in substance by the authorities that the applicant had been subjected to ill-treatment contrary to Article 3 of the Convention. The applicant therefore retains his victim status for the purposes of his complaint.

(b) Exhaustion of domestic remedies

68. The Government raised the non-exhaustion objection in the cases of Mr Kramchaninov and Mr Martyshev concerning their attempts to obtain compensation for the police ill-treatment.

69. The Court has repeatedly held that the breach of Article 3 cannot be remedied solely by awarding compensation to the victim. This is so because, if the authorities could confine their response to incidents of wilful ill-treatment by State agents to the mere payment of compensation, while not doing enough to prosecute and punish those responsible, it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity, and the general legal prohibition of torture and inhuman and degrading treatment, despite its fundamental importance, would be ineffective in practice. That is why an applicant's ability to request and obtain compensation for the damage which he sustained as a result of the ill-treatment is only part of the overall action required (see *Cestaro v. Italy*, no. 6884/11, § 231, 7 April 2015).

70. In cases of treatment contrary to Article 3 of the Convention, given that the requirement for compensation to remedy a breach of Article 3 at national level is imposed in addition to the requirement of a thorough and effective investigation geared to identifying and punishing those responsible and is not an alternative, purely compensatory remedies cannot be regarded as effective under Article 3 as they are aimed at awarding damages rather than identifying and punishing those responsible (see *Sapožkovs v. Latvia*, no. 8550/03, § 55, 11 February 2014).

71. The Court considers that an obligation on the applicants to appeal against the court decision (as in the case of Mr Kramchaninov) or lodge a civil action in view of the termination of the criminal proceedings into infliction of serious bodily injuries (as in the case of Mr Martyshev) would place an excessive burden on the victims of a violation of Article 3 of the Convention. The Court therefore rejects the Government's objection as to the non-exhaustion of domestic remedies.

72. As to the Government's final submission that Mr Martyshev failed to appeal the perpetrator's conviction, the Court notes that it clearly follows from the case file that the applicant appealed against that judgment on the grounds that the sentence had been disproportionate to the charges. These appeals were dismissed (see paragraphs 48 and 49 above). The Court therefore rejects the Government's objection.

(c) Conclusion on admissibility

73. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits*1. Submissions by the parties*

74. In the case of Mr Shishkin, the Government submitted that no physical force had been applied to the applicant at the police station on 3 March 2006. The applicant's injuries had originated in the circumstances not related to the actions of police officers. In the cases of Mr Kramchaninov and Mr Martyshev, the Government did not make submissions on the merits.

75. Mr Shishkin reiterated that he had been ill-treated by the police and that the Government had failed to provide a plausible explanation for his injuries. Mr Kramchaninov and Mr Martyshev maintained their complaints.

*2. The Court's assessment***(a) Mr Shishkin (application no. 30050/09)**

76. Having examined the case file and the parties' submissions, the Court considers that the applicant's injuries were well-documented following his presence at the police department (see paragraph 8 above) and could arguably have resulted from the violence allegedly suffered at the hands of the police officers. The above factors are sufficient to give rise to a presumption in favour of the applicant's account of events and to satisfy the Court that his allegations of ill-treatment in police custody were credible.

77. The Court must now examine whether the investigation into the credible allegations of ill-treatment was in compliance with the requirements of Article 3 of the Convention.

78. The Court observes that the applicant's credible allegations of police ill-treatment were dismissed by the investigators as unfounded based mainly on the explanations of police officers denying his ill-treatment (see paragraph 10 above). Despite the court decisions of 18 February 2008 and 16 June 2010, the investigators failed to address in their subsequent decisions the established inconsistencies, at which the courts had pointed. As the courts indicated, the investigators also had not given a proper assessment of the injuries recorded in the applicant's forensic examination report (see paragraphs 14 and 17 above).

79. In addition, as regards the quality of the medical evidence, the Court reiterates that proper medical examinations are essential safeguards against ill-treatment (see *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, §§ 55 and 118, ECHR 2000-X). In this connection, the Court observes that despite the fact that the applicant had been examined by a doctor on the following day after his ill-treatment and that the police had been informed about it (see paragraph 8 above), the applicant's forensic examination was carried out more than a year after the events (see paragraph 11 above). The Court considers that such delay put into question the experts' ability to provide

adequate answers to the questions raised by the investigating authority (see *Mogilat v. Russia*, no. 8461/03, § 64, 13 March 2012).

80. The Court further finds that the Government's explanation that the applicant's injuries had been caused in the circumstances not related to the actions of police officers is not supported by any evidence.

81. The Court reiterates its finding that the mere carrying out of a pre-investigation inquiry under Article 144 of the Code of Criminal Procedure of the Russian Federation is insufficient if the authorities are to comply with the standards established under Article 3 of the Convention for an effective investigation into credible allegations of ill-treatment in police custody. It is incumbent on the authorities to institute criminal proceedings and conduct a proper criminal investigation in which a full range of investigative measures are carried out (see *Lyapin v. Russia*, no. 46956/09, § 129, 24 July 2014). The Court finds that the State has failed to carry out an effective investigation into the applicant's allegations of police violence.

82. Given the purpose, length and intensity of the ill-treatment and the damage caused by it to the applicant, the Court concludes that it must be classified as "inhuman and degrading treatment".

83. Accordingly, there has a violation of the substantive and procedural aspects of Article 3 of the Convention.

(b) Mr Kramchaninov (application no. 47008/16)

84. The Court has already found that the authorities had acknowledged the applicant's ill-treatment in the police custody (see paragraph 66 above). The Court considers that the treatment, to which the applicant was subjected, must be classified as "torture". The Court notes that the criminal investigation was opened into the events, which resulted in the identification and punishment of the perpetrator (see paragraph 29 above). The Court will now examine whether the investigation in that regard was compliant with the procedural standards of Article 3 of the Convention.

85. The Court observes that the applicant complained about his ill-treatment on the following day after the events, having already been examined by a forensic expert (see paragraphs 25 and 26 above). He had an "arguable claim" that obliged the domestic authorities to carry out "a thorough and effective investigation capable of leading to the identification and punishment of those responsible" (see, for similar reasoning, *Egmez v. Cyprus*, no. 30873/96, § 66, ECHR 2000-XII, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, §§ 358-59, 6 April 2004). It was therefore incumbent on the national authorities to respond to the applicant's claim, which was clearly credible, without undue delay and to provide a plausible explanation for his injuries (see *A.A. v. Russia*, no. 49097/08, § 92, 17 January 2012, and *Davitidze v. Russia*, no. 8810/05, § 109, 30 May 2013).

86. In the present case the Court notes that for about six years the authorities refused to open a criminal case, referring to the lack of evidence (see paragraph 27 above). They launched a fully fledged criminal investigation only in May 2017 (see paragraph 28 above), that is nine months after he had lodged his complaint with the Court.

87. The Court is satisfied that the domestic authorities eventually conducted the investigation within eight months after its launch, which resulted in the identification and punishment of the perpetrator. However, it cannot overlook the fact that the overall duration of the criminal proceedings, including the initial delay, was eight years. During the first six years, the investigators consistently issued refusals to open a criminal case, which were all based on similar grounds. Accordingly, the Court finds that the investigation cannot be said to have been prompt and diligent.

88. As to the sentence imposed on the perpetrator, the Court notes that the crime is punishable by the Russian criminal law from three to ten years of imprisonment (see paragraph 51 above). The perpetrator, who had been found guilty of a serious case of ill-treatment, was punished by a suspended sentence of four years. Having regard to the fact that the sentence was imposed eight years after the wrongful conduct, the suspension appears lenient and disproportionate to the gravity of the act (see *Atalay v. Turkey*, no. 1249/03, § 44, 18 September 2008).

89. The Court finds that the authorities failed to carry out an effective criminal investigation into the applicant's allegations of ill-treatment and that the applicant may still claim to be a "victim" of a breach of his rights under Article 3 of the Convention on account of his ill-treatment by the police. It therefore dismisses the Government's objection in that regard.

90. In view of this finding, the Court considers that it is not necessary to examine whether the compensation awarded by the domestic courts to the applicant (see paragraphs 31 and 34 above) constitute sufficient compensation for the damage sustained as a result of ill-treatment.

91. The Court concludes that there has been a violation of Article 3 of the Convention under its substantive and procedural aspects.

(c) Mr Martyshev (application no. 62972/16)

92. The Court observes that the domestic authorities established that the applicant had sustained liver rupture, haemorrhage, ribs fracture and multiple bruises on his body following his presence at the police department on 9 March 2012 (see paragraphs 38 and 67 above). The applicant's injuries and allegations were sufficiently serious and credible to require an investigation on the part of the authorities.

93. The Court further observes that the authorities carried out an investigation into the ill-treatment. They identified and punished police officer M. for the infliction of two blows in the applicant's chest (see paragraph 45 above).

94. As to the liver rupture, the authorities were unable to identify the individuals who had inflicted this injury (see paragraph 46 above). The Court further notes that it was not disputed by the parties that the applicant had been arrested by officers M. and K. on 9 March 2012. No other officers participated in the applicant's arrest. The main conclusion of the domestic courts was that the liver rupture had been inflicted by joint actions of officer M. and an unidentified person at the police department, but it was impossible to establish whose actions in particular had caused the rupture (*ibid.*). In this regard, the Court notes that the circle of individuals involved in the ill-treatment was sufficiently clear and the investigation's inability to identify a perpetrator responsible for liver rupture may only be attributed to the reluctance of the authorities to pursue the investigation (see, *mutatis mutandis, Velkhiyev and Others v. Russia*, no. 34085/06, § 114, 5 July 2011).

95. Regarding the ribs fracture and haemorrhage, these injuries were not even mentioned either in the conviction of police officer M. or in the decision to terminate the criminal proceedings of 30 November 2015. Despite the fact that these injuries had been apparently inflicted to the applicant at the police department, that is while he had been under the authorities' control, the authorities nevertheless failed to provide any explanation of how they had been caused.

96. The Court therefore concludes that there was no thorough and effective investigation into the applicant's allegation of ill-treatment, which has resulted, in particular, in the liver rupture, ribs fracture and haemorrhage.

97. Given the damage caused by the ill-treatment to the applicant, the Court classifies the treatment as "torture". It concludes that there has been a violation of both substantive and procedural aspects of Article 3 of the Convention.

(d) Alleged violation of Article 13 of the Convention

98. In the light of the Court's findings on Article 3 of the Convention, the Court considers that it is not necessary to examine whether there has also been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. Article 41 of the Convention provides:

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

A. The parties' submissions

100. The amounts claimed by the applicants under the head of non-pecuniary damage and costs and expenses are indicated in the appended table. The applicants provided documents and receipts in support of their claims for the costs and expenses incurred before the Court.

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

B. The Court's assessment

102. Wherever the Court finds a violation of the Convention, it may accept that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the findings of violations, and make a financial award.

103. As to costs and expenses, the Court has to establish whether they were actually incurred and whether they were necessary and reasonable as to quantum (see *McCann and Others v. the United Kingdom*, 27 September 1995, § 220, Series A no. 324).

104. Having regard to the conclusions and principles set out above and the parties' submissions, and taking into account the amounts awarded to Mr Kramchaninov and Mr Shishkin by the domestic courts, the Court awards the applicants the amounts detailed in the appended table, plus any tax that may be chargeable to them on those amounts.

C. Default interest

105. 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. *Dismisses* the Government's objections concerning the loss of victim status and non-exhaustion of domestic remedies, with the exception of the objection concerning the loss of victim in the case of Mr Kramchaninov, which it *joins* to the merits, and *rejects* it;
3. *Declares* the applications admissible;
4. *Holds* that there has been a violation of Article 3 of the Convention on account of inhuman and degrading treatment of Mr Shishkin and on

account of torture of Mr Kramchaninov and Mr Martyshev and that no effective investigation into their complaints was carried out by the authorities;

5. *Holds* that there is no need to examine the complaints under Article 13 of the Convention;
6. *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 the applicants, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the amounts indicated in the appended table at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 1 September 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Alena Poláčková
President

Appendix

| No. | Case name Application no. Lodged on | Applicant Year of Birth Place of Residence Nationality Represented by | Non-pecuniary damage | Costs and expenses |
|-----|---|---|--|---|
| 1 | Shishkin v. Russia 30050/09 13/05/2009 | Vladimir Viktorovich SHISHKIN 1968 Kstovo Nizhniy Novgorod Region Russian Olga Aleksandrovna SADOVSKAYA | Sought by the applicant | |
| | | | EUR 45,000 | EUR 4,494 |
| | | | Awarded by the Court | |
| | | | EUR 19,300 (nineteen thousand three hundred euros) | EUR 3,000 ¹ (three thousand euros) |
| 2 | Kramchaninov v. Russia 47008/16 04/08/2016 | Denis Yuryevich KRAMCHANINOV 1991 Shakhunya, Nizhniy Novgorod Region Russian Olga Aleksandrovna SADOVSKAYA | Sought by the applicant | |
| | | | EUR 45,000 | EUR 3,900 |
| | | | Awarded by the Court | |
| | | | EUR 34,400 (thirty four thousand four hundred euros) | EUR 3,000 ² (three thousand euros) |
| 3 | Martyshev v. Russia 62972/16 18/10/2016 | Marat Aleksandrovich MARTYSHEV 1973 Yangiabad Uzbekistan Olga Anatolyevna GNEZDILOVA | Sought by the applicant | |
| | | | At the Court's discretion | EUR 3,621.5 |
| | | | Awarded by the Court | |
| | | | EUR 39,700 (thirty nine thousand seven hundred euros) | EUR 3,000 ³ (three thousand euros) |

¹ The sum is to be paid into the representative's bank account, as identified by the applicant.

² The sum is to be paid into the representative's bank account, as identified by the applicant.

³ The sum is to be paid into the representative's bank account, as identified by the applicant.