THIRD SECTION

**CASE OF VOROSHILOV v. RUSSIA**

*(Application no. 59465/12)*

JUDGMENT

STRASBOURG

17 July 2018

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

In the case of Voroshilov v. Russia,

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

 Alena Poláčková, *President,* Dmitry Dedov, Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 26 June 2018,

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

PROCEDURE

1.  The case originated in an application (no. 59465/12) 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 a Russian national, Mr Aleksandr Sergeyevich Voroshilov (“the applicant”), on 14 August 2012.

2.  The applicant was represented by the Committee Against Torture, a non‑governmental organisation based in Nizhniy Novgorod and Ms O.A. Sadovskaya, a lawyer practising in Nizhniy Novgorod. The Russian Government (“the Government”) were represented initially by Mr G. Matyushkin, former Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3.  On 19 September 2016 the complaints concerning the applicant’s ill‑treatment in police custody were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1991 and lives in Orenburg.

A.  The applicant’s ill-treatment in police custody and criminal proceedings against police officers

5.  The facts of the applicant’s ill-treatment were established in a judgment of the Promyshlenniy District Court of Orenburg of 15 December 2011, as upheld on 14 February 2012 by the Orenburg Regional Court, and are as follows.

6.  At around 7 p.m. on 30 August 2009 the applicant was arrested at a bus stop by police officers of the criminal investigation unit and taken to a police station in Orenburg (*УВД по г. Оренбургу*). From 8 p.m. to midnight on 30 August 2009, and from 12 noon to 6 p.m. on 31 August 2009, police officers K. and M. subjected the applicant to physical and psychological violence in order to obtain a confession from him about a drug-related crime which they suspected him of having committed.

7.  The facts of the ill-treatment on 30 August 2009 were established as follows. Officers K. and M. pushed the applicant to the floor and punched and kicked him numerous times in the head, face, chest, arms and legs. K. placed a plastic bag over his head, closing off his access to air, while M. held him down. As regards the ill-treatment on 31 August 2009, officers K. and M. punched the applicant numerous times in the head and threatened to detain him.

8.  At 8 p.m. on 31 August 2009 the applicant was formally arrested on suspicion of possession of drugs and placed in a temporary detention facility.

9.  On 2 September 2009 the applicant was released after giving an undertaking not to leave his place of residence. On the same day he sought medical help at a traumatology centre (TP no. 2). According to his medical records, he had abrasions on his forearms, a bruise under his right eye, a bruise in the left lumbar region and abrasions on his legs.

10.  On 3 September 2009 the applicant made a complaint to the Orenburg regional investigative committee regarding his ill‑treatment.

11.  On 4 September 2009 he underwent a forensic medical examination ordered by the investigation authority. According to report no. 6368, he had the following injuries: (i) a haematoma (swelling) of the soft tissues in the parietal region of the head, measuring 4 by 3 cm; (ii) four bruises of indefinite form on the right infraorbital region of the face, on his neck, on the left side of his chest and around the right iliac (hip) bone, measuring up to 4 by 3 cm each; and (iii) seventeen abrasions, some linear and some of indefinite form, on both forearms, his right hip and left lower leg, measuring from 0.8 by 0.5 cm to 2.5 by 1 cm each. The expert concluded that the applicant’s injuries had resulted from being struck repeatedly with a hard, blunt object with a limited surface area on the day of the alleged incident, and had not caused any “health damage”. Subsequent forensic medical expert reports of 4 December 2009 and 21 October 2010 came to similar conclusions. It was stated in the first of those reports that the applicant’s injuries had been caused by at least twenty traumatic blows to his body.

12.  Officers K. and M. were convicted under Article 286 § 3 (a) of the Criminal Code and banned from exercising official duties for three years. They were also given a three-year suspended sentence with a three-year probation period, which required them to appear monthly before the Service for the Execution of Sentences and disclose any change of place of work or residence.

13.  The following circumstances were taken into account in sentencing the police officers. The fact that officer K. had a child under 14 years old was considered a mitigating circumstance, while the fact that he and M. had committed the crime with a group of other officers was considered an aggravating circumstance. It was further taken into account that K. and M. had positive references from their places of work and residence, had no previous convictions, and had led a law-abiding way of life without committing any administrative offences for more than two years since the crime had been committed.

14.  On 31 November 2009 criminal proceedings against the applicant under Article 228 § 2 of the Criminal Code (possession of large quantities of drugs) were terminated for absence of a crime, pursuant to Article 24 § 1(2) of the Code of Criminal Procedure.

B.  Civil claim and compensation

15.  In 2012 the applicant brought a civil claim against the Russian Ministry of Finance, seeking 2,655,936 Russian roubles (RUB) in compensation for his unlawful detention and ill‑treatment in police custody by K. and M.

16.  On 28 June 2012 the Leninskiy District Court of Orenburg allowed the applicant’s claim in part and awarded him RUB 20,000. In determining the amount of compensation, the court found that the applicant had sustained injuries as a result of the police officers’ actions and had experienced physical and mental suffering, but that this had not caused him any “health damage”.

17.  The applicant appealed against that judgment to the Orenburg Regional Court, which on 19 September 2012 increased the amount of compensation to RUB 80,000.

II.  RELEVANT DOMESTIC LAW

18.  Article 286 § 3 (a) of the Criminal Code of the Russian Federation provides that actions by a public official which clearly exceed his or her authority and entail a substantial violation of an individual’s rights and lawful interests, committed with violence or the threat of violence, are punishable by three to ten years’ imprisonment, with a ban on occupying certain posts or engaging in certain activities for a period of up to three years.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

19.  The applicant complained that he had been subjected to torture in police custody, that the police officers who had tortured him had been given lenient sentences and that the amount of compensation awarded to him by the domestic courts had been inadequate. He relied on Article 3 of the Convention, which reads as follows:

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

20.  The Government acknowledged that the applicant had been subjected to ill-treatment in police custody in breach of Article 3. They further argued that the applicant had lost his status as a victim of that violation in view of the conviction and punishment of the police officers in the criminal proceedings and the compensation awarded to him in the civil proceedings. They noted that the criminal sanctions had been determined with regard to a number of mitigating circumstances and, despite the suspension of the sentences, had had negative consequences for the police officers. They considered the compensation reasonable given that the injuries had not caused the applicant any “health damage”.

21.  The applicant submitted that the minimal criminal sanctions and the suspension of their enforcement had been incompatible with the preventive role of criminal sanctions in what was a case of torture, and that the compensation had been much lower than the compensation generally awarded by the Court in similar cases.

A.  Admissibility

22.  The question of whether the applicant may still claim to be a victim of a violation of Article 3 of the Convention in respect of his alleged ill‑treatment is closely linked to the merits of his complaints under that provision. The Court therefore decides to join this matter to the merits.

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

B.  Merits

24.  The Court reiterates that the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned (see *Gäfgen v. Germany* [GC], no. 22978/05, § 87, ECHR 2010). In cases of wilful ill-treatment by State agents in breach of Article 3, 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 (ibid., §§ 115-16). Secondly, compensation for the non‑pecuniary damage flowing from the breach should in principle be part of the range of available remedies (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 218, ECHR 2012).

25.  The Court observes that for four hours on 30 August 2009 police officers K. and M. subjected the applicant – who was 18 years old at the time – to various forms of ill-treatment, which included him being pushed to the floor, punched and kicked numerous times in the head, face, chest, arms and legs, and being subjected to near suffocation by having a plastic bag put over his head. For six hours the following day they continued to ill-treat him, punching him numerous times in the head and threatening to detain him. Such treatment caused the applicant bodily injuries and serious physical and mental suffering. The police officers acted intentionally with the aim of humiliating him, driving him into submission and making him confess to the crime. The Court considers that such treatment amounted to torture (see, for instance, *Selmouni v. France* [GC], no. 25803/94, §§ 96‑105, ECHR 1999‑V, and *Gäfgen*, cited above, § 90).

26.  The Court further observes that the police officers were convicted for their conduct and sentenced to three years’ imprisonment and a three‑year ban on exercising official duties (see paragraphs 12 and 13 above). However, it notes that their sentences were suspended in view of, in particular, positive references from their places of work and residence, their lack of previous convictions and their law-abiding behaviour after committing the crime. The Court, however, cannot accept those arguments as justifying the imposition of lenient sentences on the police officers, who had been found guilty of violent acts which amounted to torture (see, *mutatis mutandis*, *Kopylov v. Russia*, no. 3933/04, § 141, 29 July 2010). It considers that such punishment is manifestly disproportionate to a breach of one of the core rights of the Convention and does not have the necessary deterrent effect in order to prevent further violations of the prohibition of torture (see *Gäfgen*, cited above, §§ 121, 123 and 124).

27.  The Court further notes that the domestic courts awarded the applicant the equivalent of about EUR 1,900 in compensation. This amount is substantially less than what it generally awards in similar cases (see, for instance, *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, § 96, 2 May 2017).

28.  Given the manifestly disproportionate criminal sanctions imposed on the police officers and the amount of compensation, which cannot be considered reasonable in comparison with the awards made by the Court in similar cases, the applicant may still claim to be a victim of a breach of his rights under Article 3. Accordingly, the Government’s objection must be dismissed.

29.  There has been a violation of Article 3 of the Convention under its substantive limb in that the applicant was subjected to torture. There has also been a violation of Article 3 of the Convention under its procedural limb on account of the lack of an effective investigation into his complaints.

II.  ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

30.  The applicant contended that the domestic remedies of which he had availed himself in respect of the breach of his rights guaranteed by Article 3 had not been effective. He relied on Article 13, which reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

31.  The Government contested that argument.

A.  Admissibility

32.  The Court has found that the respondent State is responsible under Article 3 of the Convention for the torture suffered by the applicant at the hands of the police. The applicant’s complaints in this regard are therefore “arguable” for the purposes of Article 13 in connection with Article 3 of the Convention.

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

B.  Merits

34.  In so far as the applicant complained that he did not have an effective criminal-law remedy in respect of his allegations of torture by the police, the Court notes that this part of the complaint does not raise any separate issue from that examined under the procedural limb of Article 3 and considers that there is no need to examine it separately under Article 13.

35.  In so far as the applicant complained that he did not have an effective civil-law remedy in respect of the same allegations, the Court notes that Russian law enabled the applicant to lodge a civil claim for compensation for the non-pecuniary damage sustained as a result of the ill‑treatment. The fact that his claim was only partially allowed is not in itself sufficient to render the remedy ineffective. The Court finds that it has not been shown that the civil-law remedy was ineffective. Accordingly, there has been no violation of Article 13 of the Convention as regards the civil proceedings (see *Shestopalov v. Russia*, no. 46248/07, §§ 72-74, 28 March 2017).

III.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

36.  Article 41 of the Convention provides:

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

A.  Damage

37.  Taking into account the amount awarded to the applicant in the domestic civil proceedings, he claimed 15,000 euros (EUR) in respect of non‑pecuniary damage.

38.  The Government contested that claim.

39.  The Court has found that the applicant can still claim to be a victim of a violation of his rights guaranteed under Article 3 of the Convention. Making its assessment on an equitable basis, and taking into account the amount awarded by the domestic courts, it awards the applicant the amount claimed, plus any tax that may be chargeable on that amount.

B.  Costs and expenses

40.  The applicant also claimed EUR 6,500 for the legal fees of Ms Sadovskaya incurred before both the domestic authorities and the Court.

41.  The Government contested that claim.

42.  Regard being had to the documents in its possession and to its case law, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 2,500 for the proceedings before the Court.

C.  Default interest

43.  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 to the merits the question whether the applicant may still claim to be a victim of a violation of Article 3 of the Convention;

2.  *Declares* the application admissible;

3.  *Holds* that the applicant may still claim to be a victim of a violation of Article 3 of the Convention for the purposes of Article 34 of the Convention;

4.  *Holds* that there has been a violation of Article 3 of the Convention under its substantive limb in that the applicant was subjected to torture;

5.  *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb on account of the lack of an effective investigation into the applicant’s complaints;

6.  *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention in conjunction with Article 3 of the Convention as regards the criminal‑law remedy;

7.  *Holds* that there has been no violation of Article 13 of the Convention in conjunction with Article 3 of the Convention as regards the civil proceedings;

8.  *Holds*,

(a)  that the respondent State is to pay the applicant, within three months the following amounts,to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i)  EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii)  EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

9.  *Dismisses* the remainder of the applicant’s claims for just satisfaction.

Done in English, and notified in writing on 17 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

 Fatoş Aracı Alena Poláčková
 Deputy Registrar President