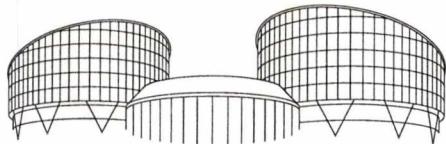


*Yefremov
communicated*



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

Communicated on 7 October 2014

FIRST SECTION

Application no. 46955/10
Ansar Agdamovich VAGAPOV against Russia
and 2 other applications
(see list appended)

STATEMENT OF FACTS

The applicants are Russian nationals. Their names, dates of birth and places of residence are listed in the Appendix. The facts of the cases, as submitted by the applicants, are summarised below.

The applicants allege that they were subjected to ill-treatment by police officers in the Mariy El Republic. No criminal cases were open to carry out investigation into their allegations. Information concerning the investigating authorities' refusals to open criminal cases and their review by courts on the applicants' appeals is set out in the Appendix.

A. The application of Mr Vagapov

1. The applicant's alleged ill-treatment

1. On 9 June 2007 at 2 a.m. the applicant was apprehended by a police patrol following a telephone call of his girlfriend who complained of his aggressive behaviour. He was taken to the Krasnogorskoye police station, where he was beaten up by police officers M. and P.

2. The applicant was released on the same day at about 4 a.m. On his way home he felt unwell and asked for help in a shop. A shop assistant called an ambulance. The ambulance took the applicant to a hospital.

2. The applicant's injuries

3. According to an ambulance signal sheet (*сигнальный лист*) and an ambulance card of 9 June 2007, and a letter of the Zvenigorodskaya Central Hospital of 7 April 2008, the applicant had the following injuries on 9 June 2007: contusion of the lower jaw, contusion or fraction of the left hip and laceration on the back of the head.

4. According to forensic medical expert report no. 436 of 9 June 2007, the applicant had abrasions on his face and lips and injury on the back of his head, which had been inflicted by a blunt object. According to medical expert report no. 449 of 15 June 2007, the applicant had a laceration on the

back of his head, which had been inflicted by a blunt object six to eight days before the examination.

5. According to the applicant's parents, the applicant did not have any injuries before the events in question, when they saw him on 7 June and 8 June 2007 at about 5 p.m., and had the injuries on 10 June 2007. According to the applicant's girlfriend, he did not have any injuries when he was apprehended at their flat by police officers and taken to the police station. After his release from the police office she saw him with the injuries when she accompanied him to the hospital in the ambulance at about 7 a.m. on 9 June 2007.

6. According to the ambulance assistant A., the ambulance arrived in the shop at about 5.30 a.m. on 9 June 2007. The applicant had the injuries described in paragraph 3 above.

3. Pre-investigation inquiry

7. According to the first refusal to open a criminal case, the applicant received the injuries as a result of his fall at the entrance to the police station. According to the other refusals, the applicant's injuries were received in a brawl with unspecified persons on 8 June 2007.

8. According to explanations (*объяснения*) by police officers M. and Ya., who took part in the applicant's apprehension, he had been apprehended in a car near his home following his girlfriend's call to the police. He was drunk. The police officers did not notice any injuries on him. None of the police officers used any force against him. Later, on 11 June 2007 the applicant was apprehended anew in relation to a criminal case and it was at that moment that officer M. noted injuries on his head and hands.

9. Police officer P. gave explanations in which he stated that the applicant had been drunk when taken to the police station. None of the police officers present at the police station at the night of the events had beaten him up. Similar explanations were given by police officer G. who stated that he had not noticed any injuries on the applicant.

4. Other information

10. On 12 June 2007 the applicant was arrested on suspicion of having committed a murder on 11 June 2007. The case ended with his conviction of murder by the Zvenigorodskiy District Court on 19 November 2007. In those criminal proceedings the applicant stated that he could not have beaten the victim up due to his poor physical condition following his injury in a brawl on 8 June 2007, of which he had chosen not to give any details.

B. The application of Mr Dmitrichenko

1. The applicant's arrest and alleged ill-treatment

11. On 12 August 2009 at approximately 3 p.m. the applicant was apprehended in a street in Yoshkar-Ola by police officers who had information about his involvement in a fraud. He was taken to a forest where he was beaten up, held sitting on the floor tied up with crossed legs, hands shackled behind his back, and his head fixed close to his legs, and subjected to electric shocks via wires of a portable device connected to his

fingers by police officers who requested him to confess to a murder of the victim of the fraud. The applicant did not confess. The police officers then took him to a police station and later to his home for a search in the fraud case.

12. At about 7 p.m. the second applicant was taken to a hospital. According to the police arrest record compiled on 12 August 2009 at 10.40 p.m., the applicant was arrested at 7.40 p.m. The applicant wrote in the arrest record that he had been arrested at 3 p.m. and that he had been beaten up and tortured with electricity in a forest.

13. On the same day at 11.30 p.m. the applicant was placed in a temporary detention facility.

2. The applicant's injuries

14. According to the report of the head of the temporary detention facility, the applicant was brought there from a hospital with multiple bruises and abrasions on his neck, back, contusion of reins, hyperaemia on both wrists and sores on his hands and legs.

15. According to forensic medical report no. 1482 of 14 September 2009, the applicant had received the following injuries on 12 August 2009: abrasions on his left and right wrists and left forearm, and bruises on his face, back and in the lumbar area.

3. Pre-investigation inquiry

16. The investigating authority refused to open a criminal case into the applicant's alleged ill-treatment by the police for the reason that his allegations were not corroborated by evidence. The materials concerning the fact that the applicant had suffered injuries by unknown persons were transferred for further check by the police.

4. Criminal proceedings against the applicant

17. The applicant was found guilty of fraud by the Yoshkar-Ola Town Court on 4 August 2010. On 4 October 2010 the judgment was upheld on appeal by the Supreme Court of the Mariy El Republic. The applicant raised the complaint of his police ill-treatment during his trial, but it appears that the complained was left unanswered by both the first instance and appeal courts.

C. The application of Mr Yefremov

1. The applicant's alleged ill-treatment

18. On 2 January 2008 at 10.30 p.m. the applicant was stopped in a street by police officers O. and K. because he was in a state of alcoholic intoxication. He refused to produce his identification documents and they beat him up. Then a police car arrived and he was taken to the Zarechnyy police station of Yoshkar-Ola. There he was held for some time and then taken to a narcological unit after which he was brought back to the police station. Immediately after his release on the morning of the next day he went to a hospital in order to record his injuries.

2. The applicant's injuries

19. According to medical certificate no. 190 of 7 February 2008 of the hospital No. 5 of Yoshkar-Ola, the applicant had the following injuries: laceration on his lower lip, bruise on the right parietal region and bruises on both hips.

20. The following injuries on the applicant were recorded in forensic medical expert report no. 91 of 4 January 2008: bruises on the left eye, laceration on the lower lip, bruises on the right shoulder, right knee, left buttock and both hips. The expert considered that the injuries had been received as a result of at least nine blows. Those on the lower extremities had been inflicted by a long blunt object, which could have been a police rubber stick. The expert excluded the possibility that those injuries had been received as a result of a fall.

3. Pre-investigation inquiry

21. According to police officers O. and K., they found the applicant sleeping on the snow and woke him up. He refused to produce his identification documents and tried to attack one of them. They used force against him in compliance with the relevant legal requirements. In particular, they stated that they punched the applicant in his face only once and that his other injuries had probably been received before they stopped him. It appears that in their initial explanations the officers indicated that they had used a rubber stick. In further statements they denied having used it, although they presumed that the applicant could have received blows by the rubber stick which was hanging on officer O.'s hand.

22. The investigating authority refused to open a criminal case for the reason *inter alia* that it was not possible to determine whether the applicant had been beaten by the rubber stick or had hit himself against it.

COMPLAINTS

23. The applicants complain under Articles 3 and 13 of the Convention that they were subjected to ill-treatment by the police and that the State failed to conduct effective investigation into those events.

24. Mr Vagapov and Mr Efremov also complain under Article 13 that in the absence of an effective investigation into their complaints a civil claim for damages would have no prospects of success.

25. Mr Dmitrichenko complains under Article 5 § 1 (c) of the Convention of his unrecorded detention between 3 p.m. and 10.40 p.m. on 12 August 2009.

QUESTIONS TO THE PARTIES

1. Have the applicants been subjected to torture or inhuman or degrading treatment in breach of Article 3 of the Convention?

2. Have the authorities provided a satisfactory and convincing explanations to the applicants' injuries, as recorded in the relevant medical documents (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Selmouni v. France* [GC], no. 25803/94, § 87, ECHR 1999-V)?

3. In answering that question the Government are requested to address, *inter alia*, the following points concerning the circumstances surrounding alleged ill-treatment of each of the applicants:

(a) Once in the hands of the police:

(i) Were the applicants informed of their rights? If so, when, and what rights were they informed about?

(ii) Were they given the possibility of informing their families about their apprehension and, if so, when?

(iii) Were they given access to a lawyer and, if so, when? Was that a lawyer on duty invited by a police officer or an investigator, or a lawyer of the applicant's choice? If given initially a State-appointed lawyer, when did the applicants receive access to a lawyer of their choice?

(iv) Were they given access to a doctor and, if so, when? Were their medical examination, if any, conducted out of the hearing and out of sight of police officers?

(b) What activities, where, when and by whom were conducted with the applicants' participation during the period between the moment of their actual apprehension and until their release, or in the case of Mr Dmitrichenko until the moment when he was first brought before the judge who ordered his remand in custody? The Government are required to provide a detailed hour-by-hour report on what happened during that period and to account for the time spent by the applicants in the hands of police.

Where were the applicants held during those periods? What was their procedural status?

The Government are required to provide relevant procedural and other documents in support of their answers, including where applicable the decision on bringing the criminal proceedings within the framework of which Mr Dmitrichenko was apprehended; records of the applicants' apprehension as suspects or administrative offenders; records of investigative activities including questioning as a suspect and accused, when applicable; home search records of 12 August 2009 in relation to Mr Dmitrichenko; records of the applicants' entering and leaving the police stations from the Registers of persons brought to a police station (*Книга учета лиц, доставленных в дежурную часть органа внутренних дел*),

of their admission to detention facilities (*ИВС и СИЗО, камеры для административно задержанных*), and any documents attesting to their state of health and injuries during the periods concerned, including medical documents from hospital no. 5 of Yoshkar-Ola, to which Mr Dmitrichenko was taken before his placement to a temporary detention facility on 12 August 2009.

4. In the cases where the applicants' apprehension was not related to a criminal investigation (Mr Vagapov and Mr Yefremov), what proceedings, if any, were brought against the applicants? What were the legal grounds and reasons for taking the applicants to the police stations and their stay at the police stations on the dates of their alleged ill-treatment?

5. Having regard to the procedural protection from torture, inhuman or degrading treatment, was the pre-investigation inquiry in these cases by the domestic authorities, which refused to open criminal cases into the applicants' complaints, in breach of Article 3 of the Convention? In particular, were the investigative authorities independent from the alleged perpetrators?

6. Did the applicants have at their disposal an effective domestic remedy for their complaints under Article 3, as required by Article 13 of the Convention?

7. Was the applicant Mr Dmitrichenko deprived of his liberty on 12 August 2009 in breach of Article 5 § 1 of the Convention? In particular, did his deprivation of liberty fall within paragraph (c) of this provision?

8. Has Mr Dmitrichenko exhausted all effective domestic remedies in relation to his complaint under Article 5 § 1, as required by Article 35 § 1 of the Convention? In particular, did he raise his Article 5 § 1 complaint, at least in substance, together with his criminal complaint about physical violence allegedly applied by police officers?

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by	Investigating authority, number of refusals to open a criminal case, dates of the first and the last refusals	Grounds for the refusal to open a criminal case	Judicial review of the refusal to prosecute, under Article 125 of the Code of Criminal Procedure
1.	46955/10	22/06/2010	Ansar Agdamovich VAGAPOV 17/01/1977 Novocherkassk	Committee Against Torture, Nizhniy Novgorod	Zvenigorodskiy inter-district investigation division of the investigative committee at the Mariy El Republic prosecutor's office (<i>Звенигородский межрайонный следственный отдел следственного управления Следственного комитета при прокуратуре РФ по РМЭ</i>) 8 refusals 15 June 2007 14 August 2009	Article 24 § 1 (1) of the Code of Criminal Procedure ("CCrP"): the alleged offence had not been committed	The Supreme Court of the Mariy El Republic, 28 December 2009 (upheld the last refusal)
2.	25131/11	09/03/2011	Sergey Yakovlevich DMITRICHENKO 11/05/1958 Nizhniy Tagil		Yoshkar-Ola investigation division of the investigative committee at the Mariy El Republic (<i>следственный отдел по г. Йошкар-Ола следственного управления Следственного комитета по Республике Марий Эл</i>)	Article 24 § 1 (1) of the CCrP: the alleged offence had not been committed	The Yoshkar-Ola Town Court, 7 December 2011 (found the last refusal unlawful and unsubstantiated)

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by	Investigating authority, number of refusals to open a criminal case, dates of the first and the last refusals	Grounds for the refusal to open a criminal case	Judicial review of the refusal to prosecute, under Article 125 of the Code of Criminal Procedure
					4 refusals 29 August 2009 12 August 2011		
3.	25257/13	02/04/2013	Dmitriy Mikhaylovich YEFREMOV 26/08/1972 Yoshkar-Ola	Committee Against Torture, Nizhniy Novgorod	Yoshkar-Ola investigation division of the investigative committee at the Mariy El Republic (следственный отдел по г. Йошкар-Ола следственного управления Следственного комитета по Республике Марий Эл) 17 refusals 14 January 2008 17 October 2011	Article 24 § 1 (1) and (2) of the CCrP: the alleged offence had not been committed and the actions of police officers did not contain the elements of a crime provided for by Article 286 of the Criminal Code	The Supreme Court of the Mariy El Republic, 8 October 2012 (upheld the last refusal)