



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

THIRD SECTION

**CASE OF VAGAPOV AND YEFREMOV v. RUSSIA**

*(Applications nos. 46955/10 and 25257/13)*

JUDGMENT

STRASBOURG

16 March 2021

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



**In the case of Vagapov and Yefremov v. Russia,**

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

Darian Pavli, *President*,

Dmitry Dedov,

Peeter Roosma, *judges*,

and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

two applications (nos. 46955/10 and 25257/13) 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 two Russian nationals, Mr Ansar Agdamovich Vagapov (“the first applicant”) and Mr Dmitriy Mikhaylovich Yefremov (“the second applicant”), on 22 June 2010 and 2 April 2013 respectively;

the decision to give notice to the Russian Government (“the Government”) of the applications, in which the applicants complained of ill-treatment by police and a lack of an effective investigation into their complaints;

the parties’ observations;

Having deliberated in private on 16 February 2021,

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

## INTRODUCTION

1. The applications concern the applicants’ alleged ill-treatment by the police and the alleged lack of an effective investigation into their complaints.

## THE FACTS

2. The applicants were born in 1977 and 1972 and live, respectively, in Mochalishche in the Zvenigovskiy district and Yoshkar-Ola, in the Mariy El Republic. They were represented by the Committee against Torture, a non-governmental organisation (NGO) based in Nizhniy Novgorod.

3. The Government were represented initially by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights, and subsequently by his successor in that office, Mr M. Galperin.

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

I. Mr VAGAPOV'S APPLICATION

**A. The first applicant's alleged ill-treatment by the police**

5. On the night of 8 to 9 June 2007 the applicant was taken to the Krasnogorskiy police station in the Zvenigovskiy district of the Mariy El Republic following a telephone call to the police by his civil-law wife, with whom he had had a quarrel.

6. The applicant's account of the ensuing events, supported by witness statements, is as follows. At the police station the applicant was beaten up by police officers who punched him, knocked him down and kicked him. He was released early in the morning of 9 June 2007. On his way home he felt unwell and went into a shop to seek help. The shop assistant, who saw that the applicant was limping and that his face was badly hurt and bloodied, called for an ambulance at 5.30 a.m. The ambulance arrived and a medic observed that the applicant had multiple contusions on his face and a lacerated wound on the back of his head, and that he was indeed limping. He was taken to Zvenigovskaiy district hospital, where the wound on his head was bandaged. On the way to the hospital, the ambulance stopped off at the applicant's home to pick up his civil-law wife, who accompanied him. She saw that he was limping, with a wound on the back of his head and a cut lip; he had not had any injuries before being taken away by the police during the night. On 10 June 2007 the applicant's parents saw the applicant with injuries (bruised face, wound on the back of the head and pain in the hips) which he had not had when they had seen him on 7 and 8 June 2007 before his encounter with the police.

7. According to the ambulance records, the applicant had the following injuries: contusion of the lower jaw, haematoma of the lower lip, a contusion or fracture in the left hip and a lacerated wound on the back of the head. The hospital doctors recorded a "subcutaneous lacerated wound" on the back of the head, swelling in the area of the left hip, bruises to the face and pain in the area of the left costal arch. The applicant was diagnosed with a closed head injury, a subcutaneous contusion from a wound in the occipital lobe and a contusion on the left hip.

8. Later that day a district police officer of the Krasnogorskiy police department issued a referral for the applicant's forensic medical examination in connection with his allegations of beatings by police officers on 8 June 2007.

9. The applicant was examined on the same day by an expert from the Zvenigovskiy district forensic medical expert bureau of the Mariy El Republic Ministry of Healthcare. The expert also consulted the applicant's hospital records.

10. According to the expert's report of 9 June 2007, the applicant gave, *inter alia*, the following explanations to the expert: at around 11 p.m. on

8 June 2007 he had been taken to the police station during a family row. He was punched, knocked down and kicked by two police officers; he also fainted during the beatings.

11. The expert reported the following injuries on the applicant's body: a bruise measuring 6 cm by 3 cm in the area of the left temple and cheekbone; a bruise 2 cm by 1 cm on the right upper eyelid; a bruise on the nose; and a haemorrhage measuring 4 cm by 3 cm on the lips, which were swollen on the left. He noted that the applicant could feel pain in his chest, abdomen and left hip.

12. The expert did not remove the bandage on the applicant's head, noting that it was "soaked in reddish liquid in the occipital lobe".

13. The expert concluded that the bruises to the face, the haemorrhage of the lips and the subcutaneous contusion from a wound in the occipital lobe had originated from traumatic impacts by or against hard blunt objects. Since the injuries had not caused a health disorder or a loss of working capacity, they were classified as injuries not entailing any harm to health. The expert further stated, without any further elaboration, that the time when the injuries had been inflicted was at variance with that indicated in the police referral dated 8 June 2007.

14. On 15 June 2007 the applicant was re-examined by the same expert, this time in the context of unrelated criminal proceedings against the applicant. The expert concluded that the applicant had subcutaneous scarring from a wound in the occipital lobe which had originated from a traumatic impact by or against a hard blunt object occurring some six to eight days before the examination. The wound was classified as an injury entailing minor damage to health.

15. According to a report by a psychologist, based on a psychological assessment carried out on 16 April 2015, the applicant had signs of post-traumatic stress disorder related to his ill-treatment by the police on 8 June 2007.

#### **B. The authorities' response to the allegations of police ill-treatment**

16. The authorities, having carried out a pre-investigation inquiry into the applicant's allegations of ill-treatment by the police, refused eight times to bring criminal proceedings under Article 24 § 1 (1) of the Code of Criminal Procedure on the grounds that no offence under Article 286 § 3 (a) of the Criminal Code (exceeding authority through the use of violence) had been committed by the police officers. In the first refusal issued by the Krasnogorskiy police department on 15 June 2007, the applicant's injuries were attributed to his accidentally falling flat on his face at the entrance to the police station.

17. In the subsequent refusals issued by investigators from the Volzhskiy (and subsequently Zvenigovskiy) inter-district investigation

division of the investigative committee at the Mariy El Republic prosecutor's office, the conclusion was that the applicant's allegations of ill-treatment by the police had not been confirmed by the results of the pre-investigation inquiry. In their decisions the investigators relied on statements by police officers who had dealt with the applicant on the night of 8 to 9 June 2007 and who denied having inflicted any violence on him. The investigators also referred to the applicant's statements in the unrelated criminal proceedings against him, concerning an offence committed on 11 June 2007 in which he had sustained some injuries during an apparent brawl on 8 or 13 June 2007 (that is, two days before his forensic medical examination on 15 June 2007), details of which were not supplied. According to the applicant, those statements were given as a result of pressure exerted on him by an investigator in the criminal case against him.

18. The applicant's representatives appealed against the refusals to bring criminal proceedings, addressing their appeal to the Zvenigovskiy district prosecutor, the prosecutor of the Mariy El Republic, the Prosecutor General of the Russian Federation and the Zvenigovskiy District Court. The refusals (dated 29 February and 6 June 2008, 11 and 20 January 2009, and 22 and 28 May 2009) were set aside as unlawful and for being based on an incomplete inquiry, particularly under the Zvenigovskiy District Court's decisions of 23 September 2008 and 20 April 2009 declaring as unfounded the refusals of 6 June 2008 and 20 January 2009.

19. The most recent refusal of 14 August 2009 to bring criminal proceedings was found lawful and substantiated by the Zvenigovskiy District Court's decision of 29 October 2009, and upheld by the Supreme Court of the Mariy El Republic on 28 December 2009. Applications for supervisory review of those judgments were dismissed by a judge of the Supreme Court of the Mariy El Republic on 19 March 2010 and by a judge of the Supreme Court of the Russian Federation on 1 September 2010. The latter decision was fully endorsed by the Deputy President of the Supreme Court of the Russian Federation on 6 October 2010.

20. On 12 August 2011 the applicant brought a civil claim against the Ministry of Finance of the Russian Federation in respect of non-pecuniary damage in connection with the lack of an effective investigation into his complaint about ill-treatment by the police.

21. On 27 September 2011 the Yoshkar-Ola Town Court of the Mariy El Republic dismissed the applicant's claim. It held that the claim was based on an erroneous understanding of the domestic law, in that the finding of a court as to the unlawfulness of refusals to bring criminal proceedings did not automatically entail that compensation would be awarded in respect of non-pecuniary damage. The applicant had failed to produce evidence of such damage or of a causal link between the actions of the investigating authorities and any damage. By lodging his criminal complaint, the applicant had availed himself of his right guaranteed by Article 13 of the

Convention to have an effective domestic remedy in relation to his alleged ill-treatment by the police. A pre-investigation inquiry had been carried out into his complaint and he had been informed of its results. On 17 November 2011 the Supreme Court of the Mariy El Republic upheld the judgment on the applicant's appeal. It endorsed the Town Court's findings, noting that the repeated setting-aside of the refusals to bring criminal proceedings could not serve as a ground for granting the applicant's claim because the refusals had been either declared unfounded by courts or set aside for want of a comprehensive inquiry, and never because the investigating authorities had exceeded their power.

22. On 4 March 2013 the NGO Committee against Torture lodged an application on behalf of the applicant with the Prosecutor General of the Russian Federation, complaining about the lack of an effective investigation into the applicant's complaint of police ill-treatment, contending, *inter alia*, that there had been sufficient data revealing elements of an offence in the police officers' actions, which should have called for the opening of a criminal case under Article 140 § 2 of the Code of Criminal Procedure. They requested that the refusal to open a criminal case of 14 August 2009 be revoked. On 22 March 2013 the Prosecutor General's Office of the Russian Federation informed the applicant that there had been no grounds for setting aside the refusal of 14 August 2009.

## II. Mr YEFREMOV'S APPLICATION

### A. The second applicant's alleged ill-treatment by the police

23. On the night of 2 to 3 January 2008 the applicant was allegedly beaten up by police patrol officers in the street in Yoshkar-Ola.

24. The applicant's account of events that night is as follows. At around 10.30 p.m. he was walking home after a festive dinner with his relatives. He was approached by two police officers who requested that he produce his identity card. He refused and an argument ensued. The police officers hit him in the face, knocked him down to the ground, punched and kicked him, and used truncheons to beat him up. A passer-by saw the beatings and rebuked the police officers. A police patrol car arrived and the applicant was taken to the Zarechnyy police station in Yoshkar-Ola. He enquired about the identity of the police officers who had beaten him up, learning that their names were K. and O. Those police officers had to report to their superior about the incident. Later in the night, one of them punched the applicant in the face in a corridor inside the police station.

25. According to the police records, the applicant was taken to the Zarechnyy police station at 11.45 p.m. on 2 January 2008 and was released at 1.20 a.m. on 3 January 2008.

26. According to a certificate of a narcological dispensary, to which the applicant was taken by police officers and examined at 12.25 a.m. on 3 January 2008, he was slightly inebriated.

27. According to the applicant's cousin, the applicant had no injuries when he left her home at around 10.30 p.m. on 2 January 2008 after spending the evening with her.

28. According to the applicant's aunt, at around 11.30 p.m. on 2 January 2008 she learned from the applicant's cousin (whom the applicant had called from the police station) that the applicant had been beaten up, had subsequently been held at the police station and was in need of help. When the applicant's aunt arrived at the police station, she saw the applicant with his face swollen, a bump on his head and bloodied hands. After his release she saw that he also had fresh bruises on his buttocks and legs.

29. According to a certificate of polyclinic no. 5, where the applicant was examined at 2.09 a.m. on 3 January 2008, he had the following injuries: a contused and lacerated wound of the lower lip; a contusion in the parietal lobe on the right; and bruises on both hips.

30. At 3.30 p.m. on 4 January 2008 the applicant was examined by a forensic medical expert from the Yoshkar-Ola forensic medical bureau of the Mariy El Republic Ministry of Healthcare, who reported the following injuries on his body: a bruise (5 cm by 4 cm) on the lids of the left eye; a rupture (2.2 cm by 0.3 cm) of the lower lip; a bruise (4 cm by 3 cm) on the right shoulder; a stripe-shaped bruise (20 cm by 14 cm) on the front surface of the right hip and knee; two stripe-shaped bruises (8 cm by 5 cm and 9 cm by 6 cm) on the back surface of the right hip; a stripe-shaped bruise (18 cm by 6 cm) on the back surface of the right knee joint; and two stripe-shaped bruises (22 cm by 18 cm and 21 cm by 9 cm) on the left buttock and hip. According to the expert, the bruising to the eye and the rupture of the lower lip were consistent with being punched with a fist. The bruises on the lower extremities and left buttock were consistent with being hit with a police truncheon; they could not have resulted from a fall. The injuries had been caused as a result of no less than nine traumatic impacts, including five with a truncheon, one or two days before the examination.

31. According to reports by psychologists, based on the applicant's psychological assessment on 14 August 2009 and 16 April 2015, the applicant had signs of post-traumatic stress disorder related to his ill-treatment by the police on 2 January 2008.

#### **B. The authorities' response to the allegations of police ill-treatment**

32. On 3 January 2008 the applicant lodged a criminal complaint against the police officers. Investigators from the Yoshkar-Ola town investigation division of the investigative committee for the Mariy El Republic carried out a pre-investigation inquiry and refused to bring criminal proceedings

against officers K. and O. The refusal was based on the findings that (i) the elements of the offence under Article 286 § 3 (a) and (b) of the Criminal Code (exceeding authority through use of violence and unconventional means) could not be established in the actions of the police officers as regards the applicant's alleged beatings in the street and (ii) no offence was made out under Article 286 § 3 (a) of the Criminal Code as regards the applicant's alleged ill-treatment at the police station. Between January 2008 and October 2012 the investigators issued fourteen refusals to bring criminal proceedings, of which thirteen (dated 14 January, 24 February, 9 May and 12 October 2008; 25 January, 13 March, 26 April and 27 June 2009; 25 January, 27 May, 8 and 25 November 2010; and 14 July 2011) were revoked as unlawful and unfounded, in particular following the judicial review of some of them on the applicant's appeals (Yoshkar-Ola Town Court's decisions of 11 April and 12 September 2008, 9 December 2009, 18 February and 22 September 2010, and 8 June and 22 September 2011). Some of the applicant's appeals were not examined, because the investigators' decisions had already been revoked (Yoshkar-Ola Town Court's decisions of 15 February 2008 and of 24 February and 16 June 2009).

33. The investigators relied (including in the most recent refusal of 17 October 2011 to open a criminal case) on statements by police officers K. and O. (see paragraph 34 below) to conclude that they had lawfully used force against the applicant in order to overcome his resistance, punching the applicant once in the face and knocking him down to the ground, while involuntarily striking him with a truncheon that was hanging loosely from the hand of one of the officers.

34. According to officer O.'s report of 2 January 2008, the applicant had been found lying on the ground; after waking up he had been unable to find his bearings. In response to the officer's request for him to produce his identity card, he had jumped on them and tried to punch O. in the face; they had therefore used physical force and a rubber truncheon against him. Officer K. gave similar statements later. In the course of the subsequent rounds of the pre-investigation inquiry, O. and K. gave new statements. In particular, they stated that in response to their request for him to produce his identity card, the applicant had walked away and had ignored them. O. had tried to stop him and had grabbed him by his hand; the applicant had attacked O., kicking him and attempting to hit him in the face. O. had punched the applicant in the face once to calm him down, injuring his lip; O. and K. had subsequently knocked the applicant down to the ground. The police officers offered no explanation as to how the bruises on the applicant's lower extremities had been caused. They denied deliberately striking the applicant with a rubber truncheon, suggesting that the applicant could have received those injuries as a result of his having fallen before they

had found him, or as a result of receiving blows from a rubber truncheon hanging from O.'s hand.

35. The most recent decision, of 17 October 2011, not to bring criminal proceedings against the police officers was declared lawful and well-founded in the Yoshkar-Ola Town Court's decision of 23 August 2012, and was upheld by the Supreme Court of the Mariy El Republic on 8 October 2012.

36. There was no evidence of any injuries on the police officers after the applicant's apprehension. No administrative or criminal proceedings were initiated against the applicant, including in relation to his alleged disobedience or violence in respect of the police officers.

## THE LAW

### I. JOINDER OF THE APPLICATIONS

37. 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 ARTICLE 3 OF THE CONVENTION

38. The applicants complained that they had been victims of violence at the hands of the police and that there had been no effective investigation into their complaints. They 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.”

39. The Government, relying on the findings of the domestic authorities, denied that there had been any violation of Article 3 of the Convention.

#### A. Admissibility

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

#### B. Merits

41. The relevant general principles were reiterated by the Grand Chamber in *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-88, ECHR 2015). In particular, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of individuals within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of

proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the version of events given by the victim. In the absence of such an explanation, the Court can draw inferences which may be unfavourable for the Government. That is justified by the fact that those in custody are in a vulnerable position and the authorities are under a duty to protect them (*ibid.*, § 83).

42. The Court observes that the applicants' allegations that they had been subjected to beatings by the police officers are supported by medical evidence and witness accounts, in particular by witness statements attesting to the fact that the applicants had no injuries before their encounters with the police (see paragraphs 6 and 27 above) and that they displayed injuries thereafter (see paragraphs 6 and 28 above). They asked for medical attention immediately after their release from police custody and submitted medical certificates attesting to their injuries (see paragraphs 7 and 29 above). The forensic medical experts' conclusions about the cause of the injuries were consistent with their allegations of police ill-treatment (see paragraphs 8-14 and 30 above). The applicants were found to have signs of post-traumatic stress disorder related to their alleged ill-treatment by the police, in the case of Mr Vagapov more than seven years after the events (see paragraph 15 above) and, in the case of Mr Yefremov, more than a year and again more than seven years after the events (see paragraph 31 above).

43. While in the report of 9 June 2007 the forensic medical expert stated ambiguously that the time when Mr Vagapov's injuries were supposed to have been inflicted was at variance with the date given in the police referral (namely, 8 June 2007), the expert's conclusion in the report of 15 June 2007 left no doubt that the alleged ill-treatment could well have occurred at the stated time (see paragraphs 8-14 above).

44. In view of the above, the Court finds the applicants' allegations of ill-treatment by the police to be credible.

45. The Court further observes that the applicants' allegations that their injuries had been the result of ill-treatment by the police officers were dismissed by the investigating authority, essentially on the basis of the statements by those same police officers denying any wrongdoing and suggesting another explanation for the injuries (an accidental fall or an apparent brawl in the case of the first applicant, and the lawful use of force to overcome the second applicant's alleged resistance – see paragraphs 16-17 and 33 above). Apart from relying on the potential offenders' versions, the investigators failed to explain how the injuries had arisen, or the explanations they did offer were simply dubious (such as explaining the six bruises on the second applicant's lower extremities, which measured up to 22 cm by 18 cm, as being caused by a truncheon hanging from a police officer's hand – see paragraphs 30 and 33 above).

46. The investigating authorities based their findings on the results of the pre-investigation inquiry, which is the initial stage in dealing with a criminal complaint under Russian law and which should normally be followed by the opening of a criminal case and an investigation if the information gathered has disclosed elements of a criminal offence (see *Lyapin v. Russia*, no. 46956/09, § 129, 24 July 2014). Merely to carry out 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 bring criminal proceedings and to conduct a proper criminal investigation in which the whole range of investigative measures may be performed, including confrontations, identification parades or the questioning of witnesses (*ibid.*, §§ 132-37).

47. In view of the foregoing, the Court finds that the authorities failed to carry out an effective investigation into the applicants' credible allegations of ill-treatment by the police, as required by Article 3 of the Convention.

48. Given that the Government's denial of State responsibility for the applicants' injuries was based on the results of the superficial domestic pre-investigation inquiry, which fell short of the requirements of Article 3 of the Convention, the Court holds that the Government have failed to discharge their burden of proof and to produce evidence capable of casting doubt on the applicants' accounts of the events, which it therefore finds established (see *Olisov and Others v. Russia*, nos. 10825/09 and 2 others, §§ 83-85, 2 May 2017, and *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, §§ 102-04, 12 December 2017).

49. The Court finds that the applicants were subjected to inhuman and degrading treatment at the hands of the police (see *Gäfgen v. Germany* [GC], no. 22978/05, § 89, ECHR 2010).

50. There has thus been a violation of Article 3 of the Convention under its substantive and procedural limbs.

### III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

51. The applicants complained that they had no effective domestic remedies in relation to their ill-treatment by the police, as the authorities had failed to carry out an effective investigation in response to their complaints. They relied on Article 13 of the Convention, which reads as follows:

“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.”

52. The Government contested that argument.

53. The Court notes that this complaint is linked to the issue raised under the procedural aspect of Article 3 of the Convention and must therefore likewise be declared admissible.

54. Having regard to the finding of a violation of Article 3 under its procedural aspect on account of the respondent State's failure to carry out an effective investigation, the Court considers that it is not necessary to examine this complaint separately under Article 13 of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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.”

56. The applicants claimed 15,000 euros each in respect of non-pecuniary damage.

57. The Government submitted that no just satisfaction should be awarded to the applicants, and that if the Court decided to make an award it should be significantly lower than the amounts claimed.

58. The Court acknowledges that the applicants have undeniably sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. It awards each applicant the amount claimed in respect of non-pecuniary damage, plus any tax that may be chargeable.

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

#### FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs in respect of both applicants;
4. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;
5. *Holds*
  - (a) that the respondent State is to pay each applicant, within three months, in respect of non-pecuniary damage, EUR 15,000 (fifteen

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;

- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 16 March 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova  
Deputy Registrar

Darian Pavli  
President